NAME OF CASE	DOCKET NO.	DATE OF ORDER	PAGE
1. In the Matter of the Application of Stephen Thomas Amendola for Licensure as a Casino Employee (Floorperson).	OAL Docket No. CCC 4647-80 Agency 80-EA-90	4/15/81	1
2. In the Matter of the Application of William Baker-El for Licensure as a Casino Employee (Dealer).	OAL Docket No. CCC 928-80 Agency 80-EA-2	6/30/81	14
3. In the Matters of the Application of Bally's Park Place, Inc.,a New Jersey Corporation, For A Casino License and the Application of Bally Manufacturing Corporation, a Delaware Corporation, for a Casino Service Industry License.	Agency Docket Nos. 80-CL-2 80-CSI-13	1/13/81	24
4. In the Matter of the Application of Janet J. Capanna for Licensure as a Casino Employee (Dealer).	OAL Docket No. CCC 3764-80 Agency 80-EA-65	4/16/81	137
5. In the Matter of the Application of Rocco De Lareto for Licensure As a Casino Employee (Dealer).	OAL Docket No. CCC 3527-79 Agency 79-EA-107	3/13/81	146
6. In the Matter of the Application of Samuel DiGiancinto for Licensure as a Casino Employee (Alcoholic Beverage Employee).	OAL Docket No. CCC 4574-80 Agency 79-EA-3	5/4/81	156
7. In the Matter of the Applications of Milton P. Durham for Licensure as a Casino Employee (Dealer) and as a Casino Hotel Employee (Ticket Seller).	OAL Dockets Nos. CCC 6938-80 and CCC 2706-80 Agency 80-EA-177 and 80-EA-33	5/6/81	167
8. In the Matter of the Application of Vennon H. Hayes for Licensure as a Casino Employee (Dealer).	OAL Docket No. CCC 4714-80 Agency 80-EA-104	6/9/81	188

NAME OF CASE	DOCKET NO.	DATE OF ORDER	PAGE
9. In the Matter of the Application of Janice James for Licensure as a Casino Hotel Employee (Time Keeper).	OAL Docket No. CCC 6135-80 Agency 80-EA-132	6/16/81	194
10. In the Matter of the Application of Carroll A. Johnson for Licensure as a Casino Hotel Employee	OAL Docket No. CCC 4284-79 Agency 79-EA-133	1/30/81	203
11. In the Matter of the Application of Ronald F. Jordan for Licensure as a Casino Key Employee and Gaming School Instructor.	OAL Docket No. CCC 4778-80 Agency 80-EA-95	4/20/81	230
12. In the Matter of the Application of Robert Lemons for Licensure as a Casino Employee (Dealer).	OAL Docket No. CCC 0020-80 Agency 79-EA-194	2/24/81	258
13. In the Matter of the Renewal Application of Sonya Lewis for Licensure as a Casino Hotel Employee.	OAL Docket No. CCC 3511-80 Agency 79-EA-134	5/28/81	268
14. In the Matter of the Application of Annette Mackey for Licensure as a Casino Employee (Dealer).	OAL Docket No. CCC 5782-80 Agency 80-EA-124	5/4/81	278
15. In the Matter of the Application of Ramon Marsico for Licensure as a Casino Employee (Floorperson).	OAL Docket No. CCC 5322-80 Agency 80-EA-5	2/23/81	290
16. In the Matter of the Application of Rudy Q. Pacheco for Licensure as a Casino Employee (Floorperson).	OAL Docket No. CCC 5829-80 Agency 80-EA-126	6/30/81	296
17. In the Matter of the Application of Darryl S. Ragsdale for Licensure as a Casino Employee (Dealer).	OAL Docket No. CCC 5875-80 Agency 80-EA-155	5/19/81	304
18. In the Matter of the Application of Benito Raho for Licensure as a Casino Employee (Floorperson)	OAL Docket No. CCC 931-80 Agency 80-EA-8	2/27/81	317

NAME OF CASE	DOCKET NO.	DATE OF ORDER	PAGE
19. State of New Jersey v. William A. Sorrentino and Thomas L. Beebe.	OAL Docket No. CCC 1087-80 Agency 79-24	5/28/81	327
20. In the Matter of the Application of Patrick Taddeo for Licensure as a Casino Employee (Dealer).	OAL Docket No. CCC 3763-80 Agency 80-EA-75	1/21/81	352
21. In the Matter of the Application of Robert J. Thomason for Licensure as a Casino Employee (Craps Dealer).	OAL Docket No. CCC 5212-79 Agency 79-EA-164	3/9/81	363
22. In the Matter of the Petition of Trailways, Inc., for an Amendment to the Commission's Regulations regarding Inter-City Bus Passenger Service by Casinos.		3/13/81	371
23. In the Matter of the Application of Bradford Woodard for Licensure as a Casino Hotel Employee.	OAL Docket No. CCC 1481-79 Agency 79-EA-50	1/14/81	378

CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-90
OAL DOCKET NO. CCC 4647-80

IN THE MATTER OF THE APPLICATION :	
OF STEPHEN THOMAS AMENDOLA FOR :	
LICENSURE AS A CASINO EMPLOYEE :	FINAL ORDER
(BLACKJACK FLOORPERSON) :	

This matter having been opened to the New Jersey Casino Control Commission upon the Intial Decision of the Office of Administrative Law herein dated February 19, 1981; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed by either party; and the Commission having resolved at its public meeting on April 1, 1981 to affirm and adopt the said Initial Decision and to deny the application for licensure.

IT IS on this 15th day of April, 1981, ORDERED that the Initial Decision of the Officer of Administrative Law in this matter be and hereby is ADOPTED by the Commission; and

IT IS FURTHER ORDERED that the license application of Stephen Thomas Amendola be and hereby is DENIED based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Joseph P. Lordi

JOSEPH P. LORDI, CHAIRMAN

DATED: April 15, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4647-80

AGENCY DKT. NO. 80-EA-90

IN THE MATTER OF:

STEPHEN T. AMENDOLA,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: January 5, 1981

Received by Agency: 2/19/81

Decided: February 19, 1981

Mailed to Parties: 2/24/81

APPEARANCES:

Gary D. Thompson, Esq. for the Applicant (Cresse, Carr, Peaslee and Thompson, Attorneys)

Rosemary Quinn, Deputy Attorney General, for Respondent (John J. Degnan, Attorney General of New Jersey, Attorney)

BEFORE JOSEPH F. FIDLER, ALJ:

This matter concerns the application of Stephen T. Amendola to the Casino Control Commission for licensure to work in a casino as a blackjack floor person. By letter report to the Casino Control Commission dated May 20, 1980, the Division of Gaming Enforcement objected to the licensure of the applicant as a casino employee. The applicant requested a hearing on his license application and the matter was transmitted to

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

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

1. Whether the applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of section 89b(2), as incorporated in section 90b of the Casino Control Act.

2. Whether the applicant, with specific reference to his arrest in November 1973 by the Bellmawr, New Jersey Police Department, his charges of robbery and threat to kill in Henderson, Nevada in August 1979, and his employment with the Rendezvous Casino and Foxy's Casino in Las Vegas, has failed to reveal in his Personal History Disclosure Form, or in subsequent interviews with Division Investigators, any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the Casino Control Act.

3. Whether the applicant, with specific reference to the alleged conduct underlining a warrant for the applicant's arrest by the Henderson, Nevada Police Department in August 1979, has committed an offense which would indicate under section 86c of the Act that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not been or may not be prosecuted under the criminal laws of this State, within the meaning of section 86g of the Act.

4. Whether the applicant, with specific reference to his conviction upon a plea of guilty to a charge of distribution of a controlled dangerous substance in violation of N.J.S.A. 24:21-19, has been convicted of an offense which is an enumerated statutory disqualifier from licensure within the meaning of section 86c(3) of the Casino Control Act.

5. Whether the applicant, notwithstanding a conviction of any offense enumerated in the Act as disqualification criteria, has demonstrated his rehabilitation pursuant to section 90h of the Casino Control Act.

The applicant is a 26 year old resident of New Jersey who has satisfied the experiential requirement for licensure as a blackjack floor person as a result of the experience he gained as a blackjack dealer in Las Vegas, Nevada from May 1978 through July 1979. During this 14 month period, the applicant was employed by six Las Vegas casinos.

N.J.S.A. 5:12-86b provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. The possibility of disqualification from licensure pursuant to Section 86b of the Act arises in part from the applicant's 1973 arrest in Bellmawr, New Jersey for possession of a controlled dangerous substance with intent to distribute and possession of a hypodermic needle. It is undisputed that the applicant was acquitted of these charges after trial. However, the applicant omitted any mention of this arrest in his answer to Question No. 46 of his Personal History Disclosure Form filed with the Casino Control Commission on July 20, 1979 (Exhibit P-1), which form requires complete disclosure of an applicant's criminal and disorderly persons arrest and conviction record. Explaining the omission, the applicant stated "it just slipped my mind and I really didn't understand the question." The applicant acknowledged that he had been taken into custody on this charge, and that he had considered it to be a serious matter at the time of his arrest and his trial. The applicant's testimony concerning his reason for not disclosing this arrest on his Personal History Disclosure Form was hesitant and equivocal. When asked on cross examination what response he gave to Division of Gaming Enforcement Detective Edward Manzi concerning his failure to disclose his 1973 arrest, the applicant stated "I think I either told him that I completely forgot about it or I didn't understand the question and I thought it was only convictions."

The possibility of disqualification from licensure pursuant to the disclosure criteria of Section 86b of the Casino Control Act also arises from the applicant's responses to Questions No. 31 and 33 of his Personal History Disclosure Form, which require disclosure of the applicant's employers and reasons for discharges from employment. On his Disclosure Form, the applicant provided the information that he had been

discharged from Foxy's Casino in Las Vegas, Nevada in August 1978 as a result of a change of personnel. During his testimony, the applicant admitted that the actual reason for his termination was breaking a house rule against leaving the casino without permission. The applicant testified that he had disclosed the real reason for his termination from Foxy's Casino to each of four subsequent casino employers between August 1978 and April 1979. Although the applicant filed his Disclosure Form with the Casino Control Commission within approximately three months after he last disclosed the real reason for his termination to a Nevada casino employer, it was nevertheless the assertion of the applicant that the true reason for his discharge from Foxy's Casino had slipped his mind at the time he prepared his New Jersey Personal History Disclosure Form. Since the Disclosure Form expressly requires an applicant to set forth the reason for his discharge from employment, the applicant's assertion strains credulity.

Question number 46 of the Personal History Disclosure Form also requires disclosure of any criminal or disorderly persons offense for which an applicant has been charged. Subsequent to filing his application with the Casino Control Commission, a criminal complaint was filed against the applicant in Henderson, Nevada for robbery and threat to kill. According to the applicant, these charges resulted from a dispute between the applicant and another individual concerning their wagers on a golf match between them in August 1979. The applicant stated that he had already lost about $2,000 gambling with one Ron Denny when he was informed during another match that Mr. Denny's handicap was not as he had stated. When Mr. Denny refused the applicant's request for a more even match, the applicant not only took back his own $600 wager, but also took the $600 which had been bet by Mr. Denny. Mr. Denny filed a criminal complaint against the applicant and a warrant was issued for the applicant's arrest. It was the testimony of the applicant that he talked with Mr. Denny and it was agreed that the applicant would return $600 to Mr. Denny and Mr. Denny would drop the charges filed against the applicant. According to the applicant, he did not realize that the arrest warrant remained outstanding against him until so advised by Detective Manzi. Although the applicant acknowledged that he had been aware of the criminal charge filed against him in Henderson, Nevada, it was his testimony that he could not recall whether he disclosed the existence of the charge to Detective Manzi before being questioned about it.

Detective Edward Manzi testified on behalf of the Division of Gaming Enforcement concerning his background investigation of the applicant. According to the detective, he conducted an initial interview with the applicant by telephone in November

1979 at which time he advised the applicant that the purpose of his call was to review and update the applicant's answers on his Personal History Disclosure Form. It was the testimony of Detective Manzi that he read to the applicant each question of the disclosure form and that the applicant's interview responses to the questions concerning his employment history and criminal or disorderly persons record were the same as the responses written by the applicant on his disclosure form.

Detective Manzi testified that he did not have in his possession the applicant's entire arrest and conviction record at the time of his first telephone interview with the applicant. After obtaining the additional information, the detective again telephoned the applicant. According to the detective, he read to the applicant Question No. 46 concerning his criminal or disorderly persons record and read to the applicant the additional explanation which was attached at the end of the Personal History Disclosure Form. After determining that the applicant understood what had been read to him, the detective asked the applicant if there were any additional charges to be added to his response. It was Detective Manzi's testimony that the applicant did not acknowledge the 1979 charges entered against him in Henderson, Nevada and his 1973 arrest in Bellmawr, New Jersey until confronted with their existence by the detective. The detective stated that the applicant's explanation for not disclosing the Bellmawr arrest was that he had forgotten about it and that his explanation for not disclosing the incident in Henderson was that he didn't feel it was charges lodged against him. It was Detective Manzi's belief that the applicant never attempted to deceive him in any way concerning the undisclosed matters once the applicant had been specifically confronted with them. The detective's testimony was straightforward and sincere, and entirely worthy of credit.

Investigator Irwin Schechter testified on behalf of the Division of Gaming Enforcement for the purpose of authenticating various documents which he had acquired during the course of his investigation concerning the applicant. To demonstrate that the applicant had provided misleading information concerning his termination from the Rendezvous Casino in Las Vegas, Nevada, an unsigned letter to the investigator on the casino's letterhead, indicating that the applicant had been terminated for missing his shift without calling in, was presented. Although this unsigned, unnotarized letter was admitted into evidence (Exhibit R-5) as relevant hearsay, no properly authenticated employment records or other legally competent evidence was presented by the Division of Gaming Enforcement to support its contention that the reason for the applicant's leaving the Rendezvous Casino was other than the seasonal layoff reported by the applicant.

Pursuant to section 86c(4) of the Casino Control Act, the Commission shall deny a casino license to any applicant who is disqualified from licensure on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the Act and to casino operations. Pursuant to Section 86g of the Act, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute any offense under Subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. The applicant's taking of the wager of his opponent in a golf match in Henderson, Nevada in 1979 resulted in a criminal charge against the applicant of robbery and threat to kill. These charges were ultimately dropped after the applicant agreed to return the $600 wager of the complainant. The applicant denied having threatened the complainant, and explained that he took the money because he felt he had been cheated in the golf match. The offense committed by the applicant, albeit not prosecuted, raises serious questions concerning the applicant's honesty and integrity. While the credible proofs in the whole record concerning the applicant's commission of this offense do not necessarily establish that licensure of the applicant would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations, nonetheless, the commission of this offense reflects adversely upon the applicant's good character, honesty and integrity.

N.J.S.A. 5:12-86c provides that the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. On September 25, 1973, the applicant was convicted upon a plea of guilty of unlawful possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19. Pursuant to Section 86c(3), a conviction for possession of a controlled dangerous substance with intent to distribute is an automatic disqualifier from licensure. The applicant testified at the hearing that he had not committed this offense, and had only pled guilty upon the advice of his public defender. However, it is well settled that such a conviction cannot be collaterally attacked or relitigated in an administrative law proceeding. Nevertheless, an applicant shall not be denied a casino employee license on the basis of his conviction of a disqualifying offense, provided he has affirmatively demonstrated his rehabilitation pursuant to Section 90h of the Act. Although Section 90h lists eight factors to be considered in determining whether the applicant has affirmatively demonstrated his rehabilitation, the analysis in the present matter need proceed no further than the applicant's recent failure to disclose in his Personal History Disclosure Form and in interviews with Division investigators facts material to his qualification criteria. The applicant's incredible explanation for his failure

to disclose the real reason for his termination from Foxy's Casino and his repeated non-disclosure of an arrest and a criminal complaint until specifically confronted with the information by the Division's detective evidences an intentional, disqualifying failure to disclose material facts. Such conduct demonstrates a lack of rehabilitation. Consequently, the applicant cannot overcome his conviction of a disqualifying offense under Section 86c(3) of the Act.

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

1. The applicant has applied for a license to permit him to work in a casino as a blackjack floor person.

2. The applicant possesses the requisite experience for licensure pursuant to Section 90b of the Act.

3. The applicant failed to disclose in his Personal History Disclosure Form the true reason for his termination from employment at Foxy's Casino in Las Vegas, Nevada.

4. The applicant failed to disclose in his Personal History Disclosure Form any information concerning his 1973 arrest in Bellmawr, New Jersey for possession of a controlled dangerous substance with intent to distribute and possession of a hypodermic needle, upon which charges the applicant was acquitted.

5. Until specifically confronted with the information by a Division of Gaming Enforcement detective, the applicant failed to disclose any information concerning criminal charges filed against him in Henderson, Nevada in 1979 for robbery and threat to kill. These charges were dropped when the applicant agreed to return $600 which he had taken from the complainant.

6. The employment history and criminal record information which the applicant failed to disclose on his Personal History Disclosure Form was

material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of Section 86b of the Casino Control Act.

7. The applicant's failure to disclose the aforementioned employment history and criminal record information was intentional, rather than inadvertent.

8. The applicant's taking of the $600 wager of his opponent in a golf match in Henderson, Nevada in 1979 reflects adversely upon the applicant's good character, honesty and integrity.

9. On September 25, 1973, the applicant was convicted upon a plea of guilty of unlawful possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19.

10. A conviction of N.J.S.A. 24:21-19 is a specifically enumerated automatic disqualifier from licensure pursuant to Section 86c(3) of the Casino Control Act.

11. The applicant has failed to demonstrate his rehabilitation pursuant to Section 90h of the Act by clear and convincing evidence and has therefore failed to overcome his disqualification from licensure on the basis of his conviction of an offense enumerated under Section 86c(3) of the Act.

12. The applicant has not demonstrated by clear and convincing evidence that he possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this Act are designed to extend

strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the applicant has failed to demonstrate by clear and convincing evidence his rehabilitation, and is therefore disqualified from receiving a casino employee license due to his conviction of an offense which is an enumerated disqualifier from licensure pursuant to N.J.S.A. 5:12-86c(3). I further CONCLUDE that the applicant is disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b, and based upon his failure to prove by clear and convincing evidence his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a. It is, therefore, ORDERED that the application of Steven T. Amendola for licensure as a casino employee be DENIED.

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

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

February 19, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

2/19/81
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

February 24, 1981
DATE

Ronald L Parke /bf
OFFICE OF ADMINISTRATIVE LAW

plb

INVENTORY OF EXHIBITS

FOR THE APPLICANT:

P-1 Personal History Disclosure Form of Steven T. Amendola

P-2 Letter from Foxy's Casino dated May 17, 1980

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Certified copy of Judgment dated September 25, 1973

R-2 May 15, 1973 Arrest Report

R-3 November 13, 1973 Arrest Report

R-4 Not in evidence

R-5 Letter from Rendezvous Casino dated May 10, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-EA-2
OAL DOCKET NO. CCC 928-80

IN THE MATTER OF THE APPLICATION	:	
OF WILLIAM BAKER-EL FOR	:	
LICENSURE AS A CASINO EMPLOYEE	:	FINAL ORDER
(DEALER)	:	

A hearing having been conducted in the above-captioned matter before the Honorable Norman D. Smith, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge and the exceptions filed by the Applicant; and the Commission having resolved at its public meeting of June 24, 1981, to reject the Initial Decision of the Administrative Law Judge and to grant the application for licensure;

IT IS on this 30th day of June 1981, ORDERED that the Initial Decision of the Administrative Law Judge be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the application of William Baker-El for licensure as a casino employee be and hereby is GRANTED based upon the Commission's findings that the Applicant has established his good character, honesty and integrity by clear and convincing evidence; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: June 30, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 928-80

AGENCY DKT. NO. 80-EA-2

IN THE MATTER OF:

WILLIAM BAKER-EL,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Record Closed: April 3, 1981
Received by Agency: 5/15/81

Decided: May 14, 1981
Mailed to Parties: 5/21/81

APPEARANCES:

Petitioner, Pro Se

Patricia Arons, Deputy Attorney General for Respondent

BEFORE NORMAN D. SMITH, ALJ:

This matter concerns the application of William Baker-El to the Casino Control Commission for Licensure as a casino employee (dealer) pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement objected to licensure. Petitioner requested a hearing and the matter was transferred to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

New Jersey Is An Equal Opportunity Employer

The Division of Gaming Enforcement contends that licensure of Mr. Baker-El would be inimical to the policy of the Casino Control Act and casino operations, in violation of N.J.S.A. 5:12-86c (4), by reason of his arrest and conviction record. The Division further contends that the arrests and convictions, together with the record of previous employment, negatively reflect upon the good character, honesty and integrity of the petitioner, requiring disqualification pursuant to N.J.S.A. 5:12-90.

The petitioner served as a police officer for the City of Philadelphia from November 1962 until July 1965. During that time, he was the subject of nine (9) disciplinary actions involving tardiness, absenteeism and a failure to meet personal financial obligations. On April 2, 1965, he drank until he reached a state of extreme intoxication. While in that state, he threatened to kill his wife, his mother and his sister. He acted on his threat by shooting five (5) bullets through the window of his mother's third floor apartment, from the street below. He was diagnosed subsequently as having a sociopathic personality, and was dismissed from the Philadelphia Police Force.

On October 21, 1969 Mr. Baker-El was involved in an accident that ultimately caused him to plead guilty to an indictment charging a violation of N.J.S.A. 2A:113-9, commonly referred to as "Death by Auto." He was a participant in a high speed chase with another vehicle. He weaved in and out of three lanes of traffic. The chase ended when he collided with the rear end of a car in the center lane, causing devastating damage to the vehicle and killing the driver. Although the petitioner had consumed intoxicating liquor, it is not clear that he was under the influence. The petitioner's recollection of the accident is slightly different. He claims that he was forced to change lanes to avoid colliding with a slow moving vehicle, and he failed to see the car he ultimately struck. Neither this explanation nor petitioner's memory of the events is clear. For example, the petitioner insisted there were only two lanes in his direction of travel. However, it is obvious from the photographs in evidence and the police investigation, as well as the testimony of an eye witness, that there were, in fact, three lanes. Therefore, I find the facts as I initially stated them, based upon the testimony of the eyewitness and the police investigation. There is no question that Mr. Baker-El's guilty plea was justified, for he drove his vehicle in willful or wanton disregard of the rights and safety of others.

In 1977 and again in 1979, the petitioner was arrested and charged with possession of marijuana in an amount less than 25 grams. In the first instance, he was stopped for

driving an unsafe vehicle, and a partially smoked marijuana cigarette was found in the ashtray. Mr. Baker-El had borrowed the car from his girlfriend, Vivian Strawberry. In the second instance he was a passenger in the rear seat of a vehicle driven by a known drug dealer. The car was stopped and the driver arrested as a result of a search warrant. Heroin was found in the automobile. A marijuana cigarette was found in the hatband of a hat owned by Mr. Baker-El. There is no evidence that he had any connection with the heroin. In fact, he was unaware of the driver's mission that evening, and was simply an unfortuante passenger in the car of a man whom he had not previously met. Nevertheless, there is no question that Mr. Baker-El has smoked marijuana from time to time. He admitted it at the hearing. He admitted to a Division investigator that he smoked marijuana on October 17, 1979, well after he filed his application for licensure. The first charge was dismissed as part of a plea-bargaining arrangement. The petitioner was conditionally discharged from the second charge. In July 1980 he began a program of drug rehabilitation which he successfully completed.

On October 5, 1979, he struck a man on the forehead with a pool cue, causing two (2) lacerations, because the latter refused to leave the petitioner's home. The petitioner was charged with atrocious assault and battery but the County Prosecutor declined to indict. The petitioner pled guilty to an amended charge of simple assault.

In August 1974, the petitioner was dismissed from his position with the Philadelphia County Board of Assistance because of attendance problems. The same reason resulted in his dismissal in September 1976, and June 1979, by two (2) other employers.

Although the list of complaints concerning Mr. Baker-El's conduct is lengthy and includes some serious entries, I CONCLUDE that licensure would not be inimical within the intent of N.J.S.A. 5:12-86c(4). That section was intended to allow offenses not specifically listed to require automatic denial of an application for licensure. None of the offenses of which Mr. Baker-El was convicted should result in automatic disqualification by the exclusive act of conviction. In each case, the conviction must be weighed against the entire fabric of the petitioner's life.

Nevertheless, the criminal and quasi-criminal convictions, together with the irresponsible work habits that have been described, are most relevant to the issue of the petitioner's good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b. Three specific instances of conduct

demonstrate an apparently continuing inability to control violent tendencies. His continuing absenteeism at work in four (4) different jobs over a seventeen (17) year period demonstrate an apparently continuing lack of responsibility. His willingness to smoke marijuana, even during the period of a pending application for licensure before the Casino Control Commission, demonstrates a disrespect for the rule of law.

Mr. Baker-El's demeanor at the hearing was calm, respectful and sincere. He displayed an awareness of his own problems and a genuine regret for their existence. A concerted effort by Mr. Baker-El, over a reasonable period of time, might result in rehabilitation. However, I cannot find by clear and convincing evidence that he has established himself to be a man of good character, honesty and integrity in the hearing before me.

For the foregoing reasons, it is hereby ORDERED that the application of William Baker-El for licensure as a casino employee (dealer) be denied.

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

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

May 14, 1981
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

May 15, 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

May 21, 1981
DATE

OFFICE OF ADMINISTRATIVE LAW

sub

WITNESSES:

William Baker-El

Richard F. Bridgeford

Dominick Vesper

Edward F. McDevitt

Richard Renenter

Chief Stephen Farrell

Det. Dennis Jones

Srg. Robert Eberhart

Vivian Strawberry

EXHIBITS:

P-1 Letter dated October 1, 1980 to petitioner

P-2 Letter dated October 1, 1980 to Probation Officer

P-3 Affidavit of Anthony K. Dewitt (marked into evidence by Judge on April 3, 1981, pursuant to permission granted at hearing)

P-4 Affidavit of Odessa Fladger (marked into evidence on April 3, 1981 pursuant to permission granted at hearing

R-1 Statement of Sara Baker

R-2 Report dated April 3, 1965

R-3 Report dated April 5, 1965

R-4 Request for disciplinary action

R-5 Letter of Dr. Palmer 1965

R-6 Report of Board of Inquiry 1965

R-7 Civil Service Appeal

R-8 Disciplinary Charges

R-9 Statement of Police Commissioner Rizzo April 6, 1965

R-10 Photograph

R-11 Statement of Mr. Vesper

R-12 Letter from N. Trofa

R-13 Letter from Bud Company

R-14 Letter from Philadelphia County Board of Assistance

R-15 Through 24 Photographs

R-25 Diagram of Road

R-26 Police reports

R-27 Petitioner's arrest record

R-28 Updated credit profile

R-29 Arrest record of Charles Patton

R-30 Police report of Det. Jones

R-31 Letter from Robert G. Wells to Ocean City Municipal County

R-32 Report of Srg. Eberhart

J-1 Petitioner's Personal History Disclosure Form

23.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-CL-2

IN THE MATTER OF THE APPLICATION	:
OF BALLY'S PARK PLACE, INC., a	:
New Jersey Corporation, FOR A	:
CASINO LICENSE.	:

FINAL ORDER GRANTING
CASINO LICENSE WITH
CONDITIONS.

This matter having been brought before the New Jersey Casino Control Commission upon the application of Bally's Park Place, Inc., a New Jersey corporation, for a casino license; Clive S. Cummis, Esq., Stanley Tannenbaum, Esq., and Robert A. Baime, Esq. (Sills, Beck, Cummis, Radin & Tischman, Esqs.) appearing for the applicant; Albert E. Jenner, Esq., Anton R. Valukas, Esq., and William D. Heinz, Esq. (Jenner & Block, Esqs.) appearing for William T. O'Donnell; Peter H. Ehrenberg, Esq., and Freda L. Wolfson, Esq., (Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, Esqs.) appearing for Alexander R. A. Wilms and family; G. Michael Brown, Assistant Attorney General, Robert B. Sturges, Assistant Attorney General, and Stephen C. Becker, Deputy Attorney General, appearing for John J. Degnan, Attorney General; and the Commission having considered all of the evidence in the record and the briefs and arguments of counsel;

IT IS on this 13th day of January, 1981, ORDERED that, for the reasons stated in the record and subject to all of the conditions set forth therein, Bally's Park Place, Inc., a New Jersey corporation, be and hereby is issued a casino license effective as of December 29, 1980;

And is is further ORDERED that a copy of this Order be served on counsel for the parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

by: _____

Joseph P. Lordi, Chairman

_____

Martin B. Danziger, Vice-Chairman

_____

Don M. Thomas, Commissioner

_____

Carl Zeitz, Commissioner

_____

Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-CSI- 13

IN THE MATTER OF THE APPLICATION :
OF BALLY MANUFACTURING CORPORATION,:
a Delaware Corporation, FOR A :
CASINO SERVICE INDUSTRY LICENSE. :

FINAL ORDER GRANTING
CASINO SERVICE INDUSTRY
LICENSE WITH CONDITIONS

This matter having been brought before the New Jersey Casino Control Commission upon the application of Bally Manufacturing Corporation, a Delaware corporation, for a casino service industry license (gaming related); Clive S. Cummis, Esq., Stanley Tannenbaum, Esq., and Robert A. Baime, Esq., (Sills, Beck Cummis, Radin & Tischman, Esqs.) appearing for the applicant; Albert E. Jenner, Esq., Anton R. Valukas, Esq., and William D. Heinz, Esq. (Jenner & Block, Esqs.) appearing for William T. O'Donnell; Peter H. Ehrenberg, Esq., and Freda L. Wolfson, Esq., (Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, Esqs.) appearing for Alexander R. A. Wilms and family; G. Michael Brown, Assistant Attorney General, Robert B. Sturges, Assistant Attorney General, and Stephen C. Becker, Deputy Attorney General, appearing for John J. Degnan, Attorney General; and the Commission having considered all of the evidence in the record and the briefs and arguments of counsel;

IT IS on this 13th day of January, 1981, ORDERED that, for the reasons stated in the record and subject to all of the conditions set forth therein, Bally Manufacturing Corporation, a Delaware corporation, be and hereby is issued a casino service industry license pursuant to N.J.S.A. 5:12-92(a) and (b), effective as of December 29, 1980;

And it is FURTHER ORDERED that a copy of this Order be served on counsel for the parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

by: _____

Joseph P. Lordi, Chairman

_____

Martin B. Danziger, Vice-Chairman

_____

Don M. Thomas, Commissioner

_____

Carl Zeitz, Commissioner

_____

Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 80-CL-2
80-CSI-13

IN THE MATTERS OF THE APPLICATION :
OF BALLY'S PARK PLACE, INC., a :
New Jersey Corporation, FOR A :
CASINO LICENSE AND THE APPLICATION :
OF BALLY MANUFACTURING CORPORATION,:
a Delaware Corporation, FOR A :
CASINO SERVICE INDUSTRY LICENSE. :

FINAL ORDER REGARDING
THE QUALIFICATION OF
WILLIAM T. O'DONNELL

These matters having been brought before the New Jersey Casino Control Commission upon the application of Bally's Park Place, Inc., a New Jersey corporation, for a casino license, and upon the application of Bally Manufacturing Corporation, a Delaware corporation, for a casino service industry license (gaming related); Clive S. Cummis, Esq., Stanley Tannenbaum, Esq., and Robert A. Baime, Esq. (Sills, Beck, Cummis, Radin & Tischman, Esqs.) appearing for the applicants; Albert E. Jenner, Esq., Anton R. Valukas, Esq., and William D. Heinz, Esq. (Jenner & Block, Esqs.) appearing for William T. O'Donnell; Peter H. Ehrenberg, Esq., and Freda L. Wolfson, Esq., (Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, Esqs.) appearing for Alexander R. A. Wilms and family; G. Michael Brown, Assistant Attorney General, Robert B. Sturges, Assistant Attorney General, and Stephen C. Becker, Deputy Attorney General, appearing for John J. Degnan, Attorney General; and the Commission having considered all of the evidence

in the record and the briefs and arguments of counsel; and the Commission having, for good cause shown and for the reasons set forth in the record, made the following findings:

1. By virtue of his role in Bally Manufacturing Corporation, his significant stock holdings therein and his reasonable expectation of returning to his former position of leadership in the company if permitted by this Commission, William T. O'Donnell was:

(a) a person required to meet the qualification standards, except residency, for a casino key employee in order for Bally's Park Place, Inc., a subsidiary of Bally Manufacturing Corporation, to be eligible to receive a casino license (N.J.S.A. 5:12-85(c) and (d)); and

(b) a person required to meet the qualification standards, except residency, for a casino key employee in order for Bally Manufacturing Corporation to be eligible to receive a gaming related casino service industry license (N.J.S.A. 5:12-92(a) and (b); N.J.A.C. 19:43-1.14(a)(1)).

2. William T. O'Donnell has failed to establish by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) for a casino key employee.

IT IS on this 13th day of January, 1981, ORDERED that William T. O'Donnell be and hereby is adjudged not qualified to the standards of a casino key employee; and

IT IS FURTHER ORDERED that William T. O'Donnell comply with all agreements, conditions and restrictions stated in the record and designed to remove the said William T. O'Donnell as a

person required to be qualified in order to issue a casino license to Bally's Park Place, Inc., or a casino service industr license to Bally Manufacturing Corporation; and

IT IS FURTHER ORDERED that William T. O'Donnell refrain from accepting any position, taking any employment or acquiring any interest whereby the said William T. O'Donnell would be required by the Casino Control Act or the regulations of the Commission to qualify to the standards of a casino key employee; and

IT IS FURTHER ORDERED that a copy of this Order be served on counsel for the parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

by: _____

Joseph P. Lordi, Chairman

_____

Martin B. Danziger, Vice-Chairman

_____

Don M. Thomas, Commissioner

_____

Carl Zeitz, Commissioner

_____

Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Nos. 80-CL-2
80-CSI-13

IN THE MATTERS OF THE APPLICATION :

OF BALLY'S PARK PLACE, INC., a :

New Jersey Corporation, FOR A :

CASINO LICENSE AND THE APPLICATION :

OF BALLY MANUFACTURING CORPORATION,:

a Delaware Corporation, FOR A : OPINION

CASINO SERVICE INDUSTRY LICENSE. :

NEW JERSEY CASINO CONTROL COMMISSION

Joseph P. Lordi, Chairman
Martin B. Danziger, Vice-Chairman
Don M. Thomas, Commissioner
Carl Zeitz, Commissioner
Madeline H. McWhinney, Commissioner

APPEARANCES

For Bally's Park Place, Inc., and Bally Manufacturing Corporation:

Clive S. Cummis, Esq.
Stanley Tannenbaum, Esq.
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Newark, New Jersey

For William T. O'Donnell:

Albert E. Jenner, Esq.
Anton R. Valukas, Esq.
William D. Heinz, Esq.
Jenner & Block, Esqs., Chicago, Illinois

For Alexander R. A. Wilms and family:

Peter H. Ehrenberg, Esq.
Freda L. Wolfson, Esq.
Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, Esqs., Roseland, New Jersey

For the Division of Gaming Enforcement:

G. Michael Brown, Assistant Attorney General
Robert B. Sturges, Assistant Attorney General
Stephen C. Becker, Deputy Attorney General

For the Casino Control Commission:

R. Benjamin Cohen, General Counsel
Robert J. Genatt, Senior Assistant Counsel
David C. Missimer, Assistant Counsel

I.

INTRODUCTION

On February 24, 1978, Bally's Park Place, Inc., a New Jersey corporation (then known as Bally of New Jersey, Inc.) applied to the Casino Control Commission for a casino license.[1] In accordance with the Casino Control Act, the Commission requested the Division of Gaming Enforcement ("Division") to conduct a comprehensive investigation into the qualifications of Bally's Park Place. While the investigation was in progress, Bally's Park Place proceeded with the reconstruction of the former Dennis Hotel into a proposed casino hotel facility involving substantial other new construction upon the site of the former Marlborough-Blenheim Hotel.

1. Bally's Park Place, Inc., the corporate casino license applicant is a wholly-owned subsidiary of publicly-traded Bally's Park Place, Inc., a Delaware corporation. ["Bally's Park Place (Delaware)"]. Bally's Park Place (Delaware) is in turn an 82.8% owned subsidiary of publicly-traded Bally Manufacturing Corporation, a Delaware corporation whose principal place of business is at 2640 West Belmont Avenue, Chicago, Illinois. As will be seen, Bally Manufacturing Corporation is itself a direct applicant for a casino service industry license.

On October 1, 1979, Bally's Park Place formally requested issuance of a temporary casino permit pursuant to N.J.S.A. 5:12-95.1, et seq. After conducting a hearing on this request, the Commission found that, subject to certain conditions, Bally's Park Place met the requirements for a temporary casino permit. The Commission then issued such a permit and a certificate of operation effective December 29, 1979. Bally's Park Place has been operating its casino hotel continuously since that date. The temporary casino permit expired at midnight on December 29,1980.

The statutory requirements for a temporary casino permit are limited to areas which do not concern the suitability of the corporate applicant or the suitability of the entities and persons required by law to be qualified for a casino license. However, those deferred suitability issues are essential to this plenary casino license determination.

In addition to the casino license application of Bally's Park Place, this Commission must decide the casino service industry license application of Bally Manufacturing Corporation, a Delaware Corporation [hereinafter, at times, "Bally"]. On January 25, 1978, Bally applied for a casino service industry license seeking authorization to conduct business directly relating to casino or gaming activity pursuant to N.J.S.A. 5:12-92(a) and (b). In the usual course, the matter was referred to the Division for investigation.

On August 12, 1980, the Division filed with the Commission its "Report" with regard to the application of Bally's Park Place for a casino license and the application of

On August 12, 1980, the Division filed with the Commission its "Report" with regard to the application of Bally's Park Place for a casino license and the application of Bally Manufacturing Corporation for a casino service industry license. Along with the Report, the Division filed a "Statement of Issues" emphasizing several matters which the Division deemed significant. These documents were submitted by the Division pursuant to its statutory responsibility to investigate the qualifications of each applicant and to provide all necessary information to the Commission. N.J.S.A. 5:12-76. Although they assist the Commission in focusing its inquiry into the qualifications of the applicants, these documents are not evidence of the matters stated therein. Nor did the Report and Statement of Issues initiate the present hearing. The Casino Control Act requires a hearing on every casino license application and each applicant must meet the statutory criteria regardless of the tenor of the Division's report. See N.J.S.A. 5:12-87.

In order to expedite the proceedings and to fairly permit the parties to prepare for the hearing, five pre-hearing conferences were conducted. Those conferences resulted in five pre-hearing conference orders delineating the factual matters which were to be the primary subjects of the hearing. Essentially, those subjects concern the areas described in the Division's Report. Further, the applicants and the Division have entered into limited stipulations of fact relevant to those areas. These stipulations have been accepted by the Commission. As to any other factual matters not placed in issue nor actually litigated during the hearing, it must be assumed that such

matters pose no cause for concern. In this regard, the Commission takes notice of the fact that the applicants have to date filed numerous documents which pertain to uncontested matters and which were not introduced at the hearing. The real task at hand is to determine whether the evidence actually developed at this hearing indicates that the applicants are suitable or not.

The statutory standards which must be applied in deciding the suitability of Bally's Park Place for a casino license are contained in sections 84, 86 and 89 of the Act. N.J.S.A. 5:12-84, -86 and -89. Sections 84 and 89(b) set forth the criteria which the casino license applicant and the other persons required to be qualified as a condition of such licensure must affirmatively establish by clear and convincing evidence. The clear and convincing evidence requirement falls between the ordinary civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt." The preponderance standard means simply that when the record is considered as a whole the credible evidence renders the existence of the fact in question more likely than not. In contrast, the familiar criminal standard means that the trier of fact must not have a reasonable doubt, that is, one based on the evidence or the lack of evidence. A reasonable doubt is one which has some justification rather than an imaginary or possible doubt. The clear and convincing standard is much higher than the preponderence standard but somewhat less than the reasonable doubt requirement. Clear and convincing

evidence should produce in the mind of the Commission a firm belief or conviction as to the truth of the matters sought to be established. In order to sustain its burden, an applicant must present clear and convincing proof of the facts upon which the Commission may reach a reasonable conclusion as to suitability. Further, the Act requires that four of the five Commission members must concur in any necessary finding for casino licensure. N.J.S.A. 5:12-73(d).

As noted, a casino license applicant must establish by clear and convincing evidence that it meets the criteria of Section 84 and that the persons who must be qualified meet the criteria of Section 89(b) for casino key employees. For Bally's Park Place, a corporate casino license applicant, the persons required to so qualify are described in Sections 85(c) and 85(d) of the Act. N.J.S.A. 5:12-85(c) and-85(d). In determining whether a person is one required to be qualified, the paramount consideration is whether or not that person has the ability to significantly influence or control operations of the relevant company. Under Section 85(c), the following persons connected with Bally's Park Place must qualify:

(a) each officer;

(b) each director;

(c) each person holding any beneficial interest, direct or indirect, in the securities of the applicant corporation;

(d) any person who in the opinion of the Commission has the ability to control the corporation or elect a majority of the board of directors of the corporation, other than a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business; and

(e) any lender, underwriter, agent or employee of the applicant corporation or other person whom the Commission considers appropriate for qualification.

Under Section 85(d) the officers, directors, lenders, underwriters, agents, employees and securities holders of Bally's Park Place, Inc., (Delaware) (the intermediary company) and Bally Manufacturing Corporation (the holding company) must qualify to the standards under Section 89, except residency. See N.J.S.A. 5:12-89. However, since both the intermediary company (Bally's Park Place, Inc., (Delaware)) and the holding company (Bally Manufacturing Corporation) are publicly traded corporations, the Commission and the Director of the Division may agree to waive such qualification requirements as to any person who is not significantly involved in the activities of the applicant corporation, Bally's Park Place, and who does not have the ability to control the holding company or the intermediary company or to elect one or more directors thereof.

During the pre-hearing conferences, the Division submitted a list of persons whom the Division deemed required to be qualified in order for Bally's Park Place to receive a casino license. The Division also indicated those individuals to whom it interposed an objection and the

grounds for such objection. These materials were provided to the Commissioners and the parties. Of the 23 persons ultimately required to qualify, only William T. O'Donnell drew a specific and express objection from the Division. Although the Division initially objected to Alexander R. A. Wilms as well, the Division later agreed to waive Mr. Wilms as a person required to qualify if certain conditions are met. These matters are discussed in greater detail below.

As to the licensure standards themselves, Sections 84 and 89(b)(2) establish essentially the same qualification criteria which must be demonstrated by clear and convincing evidence for the corporate applicant and the persons to be qualified.

The first such affirmative qualification criterion is that of "financial stability, integrity and responsibility." N.J.S.A. 5:12-84(a); N.J.S.A. 5:12-89(b). The second affirmative qualification criterion appears in Section 84(c) and in Section 89(b)(2). Although the wording of the two sections is not precisely the same, the difference is without consequence. A casino license applicant or a person required to qualify must demonstrate "by clear and convincing evidence...reputation for good character, honesty and integrity." N.J.S.A. 5:12-89(b)(2). Although literally this language refers to "reputation," the Commission has previously held the basic standard to be the actual character and trustworthiness of the individual. See In the Matter of the Application of Resorts International Hotel, Inc., for a

Casino License, (1979) Opinion at pp.8-9. Of course, reputation is an accepted indicator of character and an applicant would be obliged to convincingly dispel any negative reputation evidence.[2]. The third affirmative qualification criterion requires the applicant or qualifying person to demonstrate, by clear and convincing evidence, "sufficient business ability and casino experience as to establish the likelihood" that the applicant will create and maintain "a successful, efficient casino operation," or that the qualifying person will achieve "success and efficiency in the position involved." N.J.S.A. 5:12-84(d); N.J.S.A. 5:12-89(b)(3). A fourth affirmative criterion applies only to the casino license applicant which must establish the "integrity and reputation" of all financial investors or lenders whose investments or loans are related to the Atlantic City casino hotel project. N.J.S.A. 5:12-84(b).

As previously indicated, in addition to the casino license application of Bally's Park Place, the Commission must also rule upon the casino service industry license application of Bally Manufacturing Corporation. This corporation seeks to provide goods or services to New Jersey

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2. A fuller explanation of the licensing criteria and the decisional process is contained in the written instruction provided by the presiding officer, Vice-Chairman Danziger, to the Commission members for their guidance. The instruction has been transcribed in the record and need not be restated at length here. (T12/25/80 appendix). It suffices to note that the Commission followed the guidelines in reaching its decision.

casinos which directly relate to casino or gaming activity. More precisely, this company is a manufacturer and supplier of gaming equipment. Thus, the suitability standards to be satisfied by Bally Manufacturing Corporation in order to obtain a casino service industry license are those set forth in Sections 92(a) and 92(b), 86 and 89 of the Casino Control Act. N.J.S.A. 5:12-92(a), -92(b), -86 and -89.

Under Section 92(b), Bally Manufacturing Corporation, as well as its owners, management and supervisory personnel and other principal employees must qualify under standards, except residency, established for qualification of a casino key employee under Section 89 of the Act. The affirmative qualification criteria of this section have been set forth above. The so-called negative or disqualification criteria of Section 86 are also incorporated by reference in Section 89. N.J.S.A. 5:12-89(d). As to the persons who must meet these criteria as part of the Bally casino service industry license application, they will be considered together with the group of individuals who must similarly qualify as part of the Bally's Park Place casino license application.

Simply stated, the task of the Commission on these applications is to determine whether Bally, Bally's Park Place and the persons required to individually qualify have convincingly demonstrated the positive attributes required by

the Act.[3] In its investigative report and its "Statement of Issues" the Division directed the attention of the Commission to several areas of concern. Each of the significant areas were fully explored at the hearing. At the conclusion of this proceeding, the Division objected to William T. O'Donnell as a person who must qualify for both the casino license application of Bally's Park Place and the casino service industry license application of Bally Manufacturing Corporation. Further, the Division objected to both companies as being generally unfit for licensure. A review of the lengthy record and the voluminous exhibits reveals that Mr. O'Donnell either initiated the most important events in question or bore direct responsibility for them in his role as Bally's undisputed leader. Put differently, to recount Mr. O'Donnell's activities is to recount the relevant history of Bally. Thus, we address ourselves first to Mr. O'Donnell's suitability and the suitability of the other "qualifiers." Thereafter, we consider the suitability of the corporate entities.

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3. There is no allegation that any of these entities or individuals falls under one or more of the disqualifying or negative criteria of Section 86. N.J.S.A. 5:12-86.

II.

PERSONS REQUIRED TO QUALIFY

A. WILLIAM T. O'DONNELL

1. INTRODUCTION

William T. O'Donnell who presently resides in Winnetka, Illinois, was born on September 26, 1922, in Chicago, and was educated at Loyola Academy and Sullivan High School in Chicago. He left high school before graduation to help support his family. From 1943 to 1945 he served in the United States Marine Corps. Early in 1946 William O'Donnell became employed by Lion Manufacturing Company in the purchasing department. Approximately six to eight months later he moved to the sales department. By the mid 1950's he had become the sales manager and by late 1950's the general sales manager.

Lion Manufacturing had been founded in the 1920's by Raymond J. Moloney, primarily as a mail order business. In 1931 the company was incorporated and began manufacturing a pinball machine known as the "Bally-hoo." During the 1940's and 1950's Lion produced and sold pinball machines and various other types of coin operated machines (including, until about 1949, slot machines), primarily for domestic consumption.

In 1958 Mr. Moloney died and his estate, which included Lion Manufacturing, was placed in trust with the American National Bank and Trust Company of Chicago as administrator. William O'Donnell was one of five directors of Lion appointed by American National. In 1962 American National advised the Lion directors that it intended to

liquidate the assets of Lion since the company was not then profitable and since American National felt that liquidation was in the best interests of the estate. Mr. O'Donnell requested, and American National granted him, the opportunity to raise the necessary money to purchase the assets of Lion. Ultimately, Mr. O'Donnell succeeded in assembling a small group of investors who acquired the assets of Lion on June 17, 1963, from the estate of Mr. Moloney for $1.2 million.

In March 1968, Bally Manufacturing Corporation was incorporated, and in April 1968, Lion was merged into Bally. In 1969 Bally made its initial public offering of common stock, and in 1971 Bally made a second public offering of common stock. In August 1975, Bally's common stock began to be traded on the New York Stock Exchange.

Bally is today a publicly-traded corporation. The approximately 25,500,000 shares of common stock of the company are distributed amongst approximately 22,676 stockholders of record and approximately 65,000 beneficial owners. In addition, approximately $35 million of 6% convertible subordinated debentures due 1998 are owned by 369 holders of record. Bally's principal business involves the design, manufacture, sale and distribution of slot machines, German gaming machines, various types of pinball machines, arcade-amusement games and other related products. Bally-owned distributors sell these and competitive lines of machines, as well as types of coin-operated equipment which Bally does not itself manufacture. Bally

operates 209 arcade-amusement centers in 37 states and leases coin-operated products and equipment, including slot machines. Since December 29, 1979, a majority-owned subsidiary has operated a casino hotel in Atlantic City. Products manufactured by Bally are distributed throughout the world by a network of distributors, including distributors which are wholly-owned or majority-owned subsidiaries of Bally. Distributors of Bally's products market such products through approximately 70 locations in the United States and Canada and approximately 20 locations abroad. 18 distribution locations in the United States and 6 locations in other countries are maintained by wholly-owned or majority-owned subsidiaries of Bally. As of December 31, 1979, Bally had total assets of $602 million. For the first three quarters of 1980, Bally's revenues were $347 million, net income was $38.6 million and earnings per share were $1.45.

Until December 1979, Mr. O'Donnell was president, chairman of the board of directors and chief executive officer of Bally. At that time, investigative concerns relating to Mr. O'Donnell's suitability were expressed by the Division with regard to the application of Bally's Park Place for a temporary casino permit. As part of an agreement among Bally Manufacturing Corporation, Bally's Park Place (Delaware), Bally's Park Place and Mr. O'Donnell, dated December 5, 1979, Mr. O'Donnell resigned as president, chairman of the board, employee and director of Bally and all its subsidiary companies. He agreed not to exert any influence or control over Bally and its subsidiary companies. Additionally, he further agreed to

execute an irrevocable voting trust with regard to all his shares of stock in Bally Manufacturing Corporation and in Bally's Park Place (Delaware). The voting trustees are authorized and directed to vote Mr. O'Donnell's shares in accordance with the majority of the shareholder votes cast in any particular election by the shareholders. Finally, Mr. O'Donnell agreed that: (1) upon a Commission finding of non-qualification as to him, he would promptly submit to the Commission for approval a plan of divestiture of his stock; and (2) upon final adjudication of a Commission finding of non-qualification as to him, he would divest himself of the stock of Bally and its subsidiaries owned by him. This agreement was made a condition of the temporary casino permit issued to Bally's Park Place, effective December 29, 1979. Mr. O'Donnell is the largest single stockholder of Bally. In addition, he owns stock in Bally's Park Place, (Delaware). Mr. O'Donnell was up until the time of his resignation the acknowledged leader and prime mover of the Bally group.

As an officer, director, major stockholder and principal employee of Bally and some of its subsidiaries, William O'Donnell clearly would have been a person who must individually be qualified for approval as a casino key employee (except for New Jersey residence) in order for Bally's Park Place to be eligible to hold a casino license. While Mr. O'Donnell has resigned from these positions and placed his stock in a voting trust, all parties to this proceeding, including Mr. O'Donnell, seek a determination as to his

qualification. In any event, by virtue of the history of Mr. O'Donnell's relation to Bally, his significant stock interests and his intent to return to a position of control should he be found to be qualified, he is a person whom the Commission considers appropriate for qualification. N.J.S.A. 5:12-85(c) and (d). For these reasons, Mr. O'Donnell also falls into the group of "owners, management and supervisory personnel" who must meet the same high standards as part of the application of Bally Manufacturing Corporation for a gaming-related casino service industry license. See N.J.S.A. 5:12-92(b). Mr. O'Donnell, therefore, has the affirmative responsibility to establish by clear and convincing evidence his "financial stability, integrity and responsibility," his "good character, honesty and integrity," and his "business ability and casino experience." N.J.S.A. 5:12-89(b).

With regard to Mr. O'Donnell, the bulk of the evidence presented to the Commission relates to the licensure criterion of "good character, honesty and integrity." The Act requires the Commission in determining an individual's "good character, honesty and integrity" to examine, among other factors, that individual's "family, habits, character, criminal and arrest record [if any], business activities, financial affairs and business, professional and personal associates." N.J.S.A. 5:12-89(b)(2).

In order to determine whether an individual is in fact qualified, this Commission must make a judgement as to how that individual will conduct himself in the

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

"Good character" is a concept used repeatedly in legal as well as everyday affairs. It is demanded in sundry situations, including, among others, business, personal and governmental relationships. A person's "character" is usually thought to embrace "all his qualities and deficiencies regarding traits of personality, behavior, integrity, temperament, consideration, sportsmanship, altruism, etc., which distinguish him as a human being from his fellow men." Mester v. United States, 70 F.Supp. 118, 122 (E.D. NY. 1946), aff'd 332 U.S. 749 (1947). Because of its generality, the subject defies a cataloguing of all conceivable facts and factors which define the standard. When viewed in a vacuum, the concept loses all significance. The standard, however, draws specificity from each setting and from the

particular objectives sought to be achieved. Trap Rock Industries v. Kohl, 59 N.J. 471, 483 (1971) cert.den. 405 U.S. 1065 (1972). So here, the nature of the subject, that is, the suitability to participate in the sensitive casino gaming industry in New Jersey, itself supplies concreteness to the concept of "good character." The demand is for a party who will perform honestly and whose record does not suggest a lack of that essential integrity. Hence, we must look to an individual's past conduct as a guide to how that individual is likely to operate a casino facility in the future.

In an effort to meet his statutorily imposed burden, Mr. O'Donnell produced evidence in support of his good character, honesty and integrity. Witnesses having substantial backgrounds in law enforcement testified as to Mr. O'Donnell's good character, honesty and integrity. David P. Schippers, a former head of the Chicago Strike Force, whose prior testimony was placed in evidence, stated that at no time had he received "information indicating that any of the officers or agents of that firm [Bally] were directly or indirectly involved in organized crime." Mr. William F. Beane, the former FBI Special Agent in Charge for Chicago, testified that he had personally reviewed the FBI files on Bally and Mr. O'Donnell and that he "would be willing to put [his] 28 years in the Bureau on the line and go to work for them." The Commission also heard the testimony of Thomas A. Foran, a former United States Attorney with an impressive record of prosecuting organized crime, who testified that when he asked the FBI for a report on Mr.

O'Donnell, he was told that "Bill O'Donnell was as straight as an arrow and was extremely helpful to the Bureau." James M. Rochford, Bally's Vice President of Corporate Security and a former Superintendent of Police for the City of Chicago, described Mr. O'Donnell as "absolutely honest" and "a man of his word and when he says something you can bet your life on it."

Numerous bankers and other members of the financial community gave their opinions of Mr. O'Donnell's good character and testified to his good reputation in the financial community. These included: J. Joseph Anderson, Senior-Vice President of Continental Illinois Bank and Trust Company; Alan Stults, Honorary Chairman of the Board, and Robert Engelman, Jr., Executive Vice President, both of American National Bank and Trust Company of Chicago; Samuel W. Sax, Chairman of the Board of the United of America Bank; and Lee S. Isgur of Paine, Webber.

Other witnesses testified as to Mr. O'Donnell's good character and his reputation in the community where he lives and works. Two Jesuit priests, the Reverend Lawrence Reuter, president of Loyola Academy (a private secondary school operated by the Society of Jesus), and the Reverend John H. Reinke, Chancellor of Loyola University in Chicago, stated that Mr. O'Donnell's reputation in the community where he lives and works is "very favorable" and "impeccable." In addition, the Honorable Abraham L. Marovitz, Senior Judge of the United States District Court for the Northern District of Illinois, testified

that Mr. O'Donnell's reputation in the community is that of "an honest, decent man and member of our community." Judge Marovitz also testified that in his own opinion, Mr. O'Donnell is "a very excellent human being." Still other witnesses, such as Mary Mitchell and Walter Wojtaszek, testified as to good deeds done by Mr. O'Donnell during his lifetime.

In examining the whole man and the entire circumstances in which he performed, the Commission must carefully consider all of the testimony regarding Mr. O'Donnell's character, honesty and integrity. Several individuals with impeccable credentials willingly came forward to praise Mr. O'Donnell's candor, honesty, generosity and compassion. Based either on their personal contacts with Mr. O'Donnell or on law enforcement sources available to them, these witnesses were aware of no reason to doubt that Mr. O'Donnell is an upright, trustworthy and law abiding businessman.

Due regard must be given to such positive opinion and reputation testimony. However, in determining the proper weight to accord this evidence, the Commission must consider not only the relationship of each witness to Mr. O'Donnell and Bally but, more importantly, the reliability and scope of the basis on which the opinion or reputation testimony rests. In point of fact, none of the character witnesses produced by Mr. O'Donnell exhibited knowledge of all the significant information regarding his activities and associations which has now been brought to the attention of this Commission. Thus, with the opinion and reputation testimony in mind, the Commission must scrutinize the

entire record to reach its own conclusion as to the character of Mr. O'Donnell.

Since the bulk of the evidence concerned specific acts and events in which Mr. O'Donnell was personally involved or for which he was directly responsible, a threshold question arises as to the relative value of specific act evidence, opinion testimony and reputation in judging character, honesty and integrity. Again the latter two types of evidence may not be ignored. However, if the Commission finds that an individual engaged in certain conduct which, under all the circumstances and in light of all the relevant evidence, indicates character flaws or shortcomings, the insights thus obtained would naturally deserve greater weight than contrary favorable proofs in the form of opinion or reputation evidence. Evidence of specific acts provides "the most decisive revelation of character." McCormick,Evidence, §187 at 443 (2 ed. 1972). Although true character can never be viewed directly, it is manifested by the actual behavior of the individual. Opinion and reputation, when accurate, are themselves nothing more than the residue of an individual's conduct. Quite simply, it is a theorem long-since proven by human experience that actions speak louder than words.

The Division of Gaming Enforcement has recommended that the Commission find William T. O'Donnell to be unsuitable for qualification. In so recommending, the Division points to evidence of specific acts and events which assertedly belie the favorable opinion and reputation testimony and raise serious

questions about Mr. O'Donnell's character. Thus, the Commission is required to determine whether Mr. O'Donnell's actions, viewed in the context in which they occurred, do disclose a lack of fitness. While the record is too voluminous to permit a detailed recitation of the proofs regarding Mr. O'Donnell's behavior, the Commission has taken pains to carefully assess all the pertinent evidence. We now proceed to comment upon these matters which we deem most significant.

2. GERARDO CATENA

Shortly after he began working for Lion in 1946, Mr. O'Donnell became acquainted with a company known as Runyon Sales, which was for many years the largest distributor for Lion, having exclusive rights to the New York, New Jersey and Connecticut areas. (In the coin machine business, the distributor is the entity which purchases the product from the manufacturer, and in turn sells it to the operator, who is the ultimate owner of the equipment). Mr. O'Donnell was in frequent contact during that period with Runyon Sales' principals including Abe Green, with whom he became friends. Mr. O'Donnell also had telephonic and personal contact during this period with Barnet Sugarman, a partner in Runyon Sales. On a visit to Runyon Sales in the middle 1950's Mr. O'Donnell was introduced to Gerardo Catena, whom he knew to be associated with Runyon.

Sometime in the early 1950's, Mr. O'Donnell had heard rumors that both Catena and Joseph "Doc" Stacher were connected with Runyon Sales. He had also learned at that time, from a Dun and Bradstreet report, that Runyon Sales was reputed to have

hoodlum or unsavory connections. At that point Mr. O'Donnell had asked Abe Green if Catena or Stacher were Green's partners. Green had replied that Stacher had been, but was no longer, and that Catena still was a partner.

In point of fact, during the period from 1950 to 1965 Gerardo Catena was the subject of numerous governmental and media reports in the public record, all of them negative and all referring to his organized crime affiliations. One particular example involved the so-called Apalachin meeting in 1957, in which Catena was stopped in a car along with Russel Bufalino and Vito Genovese. The matter generated substantial publicity. Based upon this and other factors, the reputation of Gerardo Catena was that he was a member of organized crime. Catena's reputation was, in the words of the Nevada Gaming Commission, of a "notorious and unsavory" nature.

In 1962, four years after the death of Lion's founder, Raymond Moloney, American National Bank and Trust Company of Chicago ("American National"), the administrator of Mr. Moloney's estate, stated its intent to liquidate the assets of Lion. Mr. O'Donnell sought an opportunity to raise the necessary money to purchase Lion. Mr. O'Donnell made unsuccessful attempts (a) to persuade American National to finance the purchase of Lion; (b) to persuade the Moloney family to keep the company together; and (c) to purchase Lion's assets in conjunction with R.F. Jones (a San Francisco-based Bally distributor). Thereafter, Mr. O'Donnell turned to Abe Green of Runyon Sales, with whom such a proposal was discussed at a

dinner meeting in Chicago. At that point in time Mr. O'Donnell knew that Green was a partner with Gerardo Catena in Runyon Sales, that Green and Catena were also partners in other businesses, and that Catena was reputed to be a hoodlum.

Green indicated interest in Mr. O'Donnell's proposal, and in 1963 contacted Sam W. Klein concerning the purchase of Lion. Klein was already acquainted with both Green and Catena since, as O'Donnell learned later, Klein had met Catena and had attempted to purchase Runyon Sales in 1960. Klein brought in Louis M. Jacobs, a principal of the Emprise Corporation, who, in turn, contacted Frank J. Prince. Another investor was Barnet Sugarman. As noted, Mr. O'Donnell knew Mr. Sugarman to be a partner in Runyon Sales. Green and Sugarman also brought in Irving Kaye, who was known to Mr. O'Donnell and who was an owner of the Irving Kaye Company along with Green, Sugarman, and Catena.

The named individuals formed a corporation, K.O.S. Enterprises, which in June of 1963 acquired the assets of Lion for approximately $1.2 million. The principals of K.O.S. were at that time divided into two groups: (1) the O'Donnell group, consisting of Messrs. O'Donnell, Kaye, Green, and Sugarman; and, (2) the Klein group, consisting of Klein, Jacobs, and Prince. Klein and Jacobs subsequently purchased Prince's shares.

In March of 1964 Barnet Sugarman died. Mr. O'Donnell testified that he then first learned that Catena had a hidden ownership interest in Lion. Specifically he was advised that Sugarman and Abe Green

had each acquired one-half of their respective interests in K.O.S. Enterprises for the benefit of Catena. At that point Catena and Green purchased what had been Sugarman's interest in K.O.S. from his widow. Thereafter Green told Mr. O'Donnell that Catena was getting older and wanted to liquidate his assets. Mr. O'Donnell was interested in buying out Catena because of his reputation and prior hidden ownership of Lion. By this time, Catena's underworld reputation as the underboss of the Vito Genovese crime family was well documented publicly. In July of 1965, an agreement was signed whereby Mr. O'Donnell purchased some of Green's record shares of Lion. This agreement was intended to buy out Catena's interest in the company, although it contains no reference to Mr. Catena or any other third party.

In the meantime, in October of 1964, a partnership was formed for the purpose of purchasing the real estate on which the Lion premises were located. This was the 2640 West Belmont Avenue Partnership, and consisted of all the shareholders of Lion, those then being Messrs. O'Donnell, Klein, Kaye, Green and Jacobs. Although Mr. O'Donnell had learned prior to that time that Green had fronted for Catena in the purchase of Lion and in the Irving Kaye Co., he recalls making no inquiry of Green as to whether he was fronting for Catena in the real estate partnership as well.

Green himself remained a partner of Catena in Runyon Sales until late 1970 and Runyon Sales was retained as the exclusive Bally distributor in the New York, New Jersey, and

Connecticut areas until at least 1974, when it was nominally replaced by Coin-Op. Although Mr. O'Donnell had "some concern" over Bally's use of a distributor partly owned by Catena, such concern was not acted on in any way other than for O'Donnell to occasionally express such concern to Green.

Green did not buy Catena out of Runyon Sales until December of 1970 at a time when Catena was in prison for contempt of the New Jersey State Commission of Investigation. During the period from 1970 to 1975, Catena was confined continuously in New Jersey for his contemptuous refusal to answer questions put to him by the State Commission of Investigation concerning organized crime activities, following a grant of testimonial immunity.

According to Mr. O'Donnell, Irving Kaye first learned in March of 1964 that Green and Sugarman had been fronting for Catena in the Irving Kaye Co. Kaye nevertheless knowingly remained a partner of Catena in that company until 1971. This was despite suggestions from Mr. O'Donnell that Kaye, who was a vice president of Bally during this period, should buy out Catena because of Catena's reputation.

Meanwhile, Bally Manufacturing Corporation was incorporated in 1968. In 1966 the Jacobs interests were purchased by the Klein and O'Donnell groups. Thereafter, in 1968, Bally Manufacturing Corporation was formed and Lion was merged into Bally. The resulting equity structure of Bally remained substantially unchanged from the Lion ownership until Bally's initial public securities offering in 1969.

By this time, Mr. O'Donnell's ambitions for Bally had begun to be realized. In a period of just four years, Bally had become so dominant in the Nevada slot machine market that, in 1968, Bally sold over 90% of the new slot machines in that State. Mr. O'Donnell attributed this near sales monopoly to the superiority of the company's product.

The evidence before us suggests that during the 1960's there were hidden ownership interests in a group of casinos in Nevada, including the Sands, Flamingo, Freemont, and Horse Shoe, to which Bally supplied its slot machines. Hidden profits were reportedly skimmed out of these casinos, and some were ultimately funnelled from Las Vegas to New Jersey where they were shared by, among others, Gerardo Catena. Michael "Mickey" Wichinski, who was Bally's first successful Nevada slot machine distributor during the 1960's, had a familial relationship with Catena by virtue of the marriage of Wichinski's nephew to Catena's daughter. Wichinski had been referred to Mr. O'Donnell by Abe Green. Wichinski himself held a percentage ownership in the Sands Hotel, which was one of the first Nevada casinos to which Bally sold slot machines, and Wichinski received commissions for all these sales. Wichinski also became an investor along with Mr. O'Donnell in the Westronics Co. in or about 1965 and remains so to this day.

In 1971 Bally made a second public offering of its stock. A portion of the proceeds therefrom were used to redeem the shares owned by Abe Green and his family. This was prompted by earlier discussions with Nevada authorities concerning

Bally's contemplated bid for public registration there. Nevada officials indicated to Mr. O'Donnell that Bally would have difficulty being licensed as long as Green was associated with the company. Pursuant to an agreement with Bally, Irving Kaye also disposed of a quantity of his stock and used the proceeds to buy out the record and beneficial interests then held by Green, Catena and Mrs. Catena in various companies in which Kaye was an owner.

Subsequent to the 1971 public offering, the only remaining shareholders of Bally who had participated in the 1963 acquisition of Lion were Irving Kaye, Sam Klein, and William O'Donnell. In 1975, Kaye was denied a gaming license in Nevada based upon his "numerous business relationships over a period of years with Gerardo Catena, a person of notorious and unsavory reputation." Kaye subsequently resigned as an officer of Bally and sold his stock. Kaye died in 1977. In 1976, Klein's probationary licensure was revoked by Nevada, and Klein was ordered to resign from Bally and divest himself of his stock, although his continued partnership with Mr. O'Donnell in the 2640 West Belmont Avenue Partnership was left, and remains to this day, undisturbed. These events now leave William O'Donnell as the only remaining shareholder of Bally who participated in the acquisition of Lion.

From these facts it is apparent that, in order to acquire Lion Manufacturing in 1963, William O'Donnell entered into partnership with individuals (Green and Sugarman) "fronting" for Gerardo Catena, who was then known to Mr.

O'Donnell as a member of organized crime. Mr. O'Donnell was made aware that Green, Sugarman and Kaye were partners with Catena in numerous business ventures. Moreover, another of the K.O.S. partners, Sam Klein, turned out to be too tolerant of the disreputable Gerardo Catena. Nevada's 1976 revocation of Klein's probationary license followed his being observed in May of 1976 playing golf in Florida with Catena. These relationships occurred, for the most part, at the very inception of what was to become a highly successful gaming enterprise led by Mr. O'Donnell. They were conceived as a result of his calculated business judgments which, from a strictly commercial point of view, proved well-founded. They were cultivated by Mr. O'Donnell, through the years, despite his notice and increasing awareness of facts that should have counseled him to immediately sever these potentially corruptive influences. Illustrative is the fact that although Catena's interest in Bally (then Lion) was bought out in 1965, Bally nevertheless continued a business relationship with Runyon Sales until at least 1974, and that until 1971, Catena continued his part ownership of Runyon. Moreover, to this very day, William O'Donnell remains a partner of Sam Klein's in the 2640 West Belmont Building Partnership which leases to Bally the premises on which its main factory in Chicago is located.

3. DINO CELLINI

Another questionable and disturbing association which William O'Donnell was instrumental in formulating was one with Dino Cellini, whom this Commission has previously found to be an

"associate of Meyer Lansky and a person of unsuitable character." In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, (1979) at p. 36. ["Resorts"]. According to Mr. O'Donnell, Dino Cellini appeared at his office, unannounced, sometime in 1964 or 1965. Cellini had been referred by Cyril Schack, who was a principal of Phonographic Equipment Co., a substantial Bally distributor in England. Schack and Cellini were part owners of the Colony Club, a private gaming club in England, at which Cellini also performed managerial functions. Mr. O'Donnell himself had visited the Colony Club during the 1960's and had there socialized with Cellini.[4]

At the meeting in Mr. O'Donnell's office, Cellini told Mr. O'Donnell that he would have the authority to select slot machines for a new casino in the Bahamas. Based upon this conversation, in 1965 Mr. O'Donnell accompanied Cellini to the Bahamas where, after various discussions, the Bally Bahamian Company was set up.

Shortly thereafter, Cellini contacted Mr. O'Donnell to inform him that he, Cellini, had been excluded from the Bahamas for formerly running one of Meyer Lansky's casinos in Cuba. At that time Mr. O'Donnell knew Meyer Lansky to be a notorious

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4. The Colony Club's other owners included Alexander Wilms, the managing director of one of Bally's European distributorships, and Carl Glickman, a close friend of Sam Klein and a Bally consultant. Also noteworthy is the fact that in 1968 newspaper articles appeared in Britain which alleged that Klein was a hidden owner of the Club.

organized crime figure. In 1967, Cellini was excluded from Great Britain for the same reasons he had been excluded from the Bahamas. Bally continued to pay commissions to Cellini for his sales of Bally slot machines in the Bahamas and Portugal in 1967 and 1968. However, Cellini was not paid directly. His commissions went instead to third party companies. This method of payment may have been selected to avoid the appearance of Dino Cellini's name in Bally's records.

At some subsequent point, Mr. O'Donnell recommended to Alexander Wilms that Cellini become a slot machine salesman for Bally Continental, a Belgium based distributorship which became a wholly-owned Bally subsidiary in 1969. Cellini did commence such employment in that year. Subsequently, Cellini began to receive from Bally Continental a draw against commissions in the amount of $2,000 per month. In addition to his receipt of this draw, Cellini's business expenses (which in some years totalled in excess of $50,000) were also paid by Bally Continental.

Sometime in 1971, inquiries were made concerning the possibility of Bally Manufacturing Corporation becoming licensed in Nevada for the purpose of purchasing Bally Distributing, a separate corporation selling Bally slot machines in Nevada. William O'Donnell was informed by Philip Hannifin, Chairman of the Nevada Gaming Control Board, that the company's association with Dino Cellini would cause substantial problems insofar as licensing was concerned.

From December 1971, (when a federal indictment was returned against Bally and Mr. O'Donnell in New Orleans) until

April 1973, (the date of their acquittal on that indictment), Bally's licensing initiative in Nevada was held in abeyance. Mr. O'Donnell spoke to Wilms occasionally during this period about terminating Cellini. Mr. O'Donnell testified that Wilms resisted, and so he, O'Donnell, did not insist.[5] Dino Cellini was eventually severed in May of 1973 about one month after Bally's acquittal and one month before its licensing effort in Nevada was resumed in June of 1973.

4. SOUTHLAND DISTRIBUTING: THE KENTUCKY BRIBERY INCIDENT

In the late 1940's or early 1950's, William O'Donnell first met or spoke to Gilbert K. Brawner, who was then an employee of Branson Distributing Company. Branson was at that time Lion's distributor in Kentucky and was selling bingo machines. Brawner later came to own Branson, which became Southland Distributing Company.

As a result of federal legislation in 1961, a question arose as to whether these bingo machines could be sent into various states. Test litigation involving a machine shipped to Branson in Kentucky was initiated by Bally in 1964, but was abandoned in 1966 when the Kentucky Legislature amended

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5. In this period, on June 6, 1971, Dino Cellini was indicted by a federal grand jury in Florida. The indictment charged Cellini with evasion of taxes due on money skimmed from junkets to casinos in London and the Bahamas. Meyer Lansky was named as a co-defendant. Although O'Donnell was aware of this indictment, he claimed to have no knowledge of the specific allegations. The indictment was ultimately dismissed in 1977 or 1978.

the applicable statute so as to clearly prohibit importation of the bingo machines.

In late 1967, Mr. O'Donnell became aware of an initiative on the part of Brawner and others to attempt to have the Kentucky statute amended to legalize the bingo games. Letters on the subject were exchanged between Brawner and Mr. O'Donnell. The passage of such an amendment was in the interest of both Bally and Mr. O'Donnell. In response to a request from Brawner, legal advice was provided by Bally's attorneys at Bally's expense.

In a letter dated February 2, 1968, addressed to Mr. O'Donnell by Brawner, Brawner stated in part:

> One other thing, Bill, we have turned the bingo bill into the Research Committee this week. It seems as though more of the representatives and senators who have read the bill so far seems [sic] to think that we do have a very good chance of putting this bill over. My biggest problem is trying to raise enough to take care of the expenses in Frankfort...

Brawner also stated, in a letter to Mr. O'Donnell dated February 20, 1968:

> ...I am awfully afraid that I am not going to have enough money to get it through the House. It is really shameful because we have made all the arrangements with the representatives, and they all tell us that we have a 99 per cent chance to get it through. We are not worried too much about the senate, as we have made the senators an if come basis.
>
> Just last night I gave the chairman of the committee, which this bill is in, $500. That is what he wanted. It seems as though word got out that we have given him some money. Now, they are trying to put me on for more money...

In still another letter to Mr. O'Donnell dated February 23, 1968, Brawner stated:

> Our bill came out of the House favorably. There was [sic] eleven on the committee, and ten voted for it. We feel that we do have a big job ahead of us; but in addition, we have made a lot of contacts with the representatives. We feel that we will have in the neighborhood of 67 votes out of 100, which we only need 51.
>
> The only thing that we are now worried about is being able to have enough money on hand to get it through the House, but we are hoping that we will be able to get a lot of the representatives with less money than they are asking for. Mr. Akers, who introduced the bill, and myself have obligated ourselves to all of them.
>
> It is like I mentioned the other day that we feel that we will be able to work a deal with our senate when it gets that far. Our biggest problem is in the House...

On March 1, 1968, Mr. O'Donnell sent an airmail, special delivery letter to Brawner which read in part:

> Enclosed is the $4,000 loan you asked me for. Also enclosed is a note which I ask you to please sign and return to me.

At the time this letter and check were sent, the bill Brawner was supporting had passed the House and was pending in the Senate. The bill did not ultimately pass the Senate, however, and the $4,000 was returned to Mr. O'Donnell with a letter from Brawner dated March 18, 1968, which read in part:

> Enclosed you will find the note along with a check for $4,000. I want to take this opportunity to thank you for all the favors you have done for me, and I am sorry that we have to return this, as it could have been a real big thing for you and myself...

In testifying before this Commission, Mr. O'Donnell stated clearly that he interpreted Brawner's February 20, 1968,

letter to be referring to bribery. In particular, he interpreted the "if come basis" language of the second paragraph to refer to a contingent bribe arrangement with senators.

Mr. O'Donnell's explanation of this matter was that he never saw the February 20 and February 23 letters from Brawner, and that the $4,000 constituted a loan to Brawner. Mr. O'Donnell said he supposed he had spoken to Brawner prior to sending him the money, but could not recall any details of the conversation or the purpose for the loan other than his conviction that it was not for purposes of bribery.

When questioned as to how he could be so certain that he had never read the February 20th and February 23rd letters, Mr. O'Donnell responded:

> I think there are two facts that make [me] believe I never read those letters The first fact is that it was in my files. The second fact is that I never would have sent a check down there if I had read those letters.

At a later point, Mr. O'Donnell again stated that, had he read such letters, he would have thrown them away without bringing them to the attention of any enforcement agency.

On still another occasion, Mr. O'Donnell stated:

> If I had read those letters, your question is would I have referred that to a law enforcement agency...I think I have to answer I'm not sure what I would have done.

5. OTHER MATTERS OF CONCERN

During the course of the hearing, evidence was adduced on numerous other matters which bear upon Mr. O'Donnell's suitability. Although no single one of those other matters appears as a meaningful as any of the three areas set forth above, several of them do give cause for concern. Moreover, when these seemingly less significant events are viewed together with the more serious ones, the developing picture of Mr. O'Donnell is brought into sharper focus. Specifically, the quality of his business practices, the nature of his attitude toward regulatory authorities, and the degree of his commitment to disentangle the company from its suspect origins are better revealed in the

added light cast by these other matters. As always, the Commission has considered each event or sequence of events in the context of the entire record and in the circumstances in which they occurred. In the interest of clarity and brevity, however, our comments are directed to those which best serve to illuminate and refine the critical issue of whether Mr. O'Donnell may be trusted to influence or control a casino operation or an essential casino service industry.

In the fall of 1971, federal law enforcement authorities were conducting an investigation into illegal gambling in Chicago. Pursuant to court authorization, a wiretap was installed on the telephone line of one of the suspected participants. On four occasions from September 16, 1971, to October 17, 1971; conversations involving Mr. O'Donnell were intercepted and recorded. These taped conversations were introduced into evidence along with transcripts of their contents. (D-112, 113, 114 and 115). Mr. O'Donnell admitted that he was a party to the telephone conversations, that the purpose of the calls was to place wagers on football games and that he then knew bookmaking activity to be illegal under Illinois law. He claimed not to have been aware at the time that the act of placing a wager with a bookmaker was also illegal under Illinois law. See 38 Ill. Rev. Stat. §28-1(a)(2).[6] However, Mr. O'Donnell acknowledged that he was then familiar with the fact

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6. It is understood that New Jersey does not impose criminal penalties on individuals who participate in illicit gaming solely as players. See N.J.S.A. 2C:37-2.

that illegal bookmaking and gambling operations frequently provided funds for other organized criminal ventures.[7] Thus, some importance attached to the question whether Mr. O'Donnell regularly bet substantial sums with a person whom he knew to be part of such an operation.

According to Mr. O'Donnell, he had previously engaged in a course of friendly wagering with a long-time friend, one Arthur "Jake" Sommerfield. These bets had escalated to $500 or $1000 each when Mr. Sommerfield indicated he would be traveling out of the state. Mr. O'Donnell explained: "I knew it was illegal to bet across state lines and I asked him if he knew somewhere where I could place the bet and to give me the number." (T1801-1 to 22). Mr. Sommerfield obliged and Mr. O'Donnell called the number four times at approximately one week intervals to place bets on the next weekend's football games.

In the first call, Mr. O'Donnell was instructed to refer to himself as "Bill for J" which signified that he was referred by Jake Sommerfield. This form of identification was necessary because different people might answer the telephone when Mr. O'Donnell called and because Mr. O'Donnell was told to "straighten up whatever you do with J." (D-112). The other party explained that Mr. O'Donnell should pay his losses or collect his winnings through Jake Sommerfield and that when "he [Jake] lets

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7. The New Jersey Supreme Court has recognized the fact that illegal gaming operations are a prime source of revenue for organized crime. See State v. DeStasio, 49 N.J. 247, 257 (1967).

me know then your figure will be clear." To avoid confusion, the other party decided to begin "clean" with Mr. O'Donnell's account notwithstanding Mr. O'Donnell's assertion that he was $1,500 "to the good" with Sommerfield. The other party added that if "J tells me to give you credit for $1,500, I will gladly do it." (D112). The other party then proceeded to inform Mr. O'Donnell of the betting "line" on that week's football games and Mr. O'Donnell made wagers aggregating $5,000. In the three subsequent calls, Mr. O'Donnell announced himself as "Bill for J" and made bets totalling $2,500, $6,000 and $2,000 respectively. Mr. O'Donnell testified that an unidentified man would come to his office to collect losses or to pay winnings.

In fairness, it must be observed that sports betting is widespread in our society. Nevertheless, Mr. O'Donnell's illicit gaming hardly serves to enhance his image. Of more significance are Mr. O'Donnell's responses to questions regarding this episode. On direct examination, he was asked whether he knew he was placing bets with an illegal bookmaking operation. He answered that "if I had thought about it, yes, I would have known that it was a bookie." (T1347-9 to 14). On cross-examination, Mr. O'Donnell restated this response and declared that he had not given any thought at the time to whether he was dealing with a bookmaker. (T1810-7 to 20).

While anyone would be reluctant to admit he knowingly patronized an illicit gaming operation with its probable organized crime affiliations, this motivation only makes Mr. O'Donnell's answers more disturbing. A man of Mr. O'Donnell's

intelligence and acumen could hardly have failed to realize he was betting with a bookmaking ring. Indeed, if Mr. O'Donnell truly did not grasp this fact, then he is capable of ignoring or avoiding the most obvious implication of information coming to his attention. Thus, Mr. O'Donnell was being less than honest either with the Commission when he testified or with himself when he placed the wagers. Neither alternative speaks well for Mr. O'Donnell's trustworthiness and candor.

Similar doubts about Mr. O'Donnell are raised by the evidence regarding Bally's efforts to sever business relationships with Louis Boasberg whose company, New Orleans Novelty Company, had been Bally's distributor in Louisiana for many years. As noted previously, Mr. O'Donnell and Bally were indicted by a federal grand jury in 1971 for interstate transportation of illegal gaming equipment, to wit, Bally "bingo" pinball machines, and for conducting illegal gambling with such ekquipment. Louis Boasberg was also named in the indictment. (D-474). Following the jury trial at which Bally and Mr. O'Donnell were acquitted, Mr. Boasberg was found guilty of promoting illegal gambling and operating an illegal gaming business, i.e., New Orleans Novelty Company. (D-475). Contemporaneously with this prosecution, Mr. Boasberg was charged in a separate federal indictment with bribery of public officials. The stated purpose of the bribery was to protect an illegal gaming operation using coin operated machines, including Bally "bingo" machines. Mr. Boasberg ultimately pleaded guilty to the bribery charge and was sentenced in 1973 to several

months in federal prison. (T1772-1 to 1773-14). Thereafter, in January 1974, Mr. Boasberg was sentenced on the jury verdicts to a $7,000 fine and a three year probation to commence on his release from federal prison on the bribery sentence. (D-476).

Mr. O'Donnell was fully aware of the existence and nature of Mr. Boasberg's federal convictions. Despite this knowledge and despite his professed intolerance for bribery of any sort, Mr. O'Donnell initiated no action to ascertain whether Bally should cease using Mr. Boasberg's company as a distributor.[8] Indeed, New Orleans Novelty Company continued its relationship with Bally during Mr. Boasberg's imprisonment and after his release on May 15, 1974. Eventually, the Nevada Gaming Commission demanded, as a condition of the probationary registration order entered on March 20, 1975, that Bally terminate all business relationships with Mr. Boasberg or any company under his control. (D-210).

By letter dated March 24, 1975, Bally notified Mr. Boasberg of the Nevada order and advised him that New Orleans Novelty Company would be discontinued as a Bally distributor on May 24, 1975. (D-167A). Thereafter, Mr. Boasberg arranged to have the Bally distributorship transferred from New Orleans Novelty Company to Playtime Sales Company, a partnership composed of Mr. Boasberg's five children and one other individual.(D167B).

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8. Mr. O'Donnell's response was also inadequate in the face of convictions or admissions of four other Bally distributors regarding illegal gambling operations or bribery of public officials or both. No effective action was taken with respect to these matters until Nevada demanded severance of business relations with such individuals in 1977.

This arrangement was acceptable to the Nevada authorities so long as Mr. Boasberg refrained from any involvement in the new company. However, Mr. Boasberg was allowed to purchase Bally equipment from Playtime for use in his pinball and vending machine routes. In addition, New Orleans Novelty Company remained as a distributor for several other coin-operated machine manufacturers.

By its order of October 20, 1977, the Nevada Gaming Commission found that Bally had failed to comply with certain requirements of the 1975 registration order and, more specifically, that Bally had continued to maintain business relationships with Louis Boasberg or a company under his control. (D-213). From the evidence in the present record, there is no doubt about the correctness of Nevada's finding. In fact, shortly after the order was issued, Mr. O'Donnell instructed James Rochford, Bally's newly appointed vice-president for corporate security, to conduct an on-site inquiry into the involvement of Louis Boasberg with Playtime Sales Company. Mr. Rochford, accompanied by Bally's General Counsel Glenn Seidenfeld and its Nevada counsel, Donald Carano, visited the premises of Playtime Sales Company and Louis Boasberg's New Orleans Novelty Company in New Orleans. The two companies were located at the same address in adjacent rooms. When he viewed the facility and spoke to Louis Boasberg, it became immediately apparent to Mr. Rochford that Mr. Boasberg controlled the operation of Playtime through his son, G. Robert Boasberg. (T2314-1 to 2316-2).

Although Bally's compliance failure is established, Mr. O'Donnell's personal culpability, if any, must be determined. Mr. O'Donnell testified that he was intent on complying with the 1975 Nevada order and that he was confident the company was "in every way" complying. His confidence was based upon the internal reporting system which had been established to assist Nevada authorities in monitoring the company and upon the "almost daily" contact between Bally representatives and Nevada officials. (T1885-1 to 17). Mr. O'Donnell's confidence was not shaken when he learned that Mr. Boasberg's company (New Orleans Novelty) and Playtime Sales were located in the same building. According to Mr. O'Donnell, Nevada had been informed of this fact and had registered no protest. Nor was Mr. O'Donnell troubled by Mr. Boasberg's continuing use of stationery proclaiming New Orleans Novelty as the Louisiana and Mississippi distributor for Bally. In a response reminiscent of his explanation regarding his illegal wagers, Mr. O'Donnell stated: "I'm afraid I have to say I didn't reflect on that." (T1905-11 to 22).

Mr. O'Donnell asserted that other items coming to his attention after the 1975 order provided no cause to question Mr. Boasberg's separation from Bally or Playtime. In January 1976, Mr. O'Donnell's secretary approved payment by Bally of a trip to be taken by Mr. Boasberg from New Orleans to Chicago to London and back to New Orleans. This payment was made at the behest of Ross Scheer, Bally's marketing director, to reward Mr. Boasberg for research and marketing assistance which he provided to Bally prior to the 1975 severance order. Mr. Scheer acknowledged that

Bally was under no legal obligation to provide this benefit. Mr. O'Donnell was unsure when he first learned of this payment although he claimed that the Nevada officials were aware of it. In Mr. O'Donnell's view, there was no reason to suspect that the trip was payment for more recent services or business with Mr. Boasberg.

Mr. O'Donnell maintained his position notwithstanding certain communications from Mr. Boasberg. By all accounts, Mr. Boasberg was a prolific correspondent. A batch of letters introduced at the hearing attests to this trait and to his close personal relationship with Mr. O'Donnell. (E.g. D-154,158).[9] Mr. O'Donnell considered the business advice and suggestions offered by Mr. Boasberg to be consistent with Mr. Boasberg's use of Bally equipment as a route operator, i.e., a customer of a Bally distributor rather than as a distributor. While many of the letters do not indicate any involvement of Mr. Boasberg in Playtime, some contain passages which are difficult to reconcile with that conclusion.

In a letter dated February 16, 1976, and written on the stationery of New Orleans Novelty, Mr. Boasberg complained to Mr. O'Donnell about the price which Bally was charging for its pinball games. Mr. Boasberg asked: "[H]ow can a distributor get $35.00 more" for a certain Bally game than a competitor's model (D-167F). Later in the same letter, Mr. Boasberg wrote:

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9. Other evidence of the duration and closeness of this relationship appears in the record. For example, Mr. Boasberg guaranteed a $50,000 bank loan for Mr. O'Donnell in 1966, the proceeds of which were used to pay off a debt secured by a voting trust in favor of Louis Jacobs. At the time, Mr. Jacobs was attempting to wrest control of Lion from the other founders. (T2325-5 to 21).

> We won't use many Flip Flops [a Bally product] not only because of the price but because we still haven't been paid yet for some Wizards [a Bally product] to say nothing of Bows and Arrows [a Bally product] and other games. We have reached the end of the line as far as credit, and need a little rest to catch up.

After receiving this letter, Mr. O'Donnell sent copies to key personnel in Bally's marketing and engineering operations. In his transmittal memorandum, Mr. O'Donnell stated that Mr. Boasberg's letter was "self-explanatory" and that Bally's response would be "that he [Boasberg] had better buy" the named pinball game at Bally's current price. (D-167F).

By letter dated April 30, 1976, again on New Orleans Novelty stationery, Mr. Boasberg advised Mr. O'Donnell that Bally's direct operation of an amusement arcade had alienated competing operators who were also purchasers of Bally equipment. Mr. Boasberg enclosed a letter from one such operator who had written to New Orleans Novelty to protest such competition and to state his intent to boycott Bally products. In Mr. Boasberg's letter, he bemoaned the loss of a good customer and noted in a post-script that "TAC did not order any Old Chicagos [a Bally product], however, Operation Sales did order ten." (D-156).

On April 20, 1976, Mr. Boasberg wrote to Mr. O'Donnell once again on New Orleans Novelty stationery. Most of the letter, which was designated as "personal", was devoted to praising Bally and Mr. O'Donnell for their recent success. In the final paragraph, however, Mr. Boasberg changed the subject to his own business concerns:

> Now after all this lovemaking, let me remind you that I have on order two trailer loads of Capt. Fantastics. Will you please inform your Sales Department to stop sending Fantastics to the bootleggers, the home offices, and take care of New Orleans Novelty Co., and how about cutting my price on Twin Joker to $250. [D-153].

Mr. O'Donnell saw this request as perfectly consistent with the fact that Mr. Boasberg's company ran a large route operation which was permitted by the Nevada order to purchase Bally equipment from Playtime Sales Company. Mr. O'Donnell also insisted that Nevada knew all of this, although he could not cite a specific conversation or document discussing this with the Nevada officials prior to Nevada's expression of dissatisfaction in mid-1977.

While we have carefully considered the explanation given by Mr. O'Donnell, we are constrained to find that the combined facts known to Mr. O'Donnell should have given him a clear signal that Mr. Boasberg was continuing as a Bally distributor through his sons' company. Instead of heeding the warning signs, Mr. O'Donnell either did not "reflect" on them or did not see them as being inconsistent with compliance. Mr. O'Donnell's failure to properly interpret these indications does not necessarily mean that he intentionally violated the Nevada order. However, at best, his performance does reveal an indifference to a regulatory restriction which required Bally to terminate a well established and successful distributor. Further, when considered together with his lack of reaction to other distributors involved in illegal gaming and bribery, Mr. O'Donnell's conduct displays an acceptance, if not an approval, of such practices by Bally distributors.

The 1975 Nevada order contained other conditions to Bally's registration as a slot machine operator and manufacturer. As already discussed herein, Abe Green had held a hidden interest in Bally for the notorious Gerardo Catena. In addition, Mr. Green was a business partner of Mr. Catena in several ventures including Runyon Sales Company, a New Jersey corporation which had long been Bally's distributor for the New York metropolitan area. Mr. Green assertedly purchased Mr. Catena's interests in their businesses in late 1970 or early 1971. Mr. Green also sold his own Bally shareholdings back to the company in 1971. However, Nevada's 1975 order required Bally to have no business dealings with Mr. Green or with any company which he controlled or in which he had a 5% or greater interest in voting securities. Mr. O'Donnell understood that this requirement meant Bally could no longer deal with Runyon Sales. (T1925-12 to 22).

In apparent anticipation of the Nevada position, Abe Green's son, Irving Green, had advised Mr. O'Donnell in mid-1974 that he would be using the trade name Coin-Op. An internal memorandum dated July 15, 1974, to key Bally personnel, including Mr. O'Donnell, stated that Runyon was to be replaced by Coin-Op for all purposes (A-351). Subsequent to the Nevada prohibition, by letter dated May 16, 1975, Irving Green reminded Mr. O'Donnell of his earlier notification that "in the future, Runyon Sales Company would be conducting business as Coin-Op Distributing with Irving Green as its president." (D-12). Mr. Green asserted that Coin-Op had been engaged in the distribution and sale of coin-operated machines since the 1974 notice. Id. Attached to this

letter was a trade name certificate, dated May 9, 1975, in which Irving Green declared that he was "about to transact" business under the name of Coin-Op Distributing and that the business "will be conducted" at Route 22 and Fadem Road, Springfield, New Jersey.

Irving Green's letter and the attached trade name certificate provide information relevant to the independence of Coin-Op from Runyon. From the letter, it appears that Mr. Green considered Coin-Op as a mere alter ego or fictitious name for Runyon. The trade name certificate reveals that Coin-Op was not a separate business entity but a name being used by Irving Green to conduct business. The address stated in the certificate was also the address of Runyon Sales, and, most significantly, Irving Green was also the manager of Runyon Sales, a fact which standing alone renders suspect any claim of arms-length dealings between Runyon and Coin-Op.

Mr. O'Donnell knew of Irving Green's simultaneous ownership of Coin-Op and management of Runyon. (T1926-1 to 3). As to the sharing of facilities, Mr. O'Donnell certainly became aware of that arrangement by April 1976 when he received a memorandum from William J. Tomlinson[10] on the subject. The April 13, 1976, memorandum (D-13) was sent to Mr. O'Donnell for "Action by the Executive Committee."[11] Mr. O'Donnell

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10. Mr. Tomlinson had been Bally's general counsel from July 1, 1971, to January 1, 1976. Thereafter until January 1977, he continued as an outside consultant on a part-time basis.

11. As a condition of Bally's probationary registration in 1975, Nevada demanded that an internal control system be established and enforced. Under the system, which was designed by Mr. Tomlinson, an executive committee comprised of directors and senior management personnel was ultimately responsible for compliance.

explained that he did not schedule the memorandum for committee review since the memorandum found no control of or interest in Coin-Op by Abe Green despite evidence of overlap and confusion between Runyon and Coin-Op such as shared facilities and use of Runyon business forms by Coin-Op. Rather, Mr. O'Donnell instructed Mr. Tomlinson to take the additional measures suggested in the memorandum (T1934-7 to 1936-7).

The actions recommended by Mr. Tomlinson included physical separation of Runyon from Coin-Op, use of Coin-Op forms and documents for Coin-Op business, submission of a true copy of a certificate of incorporation for Coin-Op[12] and a yearly reporting of the officers and directors of Coin-Op (D-13, p.2). The memorandum further stated that, until these steps were taken, "no further shipments will be made from Bally to Coin-Op."

The memorandum continued with a summary of what was asserted to be Bally's existing policy with regard to Coin-Op. Essentially, the memorandum claimed that Bally had not had an official distributor in the New York-New Jersey area since the 1975 Nevada order and that any distributor with approved credit status could order direct from the factory until Coin-Op demonstrated its independence from Runyon. The memorandum declared flatly that it "encompasses the procedure followed by Bally since the registration order went into effect and sets forth the policy for the future." Mr. Tomlinson then concluded

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12. In fact, Coin-Op was not incorporated until February 21, 1978. (D-16).

by noting that the memorandum would be submitted to Nevada as part of Bally's annual compliance report. (D-13, p.3).

The recommended actions were apparently not taken and shipments were made to Coin-Op.[13] Mr. O'Donnell was content to leave the matter in the hands of Mr. Tomlinson who was then a part-time consultant. Moreover, Mr. O'Donnell saw no reason to inquire about the Coin-Op situation before he signed Bally's annual compliance report ("Review of Order of Registration") on June 8, 1976, and submitted it to the Nevada regulatory bodies. Mr. Tomlinson's memorandum was attached to the report and referenced in the text. (A-181, §11(c)). Similarly, the following year, Mr. O'Donnell signed the annual compliance report, dated June 30, 1977, which stated that the company remained in compliance as previously reported and thatthat the status of these matters had not changed. (D-15, §11(c)).

By its order of October 20, 1977 (D-213), the Nevada Gaming Commission found that Bally had failed to comply in several respects with the 1975 registration order and extended Bally's probation for an additional three year period. While the order recited continuing business relationships with one

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13. There is also considerable doubt whether Bally had implemented the policy of having no official distributor and taking direct orders from any distributor in the New York-New Jersey areas. Mr. Jerome Gordon, Vice-President of H. Betti Enterprises, testified that his company was a coin-operated equipment distributor in New Jersey and that, until it acquired the Runyon Sales distributorship in 1978, it could not purchase equipment directly from Bally. (T5344-3 to 5347-8).

unacceptable distributor, Louis Boasberg, no mention was made of Abe Green or Runyon Sales. However, Bally was directed to strengthen its system of internal reporting and, specifically, to provide copies of all reports to a company compliance committee which, in turn, was to file every such report with the Nevada Gaming Control Board.

In early 1978, Glenn K. Seidenfeld, Bally's general counsel, read an announcement in a magazine that a course in repair and maintenance of Bally products would be conducted by Runyon Sales. Upon being advised of this, Mr. O'Donnell directed Mr. Seidenfeld to visit Irving Green and inquire into the matter. In February 1978, Mr. Seidenfeld met Irving Green at the Runyon Sales offices on Route 22 in Springfield, New Jersey. In this meeting, which lasted only about 30 minutes, Mr. Green admitted that Coin-Op had no employees of its own and that Mr. Green spent 90 to 100% of his time at Runyon. In addition, Mr. Seidenfeld learned that Coin-Op had only one customer, Runyon. During the meeting, Irving Green indicated that he would be selling the distributorship business and concentrating on the more profitable route operations.

On his return to Bally, Mr. Seidenfeld reported to Mr. O'Donnell in the presence of James M. Rochford, Bally's vice-president for security. It was decided that both Mr. Rochford and Mr. Seidenfeld should return to New Jersey for another meeting with Irving Green. Mr. Rochford and Mr. Seidenfeld both testified that they were not then aware of the issues raised by Mr. Tomlinson's memorandum nearly two years

earlier (D-12) and Mr. O'Donnell made no reference to that history.

On April 12, 1978, Messrs. Seidenfeld and Rochford visited Irving Green but, on this occasion, the meeting took place at the Coin-Op office in Union, New Jersey. After speaking to Mr. Green and observing the facility, both Mr. Rochford and Mr. Seidenfeld found an "almost total intermixing" between Runyon and Coin-Op. Indeed, Mr. Rochford received the impression that the Coin-Op office had been recently set up solely to create some appearance of separation for the sake of the Nevada order.[14] (SeeT797-17 to 799-5).

These findings were reported to Mr. O'Donnell who decided that, since Irving Green intended to dispose of the distributorship, he would be given 60 days to do so or be terminated as a distributor. Eventually, by an agreement dated June 6, 1978, between Runyon Sales, Inc., and H. Betti Industries, Inc., the assets of Runyon were sold. The agreement, which was signed for Runyon by Abe Green and Irving Green and which makes no reference to Coin-Op, was contingent upon H. Betti Industries obtaining a Bally distributorship. (D-330). Mr. O'Donnell agreed to the transaction and Betti received the requested distributorship.

Although not conceded by Mr. O'Donnell, Mr. Seidenfeld or Mr. Rochford, the information obtained from the two 1978

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14. This should have caused no great surprise to Mr. O'Donnell since Bally's sales department had advised him and other key employees of Coin-Op's relocation in a memorandum dated March 8, 1978. (D-506).

visits should have confirmed earlier indications that no real distinction between Coin-Op and Runyon existed. However, no written report was prepared for the compliance committee on this matter until a year later when Mr. Rochford was requested to file such report by Bally's New Jersey counsel. (A-7, exhibit E).[15] The absence of a timely written submission in this instance contrasts with the prompt reporting by Mr. Rochford of other inquiries which he conducted regarding Bally distributors. Moreover, on May 19, 1978, Mr. O'Donnell signed Bally's annual compliance report to the Nevada authorities in which he declared: "the company's compliance with this provision [against direct or indirect business with Abe Green] was set forth in the 1976 and 1977 submission and the status of these matters has not changed since the date thereof." (D-148, p.6). In defending this representation, Mr. O'Donnell contended that he was not obliged to report any failure of compliance because Messrs. Rochford and Seidenfeld "told me they didn't know if it was or it wasn't [a violation]." (T1956-1 to 6).

The respect which Mr. O'Donnell accorded directives of the gaming authorities is further illustrated by his response to the Nevada order regarding Sam W. Klein. As previously discussed, Mr. Klein had been brought in by Abe Green to be one of the founders of Bally in 1963. In addition to being a major stockholder, he was a director and vice-president of the company. Thus, Mr. Klein, as did Mr. O'Donnell, weathered the adverse

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15. In the interim, on February 22, 1979, Bally was released from probation in Nevada and granted a permanent registration. (A-206).

publicity and regulatory skepticism arising from Bally's corporate relationship to reputed mobsters, especially Gerardo Catena. Further, Mr. Klein personally had drawn unfavorable comment for his alleged associations with undesirables and for his relationship to the oft-suspected Central States, Southeast and Southwest Areas Teamsters Pension Fund. In particular, Mr. Klein was criticized for his gift of Bally stock to an influential teamster official at a time when Bally held sizable loans and was seeking major financing from the fund. (See D-137).[16] Indeed, in a letter dated August 26, 1976, to Mr. O'Donnell, Mr. Klein recognized the responsibility of Nevada officials "to protect the gaming industry from even the hint of organized crime involvement." (A-94).

In his letter, Mr. Klein related that, in June 1976, he had been visiting Irving Kaye, a fellow Bally founder, who was seriously ill in Florida. Also present was another old friend of Mr. Kaye, Gerardo Catena.[17] Over the course of a ten day period, Mr. Klein attended three dinners with Mr. Catena and, at

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16. The record discloses that Mr. Klein was making gifts of stock to several recipients in early 1972. A very generous gift, 3,700 shares, was bestowed on the family of William Presser, a trustee of the pension fund. In February 1971, Mr. Presser had been convicted on federal charges of conspiracy and acceptance of unlawful payments for a labor organization [D-479, 480].

17. Mr. Catena had been released the previous year from a New Jersey prison where he had been incarcerated for five years for his steadfast refusal, under a grant of immunity, to answer questions regarding organized crime.(D-499).

Mr. Catena's request, Mr. Klein arranged a golf date at his country club. Mr. Klein, Mr. Catena and a friend of Mr. Catena played golf and lunched together. While maintaining that this was the extent of his contact with Mr. Catena and that there was no discussion of Bally, Mr. Klein expressed a willingness to resign his positions and dispose of his stock for the good of the company.

By its order entered on September 23, 1976, the Nevada Gaming Commission revoked all earlier licenses and findings of suitability of Mr. Klein and further ordered: (1) that Mr. Klein resign as an officer and director of Bally; (2) that he divest himself of all his Bally stock within four years and relinquish his voting rights immediately; (3) that he pay a fine of $50,000 to the Nevada Gaming Commission; and (4) that Bally "and its controlled subsidiaries shall henceforth not employ Sam W. Klein in any capacity." (D-212). Both Mr. Klein and Bally consented to the entry of this order. Mr. O'Donnell testified that he was well aware of this order and that he intended to comply with its spirit as well as its letter. (T1873-6 to 13).

Later in 1976, following passage of the New Jersey casino gaming referendum, Mr. O'Donnell was contacted by Mr. Klein who advised that a friend, one Al Toll, owned a property in Atlantic City, the Howard Johnsons Motel, which was very well-suited for development as a casino hotel. In early 1977, Mr. O'Donnell went to Atlantic City where he met with Mr. Klein and Mr. Toll to discuss the possible acquisition of the property by Bally. There were four or five such meetings in all.

At some point in these negotiations, Mr. Klein indicated that he expected a finder's fee from Bally if the acquisition took place. Mr. O'Donnell turned to Bally's general counsel, Glenn Seidenfeld, for an opinion as to whether payment of the finder's fee would violate the Nevada order. Mr. Seidenfeld in turn contacted George Aronoff, one of Bally's outside counsel, and they discussed the issue. After deliberating for some time, they concluded that the order would not prohibit such a payment to Mr. Klein as an independent contractor. However, Mr. Aronoff added that it would be "improvident" for Bally to proceed without the approval of the Nevada authorities. (T3287-5 to 3288-5). Mr. O'Donnell did not seek such approval. The finder's fee was not paid because Bally did not purchase the property.

Subsequent to the entry of the 1976 Nevada order, Mr. Klein involved himself in a separate matter but one also related to Bally's entry into the Atlantic City casino industry. Mr. O'Donnell testified that during a telephone conversation he apprised Mr. Klein of his intent to ask William Weinberger, a casino executive in Las Vegas, to lead the Bally casino project in Atlantic City. Mr. Klein revealed that he knew Mr. Weinberger from their college days and suggested that "a contact coming from me...would be more fruitful." Mr. O'Donnell accepted the offer. Later, Mr. Klein reported that he had contacted Mr. Weinberger and he was interested. To Mr. O'Donnell's knowledge, Mr. Klein played no other part in this effort, which resulted in Mr. Weinberger becoming president of Bally's Park Place. (T1360-9 to 1361-17).

On cross-examination, Mr. O'Donnell denied that the purpose of Mr. Klein's intervention was to have Mr. Weinberger be more receptive to Bally's offer. (T1870-16 to 20). When asked why he did not notify the Nevada authorities before authorizing Mr. Klein to approach Mr. Weinberger, Mr. O'Donnell asserted that he acted in reliance on the legal opinion which he obtained relative to Mr. Klein's requested finder's fee. According to Mr. O'Donnell, the lawyers had said the earlier arrangement was "perfectly okay," so he could see no problem with this "mere phone call, or a visit, or whatever he [Klein] was going to do with Mr. Weinberger." (T1875-21 to 1876-4).

The foregoing does not speak well of Mr. O'Donnell's vigilance and sensitivity to regulatory obligations. Of more significance, however, is the fact that these matters, especially Runyon and Klein, involved direct links to the admittedly dubious origins and early life of Bally. Mr. O'Donnell's reluctance to break cleanly with these elements, even in the face of possible or apparent regulatory violations, seriously undermines the credibility of his avowed determination to put Bally's past behind it.

6. CONCLUSIONS AS TO WILLIAM T. O'DONNELL

The facts recited above, all of which we find to be supported by credible evidence in the record before us, simply do not square with the positive testimony adduced as to the good character, honesty and integrity of William T. O'Donnell. Stated plainly, Mr. O'Donnell's previous behavior provides powerful proof that he should not be trusted to control a company which

seeks licensure either to operate a casino or to supply essential gaming equipment in New Jersey. To repeat, three aspects of Mr. O'Donnell's history are most troublesome;

(1) the direct and indirect associations of Gerardo Catena with Bally which resulted from the acquisition effort led by William O'Donnell and which endured over the course of several years thereafter;

(2) the association with Dino Cellini which William O'Donnell led Bally to engage in and which he engaged in personally; and

(3) the participation of William O'Donnell in an apparent attempt to secure passage of favorable legislation in Kentucky by offering monetary payments to members of the Kentucky Legislature.

Based on the substantial credible evidence in the record as a whole, including the evidence summarized above, this Commission finds Gerardo Catena to be a person of unsuitable character and reputation. Similarly this Commission also finds, as it has previously, that the late Dino Cellini was a person of unsuitable character and reputation.

The Commission has noted in the past that under the Casino Control Act a person's associations may bear upon his character and, hence, upon his present fitness for licensure. Whether an association does so reflect upon present character and fitness depends upon many factors including the time of the association, its duration, its purpose, its intensity, its attenuation through third parties, the character of the

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associate, the associate's reputation, the applicant's knowledge of such reputation or character, the applicant's exercise of reasonable efforts to determine the suitability of his associates, termination of the association and the reasons for termination. Resorts, supra at 10.

Viewing Mr. O'Donnell's associations with Gerardo Catena and with Dino Cellini in light of each of these factors we find that both of these associations reflect adversely on Mr. O'Donnell's character.

Upon careful review of all of the evidence relating to the alleged 1967-68 Kentucky bribery incident, we find that Mr. O'Donnell participated in an attempt to buy the votes of members of the Kentucky Legislature in an effort to influence the passage of legislation which would be to the economic benefit of Mr. O'Donnell and Bally. This too reflects adversely on Mr. O'Donnell's character.

The negative impressions which emerge from these associations and actions are reinforced by the other behavior which we have examined, including: Mr. O'Donnell's wagering with a bookmaking ring, his attitude toward Nevada's regulatory concerns, his seeming tolerance of public corruption and illegal gaming activity by Bally distributors, his willingness to continue business relationships which threaten to renew the appearance if not the fact of organized crime affiliations, and his unsatisfactory explanations on several occasions during this hearing. These matters, are too proximate and too numerous to be dismissed as isolated, abberational, petty or stale.

Although no single one of them would require disqualification, they substantiate the adverse inferences which we have drawn from the three most serious areas of concern. Further, these additional matters did not occur in the distant past. Indeed, many transpired during the pendency of the present application or at this hearing. Thus, they tend to oppose any finding that, whatever Mr. O'Donnell's failings may have been at one time, the character deficiencies exposed thereby have been overcome.

The law requires us to judge each applicant's character. We find this a most difficult task for several reasons. First, "character" is an elusive concept which defies precise definition. Next, we can know the character of another only indirectly, but most clearly through his words and his deeds. Finally, the character of a person is neither uniform nor immutable.

Nevertheless, we conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime. We must judge a man's character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record before us. We must focus particularly on those attributes of trustworthiness, honesty, integrity and candor which are relevant to our inquiry.

Who then is William O'Donnell? He is obviously a man with many fine attributes including those of kindness, generosity, loyalty, intelligence and leadership ability. However, in light of the evidence in the entire record and particularly those facts which we have summarized here, we are constrained to conclude that he has not satisfied us by clear and convincing evidence that he possesses the high standard of good character, honesty and integrity demanded by the Casino Control Act. Accordingly, William T. O'Donnell is not qualified.

B. ALEXANDER R. A. WILMS

Alexander R. A. Wilms, a Belgian national, was the founder of Bally Continental, Ltd., N.V. ("Bally Continental"), a Belgian corporation which was a successor to a limited partnership formed by Mr. Wilms in 1949. Both companies distributed Bally manufactured products, including coin-operated amusement and slot machines, in Europe, Africa and the Middle East. All of the outstanding and issued shares of Bally Continental were acquired by Bally from Alexander Wilms in 1969. In conjunction with this acquisition, Alexander Wilms received compensation in part in the form of unregistered Bally securities. Subsequent to this acquisition, Mr. Wilms was elected a director of Bally and continued to serve as the chief executive officer of Bally Continental.

In 1974, Alexander Wilms applied to the Nevada Gaming Commission for a state gaming license in conjunction with Bally's application for a state gaming license and concurrent registration as a publicly-traded corporation. Bally's gaming

license and registration were granted by the Nevada Gaming Commission on a probationary basis by order dated March 20, 1975. Based upon certain evidence adduced at an investigatory hearing conducted by the Nevada State Gaming Control Board, serious questions were raised regarding the qualification of Alexander Wilms for a gaming license in Nevada. By order dated March 21, 1975, Mr. Wilms was permitted to withdraw his application for a Nevada state gaming license, subject to the following conditions:

1. He resign as president of Bally Continental within nine months; and

2. He resign immediately from any other offices or directorships or positions that he may hold with Bally or any of its subsidiaries; and

3. He not seek employment as an officer, employee, or agent of Bally or any of its subsidiaries without prior approval of the Nevada Gaming Commission.(D-214).

The Nevada Gaming Commission did, however, permit Alexander Wilms to remain as a shareholder in Bally and he retains that status to this date.

Throughout the past decade, Alexander Wilms has conveyed by gift to various members of his immediate family shares of Bally stock. As of March 6, 1980, Bally had one class of voting capital stock, par value 66 2/3 cents, of which there were approximately 25,500,000 shares issued and outstanding. As of that date, the record ownership of Bally stock by Alexander Wilms and his family was as follows:

Shareholder (Relationship to Alexander Wilms)	Number of Shares Owned of Record	% of Total Shares Issued and Outstanding
Alexander R.A. Wilms	449,128	1.77%

Elise Wilms (wife)	284,800	1.12%
Alfred Wilms (son)	705,000	2.76%
Lucien Wilms (son)	633,800	2.49%
Sophie Wilms and Stephanie Wilms (granddaughters)	8,000	.031%
	2,080,728	8.16%

With minor exceptions, all of the Bally voting stock owned of record by Elise, Alfred, Lucien, Sophie and Stephanie Wilms was obtained directly or indirectly as a gift from Alexander Wilms.

As of March 6, 1980, there were 22,700,000 shares of Bally's Park Place (Delaware) voting common stock outstanding. As of that date, the record ownership of Bally's Park Place (Delaware) stock by the Wilms' family was: Alexander, 98,083 shares (0.43%); Elise, 53,427 shares (0.24%); Alfred, 112,504 shares (0.5%); and Lucien, 112,015 shares (0.49%). In the aggregate, these shares amount to 1.65% of the outstanding voting common stock of Bally's Park Place (Delaware). There is no indication in the record that the shareholdings in Bally or Bally's Park Place (Delaware) of any member of the Wilms' family have changed materially since March 6, 1980.

Pursuant to Sections 85(c) and 85(d)(1) of the Act, N.J.S.A. 5:12-85(c) and -85(d)(1), the securities holders of Bally (the holding company) and Bally's Park Place (Delaware) (the intermediary company) must qualify to the standards of a casino key employee, except for residency, in order to issue a

casino license to the operating subsidiary. However, since both the holding company, Bally, and the intermediary company, Bally's Park Place (Delaware), are publicly-traded corporations, the Commission and the Director of the Division may agree to waive such qualification requirements as to any security holder if they are satisfied that he does not have the ability to control the publicly-traded corporation or elect one or more directors thereof.

By virtue of their status as shareholders in Bally and Bally's Park Place (Delaware), Alexander, Elise, Alfred, Lucien, Sophie, and Stephanie Wilms appeared to be individuals required to qualify as part of the casino license application of Bally's Park Place. Thus, the question was presented whether Alexander Wilms or any of the named Wilms' family members, as shareholders of the intermediary and holding companies of Bally's Park Place, had the ability to control such publicly-traded intermediary or holding companies or elect one or more directors thereof within the meaning of Section 85(d)(1). If the answer to this question was in the affirmative then there could be no waiver of any requirement imposed by the Act that any or all of the Wilms family members be qualified as a condition of the casino license application. The Division took the position that Alexander Wilms would not be qualified for approval as a casino key employee pursuant to the provisions of the Act. The Division took no position with regard to the qualifications of Elise, Alfred, Lucien, Sophie or Stephanie Wilms.

At the conclusion of the evidentiary portion of the license hearing, the Commission found that, as matters then stood, there were substantial reasons why the grant of a waiver to any member of the Wilms family should be withheld. To that point, the Commission and the Division were operating under the assumption that, subsequent to the termination of the temporary casino permit of Bally's Park Place, the Wilms family would reassume the right to exercise the voting powers of their stock in Bally and Bally's Park Place (Delaware). By virtue of the terms of the December 5, 1979 agreement and with the assent of each member of the Wilms family, the Wilms' stock in Bally and Bally's Park Place (Delaware) had been subject to an irrevocable proxy during the course of the temporary casino permit.

By their terms, these proxies directed the secretaries of the holding and intermediary companies to vote the Wilms' stock in accordance with the majority of the stockholder's votes cast at any particular meeting. The proxies were to remain in effect from the date of their execution (December 12, 1979) until "the last date on which Bally's Park Place, Inc. holds a temporary casino permit in accordance with the laws of New Jersey, or for such further period of time as may be fixed by the New Jersey Casino Control Commission." Furthermore, the proxies provided that they would be irrevocable during such period unless revoked with the written consent of the New Jersey Casino Control Commission.

The Commission was thus faced with the very difficult issue of whether any or all members of the Wilms family must be qualified as part of the casino license application of Bally's Park Place. Alexander Wilms, through his counsel, steadfastly maintained that he should not be required to qualify as part of the application of Bally's Park Place. Therefore, the record of this proceeding is sparse as to the ultimate issue of the qualification of Alexander Wilms. If the Commission were forced to make a determination as to the qualification of Alexander Wilms based upon this record, the Commission might be unable to find that the statutory standard has been met. Thus, a determination that Mr. Wilms was required to qualify as part of the casino license application of Bally's Park Place could potentially have serious ramifications for that corporate casino license applicant.

The Commission considered whether an alternative response to this problem would be feasible and appropriate. The policies and purposes of the Casino Control Act would best be served by a resolution which adequately protects the law enforcement concerns contained in the Act without needlessly frustrating the mutual interests of the State and the corporate applicant. These interests, namely the economic revitalization of Atlantic City and the issuance of a casino license to an otherwise qualified applicant, would be unjustifiably jeopardized by placing in the hands of a shareholder, who is unable to control the actions of the corporate casino license applicant,

the power to disqualify that applicant by refusing to cooperate in the application process.

To avoid this dilemma without eroding the Act's mandate that the integrity of any controlling or influential person be established, the Commission proposed that certain restrictions be imposed as a precondition to issuance of a casino license to the applicant. These restrictions were specifically designed to assure that there will be no control or significant influence over the operations of Bally's Park Place or Bally Manufacturing Corporation by any member of the Wilms family.

On December 23, 1980, as part of its preliminary determination, the Commission announced its intent to pursue this course of action and described the conditions which would be imposed. In view of the fact that William T. O'Donnell would be foreclosed from playing any role in the management or in the formulation of policy of the corporate applicants as a result of his failure to qualify, the Commission believed that the proposed conditions would effectively foreclose the ability of Alexander Wilms or any other member of the Wilms family (1) to significantly influence or control the operations or policies of the casino license applicant or (2) to control Bally or Bally's Park Place (Delaware) or elect one or more of the directors thereof.

After expressing these findings and opinions, the Commission offerred the Director of the Division an opportunity to consider whether he would join the Commission in waiving any

qualification requirement for the Wilms family members, pursuant to Section 85(d)(1).

When the license hearing reconvened on December 29, 1980, the Director declared his agreement with the Commission's position that waivers of qualification were appropriate. The Director emphasized that his continuing concurrence was contingent on strict compliance with the proposed conditions and unstinting cooperation by the applicant with the Division in enforcing them. Additionally, the Director suggested a modification to the condition imposed on business dealings between Bally and Alexander R. A. Wilms. We consider the suggested modification, which expands the scope of the condition to include other Wilms family members, to be a reasonable safeguard against indirect influence by Alexander R. A. Wilms. We therefore adopt it.

Section 92(b) of the Act, N.J.S.A. 5:12-92(b), requires that the owners, among others, of a casino service industry license applicant which is subject to the provisions of Section 92(a) (gaming related) must qualify under the standards, except residency, established for qualification of a casino key employee under the Act. See N.J.S.A. 5:12-89. Commission regulations provide that each owner of a casino service industry license applicant who directly or indirectly holds any beneficial interest or ownership in excess of five percent of the enterprise must so qualify. N.J.A.C. 19:43-1.14(a)(1)(iii). As with casino license qualifiers, these statutory and regulatory provisions are grounded in those policies of the Act which require all

individuals who may have the ability to significantly influence or control the operations of a Section 92(a) enterprise to be qualified under the appropriate standards of the Act.

Bally Manufacturing Corporation, in addition to being a holding company as to Bally's Park Place, is itself an applicant for a Section 92(a) casino service industry license as a gaming equipment manufacturer and supplier. If the Bally stock held by the Wilms family were to be aggregated, the Wilms family could be found to be an owner required to be qualified in accordance with the provisions of the Act and Commission regulations. There is no credible evidence in the record of this proceeding, however, which would support a finding that the members of the Wilms family have historically pooled the non-voting beneficial interests which accrue as a result of their ownership of Bally stock; furthermore, there is a similar lack of support for a finding that such an event is likely to occur in the future. By imposing the same conditions on the casino service industry license as will be imposed on the casino license, including a restriction on the voting power of the Bally stock owned of record by Alexander, Elise, Alfred and Lucien Wilms, the Commission hereby finds that none of these individuals are now persons required to be qualified as an owner of a Section 92(a) casino service industry enterprise.

The conditions thus imposed upon both the casino license of Bally's Park Place and the casino service industry license of Bally Manufacturing Corporation to assure that the

Wilms family members are appropriately granted a waiver from any qualification requirement are as follows:

1. that the irrevocable proxies which were executed on December 12, 1979, by Alexander R. A. Wilms, Elise Wilms, Alfred Wilms and Lucien Wilms in accordance with the December 5, 1979, agreement and which provide that the Wilms' stock in Bally Manufacturing Corporation and Bally's Park Place (Delaware) shall be voted with the majority of shareholders voting on any matter, shall be continued in full force and effect so long as the companies are holding or intermediary companies with respect to a licensed New Jersey casino operator, or so long as either company holds a gaming related casino service industry license;

2. that Bally Manufacturing Corporation and Bally's Park Place (Delaware) shall notify the Commission and the Division before recording any transfer of stock in said companies held by any member of the Wilms family;

3. that the management and directors of Bally Manufacturing Corporation and its subsidiaries shall immediately notify the Commission and the Division of any effort by any member of the Wilms family to influence any actions or decisions of the companies, their officers, directors or employees;

4. that Bally Manufacturing Corporation and its subsidiaries shall have no direct or indirect business transactions of any nature whatsoever with Alexander R. A. Wilms, Elise Wilms, Alfred Wilms or Lucien Wilms or any corporation or other business entity controlled by them, or any of them, or in which they or any of them own beneficially a 5% or greater

interest of any class of voting securities, without notice to the Division of Gaming Enforcement and the prior approval of the Casino Control Commission; provided that they may continue as stockholders subject to the irrevocable proxies; and further provided that the notice and prior approval provision of this paragraph shall become effective sixty (60) days following the issuance of a casino license to Bally's Park Place or a casino service industry license to Bally Manufacturing Corporation; and

5. that Bally Manufacturing Corporation and its subsidiaries shall not permit any member of the Wilms family to act as a director, officer, employee or agent without the prior approval of the Commission.

All of the findings of the Commission regarding whether or not Alexander, Elise, Alfred, Lucien, Sophie and Stephanie Wilms are individuals required to be qualified as part of the applications of Bally Manufacturing Corporation or Bally's Park Place are predicated upon the facts contained in the record presently before the Commission. The parties should be mindful of the fact that any significant change in these facts may require the Commission to re-evaluate its findings as to whether the above-stated conditions are adequate or effective and whether any member of the Wilms family should be required to qualify in the future.

C. OTHER PERSONS REQUIRED TO QUALIFY

Aside from William T. O'Donnell and the Wilms family, the Commission finds that there are 22 persons required to qualify either as part of the Bally's Park Place casino license

application or as part of the Bally Manufacturing Corporation casino service industry license application or both. As to the casino license, the Commission and the Division concurred, under N.J.S.A. 5:12-85(c) and -85(d)(1), as to those individuals affiliated with the publicly-traded holding and intermediary companies who were required to qualify. As to the casino service industry license, the Commission has determined the qualifiers in accordance with the Act, N.J.S.A. 5:12-92(a) and (b), and the regulations, N.J.A.C. 19:43-1.14. The 22 individuals, none of whom were the subject of an objection and about whom no grounds for rejection appear on this record, are the following:

1. GEORGE NORMAN ARONOFF, an Ohio resident, 47 years of age, is a Director of Bally Manufacturing Corporation.

2. DOROTHY J. ATTANASIO, 56 years of age and a New Jersey resident, is Vice-President of Administration for Bally's Park Place.

3. ALAN H. BIBLE, 70 years of age and a Nevada resident, is a Director of Bally Manufacturing Corporation.

4. STEVEN R. BOLSON, 34 years of age and a New Jersey resident, is Secretary and General Counsel of both Bally's Park Place (Delaware) and Bally's Park Place.

5. JERRY ALLEN BLUMENSHINE, 40 years of age and an Illinois resident, is Corporate Controller for Bally Manufacturing Corporation.

6. JOHN ANTHONY BRITZ, 62 years of age and an Illinois resident, is Executive Vice-President of Technology and a Director of Bally Manufacturing Corporation.

7. WILLIS H. BROCKHOFF, 62 years of age and an Illinois resident, is Treasurer of Bally Manufacturing Corporation.

8. GEORGE D. CROWLEY, 67 years of age and an Illinois resident, is a Director of Bally Manufacturing Corporation and Chairman of that company's Finance & Long Range Planning Committee.

9. REDENIA C. GILLIAM, 32 years of age and a New Jersey resident, is Vice-President for Government Relations of both Bally's Park Place (Delaware) and Bally's Park Place.

10. RICHARD GILLMAN, 49 years of age and a New Jersey resident, is Chairman of the Board of both Bally's Park Place (Delaware) and Bally's Park Place.

11. RICHARD KNIGHT, 32 years of age and a New Jersey resident, is Corporate Controller for both Bally's Park Place (Delaware) and Bally's Park Place.

12. ALFRED C. LINKLETTER, 68 years of age and a New Jersey resident, is a Director and consultant of both Bally's Park Place (Delaware) and Bally's Park Place.

13. CHRISTIAN MARI, 29 years of age and a New Jersey resident, is Vice-President for Hotel Operations of Bally's Park Place.

14. GEORGE BERNARD MORAN, 70 years of age and a New York resident, is a Director of Bally Manufacturing Corporation.

15. ROBERT E. MULLANE, Jr., 48 years of age and an Illinois resident, is President and Chairman of the Board of Bally Manufacturing Corporation.

16. JAMES M. ROCHFORD, 59 years of age and an Illinois resident, is Vice-President for Corporate Security of Bally Manufacturing Corporation.

17. IRVING ROM, 57 years of age and an Illinois resident, is a Director and Executive Vice-President for Finance of Bally Manufacturing Corporation.

18. ROSS BERYL SCHEER, 50 years of age and an Illinois resident, is Director of Marketing for Bally Manufacturing Corporation.

19. GLENN K. SEIDENFELD, Jr., 36 years of age and an Illinois resident, is Secretary and General Counsel for Bally Manufacturing Corporation.

20. CHARLES R. TANNENBAUM, 46 years of age and a New Jersey resident, is Vice-President of Entertainment & Special Events for Bally's Park Place.

21. WALTER WECHSLER, 67 years of age and a New Jersey resident, is a Director of Bally's Park Place.

22. WILLIAM S. WEINBERGER, 67 years of age and a New Jersey resident, is a Director and President of both Bally's Park Place (Delaware) and Bally's Park Place.

Having considered all of the information supplied by each of the qualifiers and by the Division, the Commission is satisfied that each of the named individuals meets the statutory standards required of a person who must qualify as part of a casino license or a gaming-related casino service industry license.

III

SUITABILITY OF THE CORPORATE APPLICANTS

Having considered the suitability of the individuals required to qualify, we must now decide whether the corporate applicants, Bally Manufacturing Corporation and its subsidiary, Bally's Park Place, possess the requisite good character, honesty and integrity for a casino service industry license (gaming-related) and a casino license, respectively.

Bally Manufacturing Corporation is a large, publicly-traded company. Although the Casino Control Act considers this company to be a "person" required to qualify, it is evident that such an entity and its subsidiaries (collectively "the company") cannot be evaluated in the same manner as an individual like Mr. O'Donnell. Common experience teaches that an individual's character develops over time and manifests itself through acts and omissions. Once formed, individual character usually resists precipitous transformation. A corporation, however, does not possess a separate moral character. As our Supreme Court has stated: "The moral responsibility of a corporation is one and the same with the moral responsibility of the individuals who give it direction."[1] Thus, a corporation mirrors the attributes of its principal officials and must bear responsibility in a broad sense for their failings.

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1. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065 (1972).

This reflective character also permits the entity to remove a stain from the corporate image by removing the persons responsible for the misdeeds. In order to accomplish this cleansing, the corporation must be able to isolate the wrong done and the wrongdoers from the remaining corporate personnel.

> If, as a consequence, the corporation has purged itself of the offending individuals and they are no longer in a position to dominate, manage or meaningfully influence the business and operations of the corporation, the responsibility of the corporation should then be assayed, not upon the moral infirmities of the removed malefactors, but upon the integrity of the persons who remain in ownership and control of it.[2]

The question thus becomes whether the improprieties in Bally's history can be localized in any one individual. Stated differently, this Commission must be convinced that the persons remaining after Mr. O'Donnell's removal possess the necessary measure of integrity. In examining the personal qualities of these remaining individuals, at least two contentions must be considered: first, that the other key personnel, especially the directors, tolerated or ratified unacceptable conduct and associations; and second, that the very retention of Mr. O'Donnell as President and Chairman of the Board itself demonstrates the defective character of other corporate officials. Since we have already found that the persons required to qualify have done so, we have implicitly concluded that, on

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2. Trap Rock Industries, Inc. v. Sagner, 133 N.J.Super. 99, 108 (App. Div. 1975), aff'd 69 N.J. 599 (1976).

the present record, these contentions are unfounded as to the current management. We now explain why we reach this conclusion.

As previously stated in regard to Mr. O'Donnell, three areas of concern emerge as most damaging. First is the acquisition of the predecessor company in 1963 by the K.O.S. group formed by Mr. O'Donnell and the resulting association of the company with Gerardo Catena and confederates of Mr. Catena. While this association gives us cause for deep concern as to Mr. O'Donnell's fitness, the present company can hardly be held responsible for those activities. It has been demonstrated during this hearing that each of the original K.O.S. members have been severed from the company with the sole exception of Mr. O'Donnell. The last such severance occurred in 1976 when Sam W. Klein was ordered by the Nevada Gaming Commission to divest himself of his shares and to resign all positions with the company. There is no reason to believe that Mr. Klein can exercise any control or influence over Bally today, especially in view of this Commission's demand that Mr. O'Donnell be separated from the company. Further, no evidence appears to indicate that any other present corporate official has participated in or condoned any illicit activity by Mr. Klein or by any other member of the K.O.S. group.

The second major area of concern with regard to Mr. O'Donnell is the alleged bribery of Kentucky legislators in 1968. It is true that passage of the bill in question would have benefitted Bally, but there is no indication that anyone else in

the company had any knowledge of Mr. O'Donnell's apparent inten Although two current members of the company's management, Mr. Brockhoff and Mr. Britz, signed the $4,000 check which Mr. O'Donnell sent to Gilbert Brawner, we are convinced that they acted on instructions of Mr. O'Donnell to send a loan to one of Bally's distributors. The responsibility for this action falls squarely on Mr. O'Donnell.

The third troublesome area regarding Mr. O'Donnell is his employment of Dino Cellini as a salesman in the Bahamas and later in Europe. Mr. O'Donnell made it quite clear that it was his decision to engage Mr. Cellini and that he was aware of Mr. Cellini's reputation. As chief executive officer, Mr. O'Donnell certainly did not have to confer with anyone else before taking those actions. However, if anyone else could be faulted, it would be Alexander Wilms who was Mr. Cellini's immediate superio at Bally Continental. In any event, no active member of the corporate group appears to be chargable with any negative inferences flowing from Mr. Cellini's work for the corporation. That work ended in May 1973 and Mr. Cellini died in 1978.

During this hearing, several other matters have been examined. These include: the adequacy of compliance with the 1975 Nevada probationary registration, especially the requiremen to cease all business with Louis Boasberg and Abe Green; the several borrowings from the Teamsters Pension Fund; the placemen of insurance with the United Founders company through Alan Dorfman's agency; the use of Michael Wichinsky as a distributor for the company in Nevada; compliance with the 1976 order of the

Nevada Gaming Commission to refrain from employing Sam W. Klein in any capacity; and the placement of illegal wagers by Mr. O'Donnell for a month in 1971.

After reviewing the evidence pertaining to all of these matters, the Commission is satisfied that they may reflect on Mr. O'Donnell but they do not reflect adversely on the present management and directors of Bally. In this regard, the Commission observes that the membership of the board of directors has undergone almost a complete change since 1974 and that the company now appears earnest in its commitment to regulatory compliance.

Further, the company has presented for this Commission's scrutiny virtually every director, officer and key employee in the present corporate management. No allegation has been leveled against these individuals that they personally approved or participated in any of the troublesome associations, regulatory violations or improper behavior discussed herein. It is true that the Bally leadership, especially the board, has been perhaps too passive and too reliant on Mr. O'Donnell with respect to important matters. However, we do not find willful neglect or purposeful abdication which would cause us to doubt the character of the present personnel. Thus, while this Commission realizes the difficulty of weeding out culpable individuals from the corporate thicket, under the present circumstances we do not find cause to reject this publicly-traded corporate group.

For all of these reasons and subject to the condition stated hereafter, the Commission finds that the corporate applicants have established the requisite good character, honesty and integrity for licensure. However, no license could issue unless William T. O'Donnell is no longer a person to be qualified and unless the unsavory or questionable associations in the company's past are fully severed. To assure that neither Mr. O'Donnell nor any of the disreputable individuals previously affiliated with the company is in a position to dominate, manage or meaningfully influence the company's business or operations, the Commission hereby imposes several conditions on both the casino service industry license of Bally Manufacturing Corporation and the casino license of Bally's Park Place. Strict compliance with these conditions and the Wilms conditions (see Part IIB) is an essential premise for both the issuance and continuation of these licenses. The conditions are as follows:

1. that the irrevocable voting trust executed by William T. O'Donnell pursuant to the December 5, 1979, agreement entered by Mr. O'Donnell to induce the issuance of a temporary casino permit to Bally's Park Place, shall be extended until the Commission is satisfied that a permanent divestiture of those securities held by Mr. O'Donnell in Bally Manufacturing Corporation and Bally's Park Place (Delaware) has been achieved;

2. that, in accordance with the December 5, 1979, agreement, William T. O'Donnell shall submit to the Division and the Commission by no later than February 2, 1981, a plan of

divestiture for his securities which plan shall be modified as the Commission may direct;

3. that Bally Manufacturing Corporation and Bally's Park Place (Delaware) shall not distribute to Mr. O'Donnell any dividends or interest accruing to his securities in accordance with the terms of an agreement with Mr. O'Donnell dated and excuted December 24, 1980;

4. that Bally Manufacturing Corporation and its subsidiaries shall have no business transactions whatsoever with Mr. O'Donnell or any corporation or other business entity controlled by him or in which he has a 5% or greater interest of any class of voting securities, except as may be necessary to effectuate the divestiture of Mr. O'Donnell's securities and except with respect to his partnership interest in the 2640 West Belmont Partnership;

5. that Bally Manufacturing Corporation and its subsidiaries shall immediately notify the Commission and Division of any effort by Mr. O'Donnell to influence any action or decision of the companies, their officers or directors or employees;

6. that Bally Manufacturing Corporation and its subsidiaries shall have no business transactions whatsoever with Gerardo Catena, Abe Green, or Sam W. Klein (except with respect to his partnership interest in 2640 West Belmont Partnership) or with any corporation or other business entity controlled by them or any of them or in which they or any of

them have a 5% or greater interest of any class of voting securities;

7. that Bally Manufacturing Corporation and its subsidiaries shall have no business transactions whatsoever with Irving Green or Louis Boasberg or with any corporation or other business entity controlled by any of them or in which any of them have a 5% or greater interest of any class of voting securities, without the prior approval of the Commission;

8. that Bally Manufacturing Corporation and its subsidiaries shall not permit Jack Rooklyn to act as a director, officer, employee or agent without the prior approval of the Commission;

9. that by no later than February 2, 1981, Bally Manufacturing Corporation shall either show cause why the 2640 West Belmont Partnership should be allowed to continue as owner and lessor of the Bally headquarters or submit a plan for acquisition or reconstitution of the said partnership so as to eliminate the participation of Messrs. Klein and O'Donnell therein;

10. that by no later than July 1, 1981, Bally Manufacturing Corporation shall cause at least 50% of the membership of its board of directors to be independent, outside members and shall maintain such minimum proportion thereafter;

11. that Bally Manufacturing Corporation shall maintain in full force and effect its present system of internal reporting, shall amend such system as required by the Commission

and shall not amend such system without the prior approval of the Commission, provided that nothing herein shall require Bally Manufacturing Corporation to modify or not modify the said system without the concurrence or against the directive of any other jurisdiction; and

12. that Bally Manufacturing Corporation shall continue to maintain an adequately and competently staffed security department to assure that the company and its subsidiaries are not dealing with persons lacking integrity, to assure that the internal reporting system is functioning properly and to assure compliance with these conditions.

IV

FINDINGS AS TO COMPLIANCE WITH
OTHER LICENSE REQUIREMENTS

At the hearing, the contested issues covered the standards of good character, honesty and integrity as applied to the corporate applicants and to certain key persons required to qualify in order for the licenses to issue. Although these disputed matters have now been addressed, there remain several other areas in which findings are mandated by the Act, by the regulations of the Commission and by the conditions attached to the temporary casino permit granted to Bally's Park Place. A detailed recitation of proposed findings and conditions in these other areas was prepared by the Commission's Licensing Division and presented to the parties before the close of the hearing. No objection was raised and the proposal was formally adopted and included in the record. (T 12/29/80, 4-23 to 47-17). For the sake of completeness, the operative findings and conditions are set forth herein. They are as follows:

1. That Bally's Park Place has satisfied N.J.S.A. 5:12-85(a)(1) to (9) requiring it to file information concerning the organization, businesses, personnel, securities, and securities holders of it and its holding companies;

2. That Bally's Park Place is wholly-owned by an intermediary company, Bally's Park Place, Inc., (Delaware), which is qualified to do business in New Jersey and which has issued in excess of 22 million shares of common stock,

publicly-traded in the over-the-counter market, which is presently held by approximately 18,000 shareholders of record, both direct and beneficial, of which shares the holding company, Bally Manufacturing Corporation, is the owner of approximately 83% (See N.J.S.A. 5:12-26 and 28 and Exhibit J-1, par. 68-69);

3. That the holding company, Bally Manufacturing Corporation, is a Delaware Corporation with principal offices in Chicago, Illinois is qualified to do business in New Jersey and has issued in excess of 25 million shares of common stock, publicly-traded on the New York Stock Exchange which is presently held by more than 22,000 record and 65,000 beneficial shareholders (See N.J.S.A. 5:12-26 and Exhibit J-1, par. 1-3);

4. That the two said corporations, Bally Manufacturing Corporation and Bally's Partk Place, are presently the sole holding and intermediary companies of Bally's Park Place, a subsidiary (See N.J.S.A. 5:12-47), and that both have registered with the Commission as required by N.J.S.A. 5:12-85(b) (See Exhibit J-1, par. 68-69);

5. That Bally Manufacturing Corporation is a casino service industry as defined by N.J.S.A. 5:12-12 in that it does business with New Jersey casinos and provides them with goods and services on a regular or continuing basis;

6. That Bally Manufacturing Corporation is required to hold a casino service industry license pursuant to N.J.S.A. 5:12-92(a) in that its goods or services directly

relate to casino or gaming activity and it is a manufacturer and supplier of gaming equipment;

7. That Bally Manufacturing Corporation as well as its owners, management, supervisory personnel, and other principal employees, must qualify under the standards, except residency, for qualification of a casino key employee as required by N.J.S.A. 5:12-92(b), and that all required entities and persons, except as otherwise noted in this opinion and subject to the conditions previously stated, have so qualified;

8. That Bally's Park Place owns the entire casino hotel building and owns in fee the former Dennis Hotel site portion of the land thereunder; that the holding company, Bally Manufacturing Corporation, owns in fee the former Marlborough-Blenheim site portion of the land thereunder which it leases as landlord to Bally's Park Place; and that Bally's Park Place is thus eligible to hold a casino license (See N.J.S.A. 5:12-82(b)(1), (2), and (4));

9. That the said lease is in writing, has been filed with the Commission, has a duration of in excess of thirty years and includes a fixed sum buy-out provision conferring upon Bally's Park Place, as lessee, the absolute right to acquire the entire interest of lessor holding company Bally Manufacturing Corporation in the event the said lessor is found to be unsuitable (See N.J.S.A. 5:12-82(c)(5));

10. That Bally's Park Place manages its own casino (N.J.S.A. 5:12-82(b)(3) and(c));

11. That Bally's Park Place and Bally Manufacturing Corporation as parties to the said lease agreement shall each in accordance with N.J.S.A. 5:12-82(c)(9) be jointly and severally liable for all acts, omissions, and violations of the Casino Control Act by either party regardless of actual knowledge of such act, omission, or violation and notwithstanding any provision in said agreement to the contrary;

12. That Bally's Park Place meets the incorporation, on-site office, state corporation law compliance, ownership ledger, operating bank account, and express corporate charter provision requirements of N.J.S.A. 5:12-82(d)(1) through (6);

13. That Bally's Park Place has adopted provisions which establish the right of the Commission to prior approval of all transfers of interests in Bally's Park Place as required by N.J.S.A. 5:12-82(d)(7) and which establish the absolute right of Bally's Park Place to repurchase at the lesser of market or purchase price any interests the transfer of which has been disapproved by the Commission as required by N.J.S.A. 5:12-82(d)(8);

14. That Bally's Park Place neither holds nor has been issued a casino license and thereby meets the requirement of N.J.S.A. 5:12-82(e) limiting to three the number of casino licenses a person may hold;

15. That Bally's Park Place obtained, in addition to monies advanced to it by Bally Manufacturing Corporation out of its operating funds, $288.6 million to finance the casino

proposal from the following sources: (See Exhibit J-1, par. 70-76 and Exhibit J-2);

(a) $176.2 million in credit lines and revolving loans from the following twelves banking institutions;

(1) $60.1 million from Continental Illinois National Bank and Trust Company (Including $11.1 million from its Nassau, Bahama's Branch)

(2) $26.5 million from Manufacturers Hanover Trust Company

(3) $16.0 million from Marine Midland Bank

(4) $11.3 million from American National Bank

(5) $12.3 million from Girard Bank

(6) $ 7.5 million from Industrial National Bank of Rhode Island

(7) $ 7.5 million from First National State Bank of New Jersey

(8) $10.0 million from Union Bank of America

(9) $ 5.0 million from National Westminister Bank

(10) $ 5.0 million from Barclays Bank International, Ltd.

(11) $10.0 million from Credit Suisse

(12) $ 5.0 million from Canadian Imperial Bank of Commerce;

(b) $3.9 million from a mortgage to First Peoples National Bank of New Jersey of Haddon Township, New Jersey, on the Marlborough-Blenheim site extending to December 1, 1997, which was assumed by Bally Manufacturing Corporation at the time that site was purchased;

(c) $4.0 million from a mortgage to Norman Palley and Alexander Blatt, as trustees, on the Marlborough-Blenheim site extending to March 1, 1981;

(d) $56.0 million from the sale of 3.9 million shares of Bally's Park Place, (Delaware) common stock issued on July 23, 1979 (See Exhibit J-1, par. 71);

(e) $48.5 million from the sale of Bally Manufacturing Corporation twenty-year convertiblesubordinated debentures issued effective September 19, 1978 (See Exhibit J-1, par. 72);

16. That no other financial sources which bear any relation to the casino proposal have been identified;

17. That Bally's Park Place has established by clear and convincing evidence both the integrity and reputation of the named financial sources and that its financial resources are adequate to complete the casino proposal and to operate the casino as required by N.J.S.A. 5:12-84(b) (See

Stipulation, Exhibit J-2);

18. That the casino hotel facility is situated on an approximately 8.3 acre tract fronting on the Boardwalk between Park Place and Michigan Avenue and consists of wholly new construction integrated with a complete reconstruction of the historic Dennis Hotel into a single convention hotel building which conforms to the "approved hotel" requirements of N.J.S.A. 5:12-27 and 83;

19. That, as a condition to the issuance of a Temporary Casino Permit, the casino hotel facility was required both to comply with all appropriate provisions of the Uniform Construction Code Act (N.J.S.A. 52:27d-119, et seq.) and the law relating to barrier-free design for the physically handicapped (N.J.S.A. 52:32-4) and to obtain a Certificate of Occupancy from the City of Atlantic City;

20. That Bally's Park Place has complied with all appropriate provisions of the Uniform Construction Code Act and the law relating to barrier-free design for the physically handicapped and has obtained a Certificate of Occupancy from the City of Atlantic City;

21. That, as a condition of its casino license, Bally's Park Place shall maintain a current Certificate of Occupancy issued by the City of Atlantic City;

22. That, as a condition to the issuance of a casino license and as required by N.J.S.A. 5:12-83 and 84(e), any expansion of the casino hotel facility and other related construction is subject to full review and approval by the

120.

Commission and all other appropriate jurisdictional agencies, which shall include consultation with the Division of Gaming Enforcement;

23. That, as a condition to the issuance of a Temporary Casino Permit, Bally's Park Place was required to submit for Commission review and approval a design solution which would achieve the goal of N.J.S.A. 5:12-98(b)(4) by eliminating any visibility of the casino from outside the facility through the temporary Boardwalk entrance;

24. That, although Bally's Park Place effectively eliminated any visibility of the casino from outside the facility through the temporary Boardwalk entrance, there remains an issue as to whether total compliance with N.J.S.A. 5:12-98(b)(4) has been achieved in that the casino floor may be visible from outside the facility;

25. That, as a condition of its casino license, Bally's Park Place shall within thirty (30) days of the date of this decision demonstrate to the Commission that the casino is not visible from outside the facility in compliance with N.J.S.A. 5:12-98(b)(4) and shall, after consultation with the Division of Gaming Enforcement, present a design solution to eliminate any such visibility that may be found to exist;

26. That, as required by N.J.S.A. 5:12-84(e), Bally's Park Place has established to the satisfaction of the Commission that, subject to the various conditions identified herein, the casino and its related facilities and its

location are suitable and that neither the Atlantic City patron market nor the overall environment including economic, social, demographic, competitive, or natural resource conditions have been, are being, or will be adversely affected by the casino hotel facility;

27. That, as a condition to the issuance of a Temporary Casino Permit, the Commission required that parking provisions and traffic circulation be subject to continuing review and approval by both the Atlantic City Department of Police and the Commission;

28. That, as a condition of the issuance of the casino license, parking provisions and traffic circulation shall remain subject to the continuing review and approval of both the Atlantic City Department of Police and the Commission;

29. That, as a condition to the issuance of its Temporary Casino Permit, Bally's Park Place was required to cooperate with and aid in the development and implementation of plans both to improve the traffic circulation in the Brighton Park area including that on Pop Lloyd Boulevard, Park Place, Indiana Avenue and the connecting loop street and to redesign and upgrade Brighton Park itself;

30. That Bally's Park Place has in fact assumed the major cost in the upgrading of Brighton Park including the installation of an all-new irrigation system, the complete re-sodding and replacement of all damaged shrubs and the new paving of existing walkways;

31. That, as a condition of its casino license, Bally's Park Place shall to the extent appropriate continue to cooperate with and aid in the development and implementation of plans to improve such traffic circulation and to redesign Brighton Park;

32. That Bally's Park Place is required by N.J.S.A. 5:12-84(e) to establish to the satisfaction of the Commission that its proposal does not adversely affect the overall environmental conditions in the Atlantic City region including its economic, social and demographic conditions;

33. That by virtue of the fact that Bally's Park Place employs at the approved hotel facility in excess of 4,300 persons, the proposal does affect the overall environment in the Atlantic City region and does particularly affect the limited residential housing stock available as a practical matter for the employees which Bally's Park Place has added to the Atlantic City workforce;

34. That, as a condition to the issuance of a Temporary Casino Permit, Bally's Park Place was required to participate with the Commission in assessing the Atlantic City regional housing needs and, if so required, further participate in providing a reasonable share of the housing construction requirement for Atlantic City;

35. That, as a condition of its casino license, Bally's Park Place shall continue to participate with the Commission in assessing the Atlantic City regional housing needs and, if so required, further participate in providing a reasonable share of the housing construction requirement for Atlantic City;

36. That Bally's Park Place on December 6, 1979, committed itself to introduce 56 units of family housing to the Atlantic City housing stock through the construction of 28 townhouses to be known as the Jacobs Family Terrace project on a site between Mediterranean and Baltic Avenues at New York Avenue; that, to date, both New Jersey Department of Environmental Protection and Atlantic City Planning Board approvals have been obtained; and that Bally's Park Place has represented that these housing units will be ready for occupancy by November of 1981;

37. That, as a condition of its casino license, Bally's Park Place shall use its best efforts, giving consideration to among other factors the cost of money, to have the said 56 units ready for occupancy by November of 1981 and shall within thirty days of this decision submit to the Commission a detailed outline of its projected completion dates;

38. That the approved hotel presently contains 503 qualifying sleeping units of a typical size of 407 square feet and an average size of 415 square feet and thereby exceeds the minimum qualifying sleeping units requirement set forth in N.J.S.A. 5:12-27 and 83(a);

39. That the approved hotel presently contains a total of 129, 974 square feet of qualifying space including 56,470 square feet of qualifying dining, entertainment and sports space, 27,170 square feet of qualifying meeting and exhibition space, and 46,334 square feet of qualifying kitchen support facilities and thereby exceeds the minimum qualifying space requirements set forth in N.J.S.A. 5:12-83(b), (c), (d) and (g);

40. That the approved hotel contains a single casino room of 60,000 square feet which does not exceed the maximum square foot limitations set forth in N.J.S.A. 5:12-83(d);

41. That Bally's Park Place has projected the following completion dates for the listed amenities it proposes to add to its "approved hotel" as described in detail in its application for this casino license and as analyzed in the Report of the Approved Hotel and Impact Bureau of the Commission's License Division at pages 11(a) through 11(c), admitted as Exhibit C-3 at the license hearings:

Component	Completion Date as of December 1979	Completion Date as of December 1980
a. North meeting room expansion		March, 1981
b. Park Place entrance renovation		January, 1982
c. 3-level grand Boardwalk entry & health club	June 1, 1980	January, 1983
d. Boardwalk Mezzanine slab		July, 1983
e. Coffee Shop		June, 1982
f. Chinese Restaurant		June, 1983
g. Gourmet Restaurant		June, 1984

42. That, as a condition of its casino license, Bally's Park Place shall, on a quarterly basis, continue to inform the Commission in writing as to its then current intention concerning the construction and completion of the indicated amenities;

43. That, upon completion of the Boardwalk entry and mezzanine slab, the casino room may unduly dominate the convention hotel complex in violation of N.J.S.A. 5:12-(1)(b)(5) and (6) by virtue of the fact that no meaningful access may then exist from the extensive Boardwalk frontage to non-casino amenities within, other than access unduly dominated by the casino, its gaming tables and its slot machines;

44. That, as a condition of its casino license, Bally's Park Place shall provide meaningful access from the Boardwalk to non-casino amenities not dominated by its casino;

45. That construction of the approved hotel facility commenced in September 1978;

46. That Bally's Park Place, on November 16, 1979, filed a written guarantee that it would require its contractors and subcontractors to afford an equal employment opportunity to all employees in connection with the construction of its approved hotel; that it filed documents in support of its position that it made a good faith effort to afford an equal employment opportunity to such employees as required by N.J.S.A. 5:12-134(a); and that it has failed to make all construction equal employment opportunity submission on a timely basis;

47. That Bally's Park Place initially relied upon Joseph Nigro and subsequently Sharon Vavrek, employees of its general contractor Turner Construction Company, as affirmative action officers for its construction workforce as required by N.J.S.A. 5:12-135(f) and, thereafter, on April 30, 1979, appointed its own employee, William L. McKnight as its equal employment officer;

48. That Bally's Park Place has failed to meet the percentage employment goals in N.J.A.C. 19:53-1.5(3) and 1.14(a) of 20% minority and 6.9% female journeyworkers and apprentices by trade;

49. That Bally's Park Place construction workforce from November 18, 1979, to October 14, 1980, contained the following proportions of protected class individuals:

a. Journeyworkers

Trade	Total Worker Weeks	Minority Worker Weeks	Percent Minority	Female Worker Weeks	Percent Female
Plasterer	4	2	50%	0	0%
Bricklayer	12	4	33%	0	0%
Elevator Mechanic	211	43	20%	10	4.7%
Electrician	1,946	361	19%	2	0.1%
Painter	549	77	14%	10	1.8%
Plumber	726	81	11%	1	0.1%
Ironworker	70	6	9%	0	0%
Operating Engineer	68	6	9%	0	0%
Cement Mason	68	6	9%	0	0%
Roofer	333	24	7%	0	0%
Carpenter	1,954	105	5%	8	0.4%
Sheetmetal Worker	351	18	5%	13	3.7%
Floor Coverer	114	4	4%	0	0%
Sprinkler Fitter	348	10	3%	0	0%
Vinyl Worker	127	3	2%	0	0%
Taper	16	0	0%	0	0%
TOTALS	6,853	746	11%	44	0.6%

b. Apprentices

Trade	Total Worker Weeks	Minority Worker Weeks	Percent Minority	Female Worker Weeks	Percent Female
Painter	22	18	82%	8	10.3%
Sheetmetal Worker	4	3	75%	0	0%
Vinyl Worker	7	5	71%	0	0%
Brick Layer	2	1	50%	0	0%
Sprinkler Fitter	88	32	36%	20	22.7%
Floor Coverer	57	15	26%	0	0%
Electrician	154	4	3%	10	6.5%
Plumber	79	2	3%	5	6.3%
Cement Mason	1	0	0%	0	0%
TOTALS	570	106	19%	45	7.9%

c. Laborers

Total Worker Weeks	Minority Worker Weeks	Percent Minority	Female Worker Weeks	Percent Female
919	657	71%	87	9.5%

50. That in each of the two trades of Carpenter and Plumber, which collectively represent thirty-nine percent of the total journeyworker workforce on Bally's Park Place hotel project between November, 1979, and October, 1980, the percentage of minority journeyworkers failed to exceed eleven percent; that, despite some efforts by the Bally's Park Place, the goal of twenty percent minority journeyworkers within each trade has not been achieved; and, that construction of the casino hotel project has been substantially completed;

51. That Bally's Park Place, as a condition of the issuance of its operation certificate, was required to make a meaningful financial contribution to Atlantic Construction Training Program, Inc., a non-profit corporation formed to develop apprentice training programs;

52. That Atlantic Construction Training Program, Inc. presently appears to be one viable vehicle to increase the representation of protected classes in journeyworker positions within the Atlantic County area construction workforce;

53. That Bally's Park Place, as a condition to the issuance of its operation certificate, was required to employ an additional person on its affirmative action staff whose expertise relates to the construction workforce and whose duty is to make good faith efforts on behalf of the company to ensure that construction at its approved hotel complex is accomplished with a construction workforce which conforms to equal employment goals;

54. That, as a condition of its casino license, Bally's Park Place shall employ such a person on its affirmative action staff prior to the commencement of any new construction;

55. That the Commission will continue to review the question of whether Bally's Park Place has made and continues to make good faith efforts to conform to the affirmative action and equal employment opportunity requirements pertaining to its construction workforce as required by N.J.S.A. 5:12-134;

56. That Bally's Park Place employs approximately 4,361 individuals;

57. That Bally's Park Place has filed guarantees that it will afford an equal employment opportunity to all prospective employees; has filed an affirmative action program designed to afford equal employment opportunities; has filed documents in support of its position that it has made and continues to make good faith efforts to afford an equal employment opportunity to all prospective employees and to abide by its program; and has made all equal employment opportunity filings pertaining to operations in a timely manner as required by N.J.S.A. 5:12-134(b) and (c);

58. That Bally's Park Place on April 30, 1979, appointed its employee William L. McKnight as operations equal employment officer pursuant to N.J.S.A. 5:12-135(f);

59. That Bally's Park Place has developed and implemented training and upward mobility programs as a means of making all job classifications available to minorities and female workers in accordance with N.J.A.C. 19:53-1.15(a)(6);

60. That Bally's Park Place presently meets the protected class employment goals of twenty percent for minorities and forty-three percent for females set forth in N.J.A.C. 19:53-1.5(e) with respect to its present 4,361 employee workforce, which consists of 29.6% minority and 47.0% female individuals, but presently fails to meet these goals in the indicated (*) categories as required by N.J.A.C. 19:53-1.5(a)(2) and (f);

Category	Positions	Minority	Female
*Executives	35	5 (15%)	8 (23%)
*Managers	419	60 (14%)	142 (34%)
*Asst. Managers	111	12 (11%)	14 (13%)
Supervisors	241	73 (30%)	116 (48%)
*Officials & Managers	806	150 (18.6%)	280 (34.7%)
*Professionals	844	120 (14%)	305 (36%)
*Technicians	75	11 (15%)	21 (28%)
*Sales	13	2 (15%)	6 (46%)
Office & Clerical	697	175 (25%)	575 (82%)
*Craftworkers	84	20 (24%)	6 (7%)
*Operatives	77	28 (36%)	28 (36%)
*Laborers	385	317 (82%)	169 (44%)
Service Workers	1,380	471 (34%)	661 (48%)

61. That Bally's Park Place, as a condition of its operation certificate is required by January 1, 1981, to increase within the "officials and managers" level of its workforce from 18% to at least 20% minority employees and from 30% to at least 37% female employees as an interim goal and to increase such minority and female representation in each of the four subcategories included within the "officials and managers" level; and that the female and minority representation in these areas are summarized as follows:

"Officials and Managers" Level

	Total Employees		Minority		Female		Categ
	12/79	10/80	12/79	10/80	12/79	10/80	
Executives	22	35	2 (10%)	5(15%)	4 (19%)	8 (23%)	
Managers	290	419	38 (13%)	60(14%)	73 (25%)	142(34%)	
Asst.Managers	95	111	15 (16%)	12(11%)	13 (14%)	14(13%)	
Supervisors	171	241	49 (29%)	73(30%)	82 (48%)	116(48%)	
TOTAL (Officials and Managers)	578	806	104 (18%)	150(18.6%)	172 (30%)	280 (34.7%)	

62. That, as a condition of its casino license, Bally's Park Place shall by January 1, 1982, seek to achieve interim goals in the "officials and managers" category of 20% minorities and 40% females;

63. That Bally's Park Place has made good faith efforts to achieve the protected class employment goals at all levels of its workforce;

64. That, as a condition of its casino license, Bally's Park Place shall timely submit information regarding its affirmative action goal compliance levels in the form and manner prescribed the Commission staff;

65. That, as a condition of its casino license, Bally's Park Place shall, within 30 days of this decision, submit a finalized description of its training program to the Commission staff and shall implement all phases of said program immediately upon approval of said program by Commission staff;

66. That, as a condition of its casino license, Bally's Park Place shall, at the direction of and in the form prescribed by the Commission staff, timely submit all relevant information regarding its complaint review procedure and information evidencing affirmative action it has taken to afford an equal employment opportunity including but not limited to methods of employment, upgrading, demotion, transfer, recruitment, layoff, termination, compensation, and employee selection as described in N.J.A.C. 19:53-1.5(a)(2);

67. That, subject to the conditions previously stated, Bally's Park Place has established by clear and convincing evidence its financial stability, integrity, and responsibility as required by N.J.S.A. 5:12-84(a);

68. That Bally's Park Place has established by clear and convincing evidence that it has sufficient business ability and casino experience to make likely the continued maintenance of a successful, efficient casino operation as required by N.J.S.A. 5:12-84(d).

V

CONCLUSION

Based on our review of the entire record, including our observation of the witnesses who testified before us, we find that Bally Manufacturing Corporation and Bally's Park Place qualify for a conditional gaming-related casino service industry license and a conditional casino license, respectively. The major conditions attached to the licenses are designed to assure that neither William T. O'Donnell nor Alexander R. A. Wilms can exercise any control or influence over the policies, business or activities of either corporate applicant. In the case of Alexander R. A. Wilms, the conditions underpin both (1) our concurrence with the Director of the Division of Gaming Enforcement that Mr. Wilms and members of his family need not qualify as part of the casino license application and (2) our separate determination that the same individuals need not qualify as part of the gaming-related casino service industry license application.

In the case of William T. O'Donnell, the conditions must effect a full severance of Mr. O'Donnell from the applicants. Since Mr. O'Donnell was clearly a person required to qualify under the casino license application and since he has failed to establish his good character, honesty and integrity by clear and convincing evidence, the Casino Control Act demands a denial of the casino license application and the institution of a conservatorship to control the already operating casino

hotel, unless the unqualified person is totally and utterly separated from the applicant and its holding company. See N.J.S.A. 5:12-105 and -130.1b. Similarly, since Mr. O'Donnell was also required to qualify under the casino service industry license application, denial of the casino service industry license would be mandated if any significant relationship with Mr. O'Donnell continued. See N.J.S.A. 5:12-92(b). Given the virtual identity between Mr. O'Donnell and Bally Manufacturing for nearly 20 years, any business contact between them carries an especial significance and the potential for real influence over company policy. Thus, only unstinting compliance with the purposely severe conditions appended to the licenses will satisfy the policies of the Act.

Based on the foregoing and on our belief that the corporate applicants will honor punctitiously the conditions stated herein, orders granting an appropriately conditioned casino service industry license (gaming-related) and casino license to Bally Manufacturing Corporation and Bally's Park Place, respectively, will be entered. Further, an order finding William T. O'Donnell not qualified to the standards of a casino key employee shall also be entered.

NEW JERSEY CASINO CONTROL COMMISSION

Joseph P. Lordi, Chairman

Martin B. Danziger, Vice-Chairman

Don M. Thomas, Commissioner

Carl Zeitz, Commissioner

Madeline H. McWhinney, Commissioner
(Except as to Part IIA)

Dated: March 16, 1981

135.

Commissioner McWhinney, Dissenting in Part as to William T. O'Donnell.

While I agree with the majority that William T. O'Donnell does not qualify, I believe that this finding should be based solely on Mr. O'Donnell's past associations with Gerardo Catena and with Dino Cellini. Unlike my fellow Commissioners, I am unable to draw any conclusions as to Mr. O'Donnell's character from the evidence in the record relating to the incident which occurred thirteen years ago involving Southland Distributing Company and an alleged attempt to buy the votes of members of the Kentucky Legislature.

Moreover, I do not find that any of the other issues raised by the Division of Gaming Enforcement rises to the level of disqualification. In any event, these matters must be balanced against the testimony of the extremely impressive array of character witnesses who testified on Mr. O'Donnell's behalf.

Madeline H. McWhinney

Madeline H. McWhinney, Commissioner

Dated: March 16, 1981.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-65
OAL DOCKET NO. CCC 3764-80

IN THE MATTER OF THE APPLICATION :	FINAL
OF JANET J. CAPANNA FOR LICENSURE :	ORDER
AS A CASINO EMPLOYEE (DEALER) :	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein dated January 30, 1981; and the Commission having considered the entire record of these proceedings and the Initial Decision and the exceptions filed by the Applicant; and the Commission having resolved at its public meeting on March 18, 1981 to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this 6TH day of April, 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is ADOPTED by the Commission; and

IT IS FURTHER ORDERED that the license application of Janet J. Capanna be and hereby is DENIED based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: April 6, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3764-80

AGENCY DKT. NO. 80-EA-65

IN THE MATTER OF:

JANET J. CAPANNA,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: December 16, 1980

Received by Agency: 1/30/81

Decided: January 30, 1981

Mailed to Parties: 2/3/81

APPEARANCES:

F. Frederick Perone, Esq., for Applicant (Perone & Perone, attorneys)

Jane Lafferty, Deputy Attorney General, for Respondent (John J. Degnan, Attorney General of New Jersey, attorney)

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

This matter concerns the application of Janet J. Capanna to the Casino Control Commission for licensure to work in a casino as a black jack dealer. By letter report to the Casino Control Commission dated April 10, 1980, the Division of Gaming Enforcement recommended that the applicant be denied licensure. The applicant requested a hearing on her license application and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

New Jersey Is An Equal Opportunity Employer

At issue in this proceeding is whether the applicant should be disqualified from licensure as a black jack dealer on the grounds that she has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a matter fact pertaining to the license qualification criteria. If not so disqualified, the proofs in the entire record concerning the disqualification criteria may nonetheless be considered as to the remaining issue of whether the applicant has sustained her affirmative burden of establishing by clear and convincing evidence her reputation for good character, honesty and integrity.

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

The applicant is a twenty-five year old lifelong resident of New Jersey who has been employed as a salesperson for the Marlton Kirby Company for over four years. The applicant successfully completed a blackjack dealer course at the Atlantic Casino Training Academy, paying her tuition from her earnings as a salesperson.

In connection with her application for licensure, the Applicant filed a Personal History Disclosure Form with the Casino Control Commission on May 23, 1979. The possibility of disqualification from licensure pursuant to the disclosure criteria of Section 86b of the Casino Control Act arises from the applicant's failure to disclose her criminal and disorderly person's arrest and conviction record in response to question number 46 of her Personal History Disclosure Form, which requires complete disclosure of this information. The applicant's arrest and conviction record is as follows:

DATE OF ARREST	OFFENSE	DISPOSITION
June 9, 1976	Threat to kill, N.J.S.A. 2A:113-8	Dismissed
September 29, 1976	Threat to kill, N.J.S.A. 2A:113-8	Dismissed
November 18, 1977	Obscene and annoying phone calls, N.J.S.A. 2A:170-29	Fined $250 Fine suspended and $25 costs

The applicant testified that she had not gotten along with her brother Pasquale and his wife Donna since she left home at the age of fourteen. The applicant explained that this antagonistic relationship had resulted in Pasquale and Donna making unfounded complaints against her of threats to kill. According to the applicant, she complied with requests from the Evesham Township Police Department on June 9 and September 29, 1976 to come to police headquarters and receive the complaints of threats to kill which had been filed against her. The applicant acknowledged that she had been photographed and fingerprinted by the Evesham Township Police on June 9, 1976, and that she was released on $50 bail pending a court hearing. The applicant also acknowledged that she was released on $50 bail after receiving the second complaint to kill on September 29, 1976. Both complaints for threats to kill were dismissed upon the failure of the complainants to appear at the court hearings.

The applicant testified that the charge against her of obscene and annoying phone calls had been made by a former friend and co-employee, Sandra Mazzola, who had been released by their employer. According to the applicant, Ms. Mazzola became upset when the applicant would not leave her employment as well, and began making harassing phone calls to the applicant at work. It was the testimony of the applicant that she went to the Evesham Township Police Department to file a complaint against Ms. Mazzola and was told at that time that Ms. Mazzola had filed a complaint against her. After a trial, the applicant was found guilty of making obscene and annoying phone calls, and was fined $250. The fine was suspended upon the condition that the applicant not make any more phone calls to Ms. Mazzola.

The applicant testified that she understood question number 46 when she prepared her Personal History Disclosure Form. She acknowledged that she disclosed no arrests or convictions concerning herself, but did disclose unspecified "ticket fines" received by her brother Pasquale. According to the applicant, she did not disclose the charges of threats to kill and obscene phone calls because she did not feel that the incidents involved arrests. She stated that she did not disclose her conviction for obscene or annoying phone calls because her fine had been suspended and she did not think that this constituted a conviction.

Testifying as a witness for the applicant was Evesham Township Police Detective Thomas Bresnen, who stated that he had arrested the applicant at her home on June 9, 1976 and had told her that she was to accompany him to the police station. The detective stated that he also told the applicant at the police station that she would have to post bail before being released. The detective acknowledged that it had been necessary to read his report in order to refresh his recollection concerning this incident. The detective also stated that he had been told by the applicant at the time she requested he be a witness on her behalf that she did not recollect the incident.

Testifying on the applicant's behalf, Marlton Kirby Company owner Michael Romeo stated that the applicant has been employed by him as a secretary and sales manager since 1976. In addition to her phone solicitation and bookkeeping duties, the applicant handles bank deposits for the business in amounts between $3000 and $10,000. Mr. Romeo testified that he considers the applicant to be reliable, trustworthy and dependable. The final witness for the applicant was Chris Carroll, who is a student at Camden County College and who has known the applicant for about thirteen years. According to Ms. Carroll, the applicant is well liked and has a reputation in the Marlton and Pennsauken areas for being trustworthy and honest.

The applicant contends that she did not disclose her arrest record on her Personal History Disclosure Form because she did not realize that she had been arrested. Her own testimony concerning the incidents indicates the inherent improbability of her contention, and to accept her proposition would require that significant undisputed aspects of the arrest incidents be ignored. In each instance, the applicant was detained at police headquarters until the completion of processing and her release on bail or her own recognizance (Exhibits R-2, R-6 and R-7). Her detention on June 9, 1976 included the taking of full face and profile mug shots (Exhibits R-3), and the taking of the applicant's

fingerprints on a sheet which bears the applicant's signature and is clearly identified by the words "CRIMINAL ARREST" in large type (Exhibit R-4).

The applicant testified that she understood question number 46 of the disclosure form which expressly requires disclosure of the nature of all criminal or disorderly persons offenses for which the applicant has been arrested, indicted, charged with or convicted. Even if credence could be given to the applicant's explanation for her failure to disclose her arrests, she certainly knew that she had twice been charged with threats to kill and had once been charged with making obscene or annoying phone calls. Despite this knowledge of the charges which had been made against her, the applicant chose to disclose none of the requested information. The applicant's arrest and conviction record is clearly significant as to the evaluation of her qualifications for licensure and as such it constitutes material facts within the meaning of the disqualification criteria of Section 86b of the Casino Control Act, which provides for denial of licensure to any applicant who fails to reveal any fact material to qualification.

The applicant's failure to disclose the information she knew about her arrest and conviction record, despite her understanding of the express request for such information on her Personal History Disclosure Form, indicates a conscious disregard for the casino regulatory system. The applicant's failure to disclose therefore falls squarely within the meaning of the disqualification criteria of Section 86b of the Casino Control Act. The applicant's failure to disclose material facts also reflects adversely upon her attempt to affirmatively demonstrate her good character, honesty and integrity within the context of legalized gaming.

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

1. The applicant has applied for a license to permit her to work in a casino as a black jack dealer.

2. The applicant failed to disclose in her Personal History Disclosure Form any information concerning her arrest and conviction record, which undisputed record is set forth above and is incorporated herein as if set forth at length.

3. The applicant's failure to disclose on her Personal History Disclosure Form any information concerning her arrest and conviction record resulted from her conscious disregard of the request for such information, rather than from inadvertence.

4. The arrest and conviction information which the applicant failed to disclose on her Personal History Disclosure Form was material to the evaluation of her qualifications for licensure, within the meaning of the disqualification criteria of Section 86b of the Casino Control Act.

5. The applicant's failure to disclose material information on her Personal History Disclosure Form impacts adversely upon her attempt to demonstrate by clear and convincing evidence that she possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operation. To further such public confidence and trust, the regulatory provisions of this Act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the applicant is disqualified from receiving a casino employee license to work as a black jack dealer based upon her failure to disclose facts material to her qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b, and based upon her failure to prove by clear and convincing evidence her qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a. It is, therefore, ORDERED that the application of Janet J. Capanna for licensure as a casino employee be DENIED.

This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMMISSION, which by law is empowered to make a final decision

matter. However, if the Commission does not so act in forty-five (45) days and [illegible] time limit is otherwise extended, this recommended decision shall become a [illegible] in accordance with N.J.S.A. 52:14B-10.

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

January 30, 1981

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

Jan. 30, 1981

David Aaron
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

February 3, 1981

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3527-79
CCC DOCKET NO. 79-EA-107

IN THE MATTER OF THE APPLICATION	:	
OF ROCCO J. DE LARETO FOR	:	
LICENSURE AS A CASINO EMPLOYEE	:	ORDER
(DEALER), DOCKET NO. 79-EA-107	:	

A hearing having been conducted in the above-captioned matter before the Honorable Norman B. Smith, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge, the exceptions and objections filed on behalf of the Division of Gaming Enforcement and the reply thereto filed on behalf of the Applicant; and the Commission having resolved at its public meeting of March 11, 1981, to adopt the Initial Decision and to grant the application for licensure;

IT IS on this 13th day of March 1981, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted; and

IT IS FURTHER ORDERED that the application of Rocco J. DeLareto for licensure as a casino employee (dealer) be and hereby is granted for the reasons stated in the Initial Decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: March 13, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3527-79

AGENCY DKT. NO. 79-EA-107

IN THE MATTER OF:

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ROCCO J. DELARETO,
Respondent.

Record Closed: December 19, 1980
Received by Agency:

Decided: January 30, 1981
Mailed to Parties:

APPEARANCES:

George Emmer, Esq., on behalf of Rocco J. DeLareto

Patricia Arons, Deputy Attorney General for John J. Degnan, Attorney General of New Jersey on behalf of Petitioner

BEFORE NORMAN D. SMITH, ALJ:

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

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For the purposes of this decision, the objections of the Division of Gaming Enforcement may be divided into two categories: those concerning Mr. DeLareto's own conduct, and those concerning his associations with other people. I will treat those two categories of objection in the stated order.

Mr. DeLareto's personal conduct caused objection because of his arrest and conviction record. The Division of Gaming Enforcement contends that those convictions constitute convictions for offenses inimical to policies of the Casino Control Act and to casino operations, a conclusion requiring disqualification pursuant to N.J.S.A. 5:12-86c. The Division further contends that the arrests and convictions negatively reflect upon the good character, honesty and integrity of the petitioner, requiring disqualification pursuant to N.J.S.A. 5:12-90.

On August 3, 1964, Mr. DeLareto was arrested and charged with rape. The charges were withdrawn on the very same day they were made, and the matter was presented to a Grand Jury which declined to indict. No other evidence concerning this incident has been offered. Therefore, I make no findings regarding the incident other than the mere existence and withdrawal of the charges.

On July 16, 1971 Mr. DeLareto was arrested and charged with selling alcohol to a minor while tending bar. He was fined $25. Based upon the uncontroverted testimony of Mr. DeLareto, which I find to be credible, I find that Mr. DeLareto was tending bar when three (3) customers ordered drinks. Two of the customers were of legal age, while the third was a minor. Mr. DeLareto was misled by the minor's mature appearance.

On November 8, 1968, Mr. DeLareto was arrested for playing cards in an illegal game. He was fined $50. There is no evidence concerning the conduct that led to that arrest.

On September 11, 1977 Mr. DeLareto was arrested for playing cards in an illegal game and was subsequently fined $100. It is this last conviction which the Division of Gaming Enforcement contends constitutes a conviction of an offense inimical to the policies of the Casino Control Act and to casino operations. The uncontroverted facts show that Mr. DeLareto was a participant in a card game held in the basement of a private home in Hammonton, the town where Mr. DeLareto resided. The owner of the

home conducted the game every other Sunday evening. He constructed an elaborate system to protect himself from apprehension, including two steel doors and an intercom system to screen entrants. The operator of the game took a percentage of the pot as his profit, although some of that was reinvested in refreshments for the players. The players usually consisted of local men who were friendly with each other in the Hammonton area. Mr. DeLareto was only a player. He did not operate the game.

I see no basis to conclude that this last conviction was an offense inimical to the purposes of the Casino Control Act, even though it was a conviction for illegal gambling. While the conduct of Mr. DeLareto cannot be condoned, it is conduct which must be weighed against the entire fabric of his life. Mr. DeLareto was candid when he testified that he had participated in that game on prior occasions when he was not arrested. He admits to having succumbed to a predilection for a card game with friends. For Mr. DeLareto, this was a source of relaxation and an avenue for social intercourse. Since the arrest in 1977, he has stayed away from the game. He has remarried (he was divorced from his first wife) and has a two year old child by this marriage. Now, at the age of 35, the stability of his home life has gained new importance for him. I was impressed by the sincerity of Mr. DeLareto's testimony. His wife is a licensed blackjack dealer and works for the Brighton Hotel and Casino. Mr. DeLareto would like to join her in that occupation so that he may substantially contribute to the support of his present family, as well as his sixteen year old child of his first marriage whom he still supports.

Except for the events already described, Mr. DeLareto's life has been one that typifies an industrious and honest person. After graduating from High School, he was hired by Whitehall Laboratories in Hammonton in the maintenance department. He worked his way up to the position of forklift operator in the shipping department. He maintained his position at Whitehall Laboratories for fourteen (14) years. His supervisor at Whitehall testified to the high esteem in which he held Mr. DeLareto. The petitioner was trusted with valuable inventory that he could have easily converted to his own use but he did not. He was never a disciplinary problem and was a loyal and trusted employee. In 1977, Mr. DeLareto left his employment at Whitehall Laboratories in an attempt to increase his financial prospects. He went to work for his brother in a restaurant venture known as DeLareto's Roman Gardens which, unfortunately, proved to be a losing proposition.

I was also impressed by the testimony of Warren Benedetto, a character witness. Mr. Benedetto is neither a personal friend nor relative of the petitioner. He is employed by the State Department of Education as Assistant County School Business Administrator in Camden County. He has a doctorate in Education and is President of the Hammonton Board of Education. He is also Assistant Superintendent of Schools in Camden County. His appearance and demeanor evoked respect and belief in the content of his testimony. He has known the petitioner for twenty years by virtue of his participation in the community life of the City of Hammonton. He has a high regard for the petitioner's reputation for honesty, integrity and good character.

In determining the good character, honesty and integrity of the petitioner, I must judge him as he appears before me today. The evidence is clear and convincing that he applies for licensure as a man of good character, honesty and integrity. His mistakes are, in my judgment, outweighed by the generally upright direction of his life. I find that he has corrected his own course and is now a trustworthy individual.

The second category of objections consists of Mr. DeLareto's alleged association with career offenders or a career offender cartel in violation of N.J.S.A. 5:12-86(f). Between 1969 and 1977, Mr. DeLareto occasionally tended bar at an establishment owned at various times by his mother and two of his brothers. He did this without compensation as a gesture of family unity. The bar was originally purchased from one James DiNatale, who continued, for a short time, to own fifty percent of the stock. He subsequently loaned money to the corporation that owned the bar and had other frequent business dealings with that corporation. Rocco DeLareto has never owned stock in that corporation nor had any direct or indirect financial interest in that corporation. The business dealings of the corporation with Mr. DiNatale were legitimate and ordinary business transactions. Mr. DiNatale has never been arrested. The Division investigator, Detective Chance, confirmed that, to his knowledge, Mr. DiNatale is not a member of organized crime. In fact, Mr. DiNatale's daughter has been licensed by the Casino Control Commission. However, Mr. DiNatale does maintain a personal friendship with two men who, both sides admit, are members of organized crime, or have that reputation. Thus, the Division of Gaming Enforcement seeks to link Mr. DeLareto to members of organized crime. However, that link is so remote as to be nonexistent. Rocco DeLareto does not have any direct association with Mr. DiNatale let alone with his friends in organized crime.

The Division further points out that Mr. DiNatale was represented by Mark DeMarco, Esq., in his business dealings with the corporation that owns DeLareto's Roman Gardens. Mr. DeMarco has been indicted for perjury, which indictment is still pending. He is currently a practicing member of the bar of the State of New Jersey. Mr. DeNatale's use of Mr. DeMarco as an attorney is so far removed and unrelated to the petitioner as to be irrelevant.

Finally, the corporation that owned DeLareto's Roman Gardens at one time negotiated a loan from one William LaManna. Mr. LaManna pled guilty to paying someone to burn a storage building he owned in order to collect insurance proceeds. Mr. LaManna has no direct connection with Rocco DeLareto. The conviction described was the sole criminal conviction of Mr. LaManna; therefore, he is not a career offender.

I recognize the fear that organized crime will infiltrate the casino industry. However, each applicant must be judged on the proofs available, and not on fear. Association with a career offender or career offender cartel, and the deleterious nature of that association, with regard to the policies of the Casino Control Act, must be established by a preponderance of the evidence. In The Matter Of The Application of Resorts International. That has not been done in this case. I FIND that the petitioner has no association with any career offender or career offender cartel. The ultimate protection for the gaming industry is the continued investigation by the Division of Gaming Enforcement of the operation of the casinos. If evidence of associations that would violate section 86(f) of the Casino Control Act is discovered, a license may be suspended or revoked.

I CONCLUDE that Mr. DeLareto has established by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-90. I FURTHER CONCLUDE that the Division of Gaming Enforcement has not established by a preponderance of credible evidence that Mr. DeLareto is an associate of a career offender or a career offender cartel as described in N.J.S.A. 5:12-86(f).

For the foregoing reasons IT IS HEREBY ORDERED that a dealer's license be issued to the petitioner.

This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMMISSION, which by law is empowered to make a final decision

in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

Jan. 30, 1981
DATE

Norman D. Smith
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

Jan. 30, 1981
DATE

David Amaji
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

plb

DOCUMENTS IN EVIDENCE:

P-6 Settlement sheet of the Corporation

P-7 Mortgage dated July 31, 1971 between J.B.D. Enterprises and James A. Low

P-8 Deed dated July 8, 1976, between J.B.D. Realty and J.B.D. Enterprises

P-9 Mortgage settlement sheet dated October 12, 1977, between J.B.D. Enterprises and William LaManna

J-1 Personal History Disclosure Form of Rocco DeLareto

R-1 Indictment of Mark A. DeMarco

R-2 Photograph

R-3 Photograph

R-4 Photograph

R-5 Photograph

R-6 Affidavit prepared by Det. Sergeant Frederico dated September 9, 1977

R-7 Inventory List

R-8 Detective Sergeant Frederico's Police Reports

R-9 Certificate of Incorporation of JBD Enterprises

R-10 Voluntary Statement of Philip DeLareto dated February 11, 1969

R-11 Petition for Reinstatement for JBD Enterprises

R-12 Renewal Application for A.B.C.

R-13 Computer Printout for William LaManna

R-14 Police reports relating to Philip DeLareto

R-15 Computer Printout for Nicodemo Dominick Scarfo

R-16 Computer Printout for Philip Leonetti

R-19 1965 Liquor License Application

R-20 1965 Liquor License Application

R-21 1967 Liquor License Application

R-22 1968 Liquor License Application

R-23 1969 Liquor License Application

R-24 1970 Liquor License Application

R-25 1971 Liquor License Application

R-26 1972 Liquor License Application

R-27 1973 Liquor License Application

R-28 1974 Liquor License Application

R-29 1975 Liquor License Application

R-30 1976 Liquor License Application

R-31 1977 Liquor License Application

R-32 1978 Liquor License Application

R-33 1979 Liquor License Application

R-34 1980 Liquor License Application

R-35 Transcript of James DiNatale

WITNESSES:

Philip DeLareto

Detective Ronald Chance

Peter Bruso

Warren Benedetto

Louis Santanello

Rocco DeLareto

Robert Frederico

Frank Ingemi

Charles Crescenz

Frank LaSasso

William Pinto

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 79-EA-3
OAL DOCKET NO. CCC 4574-80

IN THE MATTER OF THE APPLICATION OF	:	
SAMUEL DI GIACINTO FOR LICENSURE AS	:	FINAL ORDER
A CASINO EMPLOYEE (ALCOHOLIC	:	
BEVERAGE EMPLOYEE)	:	

A hearing having been conducted in the above-captioned matter before the Honorable Richard L. Voliva, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceeding and the Initial Decision of the Administrative Law Judge; and the Commission having resolved at its public meeting of April 29, 1981 to adopt the Initial Decision and to grant the application for licensure;

IT IS on this 4th day of May 1981, ORDERED that the Initial Decision of the Administrative Law Judge be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Samuel DiGiacinto be and hereby is granted for the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: May 4, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4574-80

AGENCY DKT. NO. 79-EA-3

IN THE MATTER OF:

THE APPLICATION OF
SAMUEL V. DIGIACINTO FOR
A CASINO EMPLOYEE LICENSE
(ALCOHOLIC BEVERAGE EMPLOYEE)

Record Closed: February 6, 1981 Decided: March 19, 1981

Received by Agency: Mailed to Parties:

APPEARANCES:

Samuel V. DiGiacinto, Petitioner, pro se

Jane Lafferty, Deputy Attorney General, for the Respondent,
Division of Gaming Enforcement
(John J. Degnan, Attorney General of New Jersey, attorney)

BEFORE RICHARD L. VOLIVA, JR., ALJ:

This matter concerns the application of Samuel V. DiGiacinto, petitioner/applicant, filed August 8, 1978, for licensure by the Casino Control Commission

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(Commission) as a casino employee (alcoholic beverage employee). N.J.S.A. 5:12-90. The applicant was advised by letter from the Commission that based upon information received by letter from the Division of Gaming Enforcement (Division), respondent, dated December 7, 1978, there was a "substantial possibility" the Commission would deny his application and that he had a right to a hearing. Mr. DiGiacinto requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A prehearing conference was held on October 7, 1980, and the matter was heard and the record closed on February 6, 1981.

The Division objected to Mr. DiGiacinto's application on several grounds. At issue was whether he was disqualified from licensure by operation of N.J.S.A. 5:12-86b because he failed to disclose (1) an arrest by the Northfield Police on June 28, 1971, and charges of possession of heroin, and (2) his arrest by the Atlantic City Police on March 27, 1974, and charges of possession of heroin and marijuana under 25 grams. The second issue is whether the applicant can establish that he possesses a reputation for good character, honesty and integrity under N.J.S.A. 5:12-89b(2), in consideration of the alleged violations of Section 86b of the Act, his alleged involvement in the unlawful possession of heroin and/or marijuana, and his arrest and conviction for shoplifting on February 4, 1977 in Egg Harbor, New Jersey. At the hearing, the Division withdrew its objection to licensure based upon an allegation that the applicant failed to keep it informed of his current address (I.A.5. and B.3. of the Prehearing Order). The Division also stipulated that Mr. DiGiacinto possessed the requisite degree of financial stability required for licensure under N.J.S.A. 5:12-89b(3).

There was no dispute and the evidence showed that Mr. DiGiacinto was arrested by the Northfield Police on June 28, 1971 and charged with a violation of N.J.S.A. 24:21-20A, possession of a controlled dangerous substance (R-1, see attached List of Exhibits Admitted into Evidence). On January 26, 1972, he was found not guilty of the charge (R-2). On March 27, 1974, Mr. DiGiacinto was arrested by the Atlantic City Police and charged with possession of a controlled dangerous substance (heroin) and marijuana under 25 grams (R-3). Again, he was found not guilty of the charges. In response to Question 46 on his Personal History Disclosure Form-II (PHDF-II), Mr. DiGiacinto responded in the negative when asked if he had ". . . .ever been arrested, indicted, charged or convicted of a criminal or disorderly persons offense in this State . . . ." (J-1).

Mr. DiGiacinto was the only witness to testify at the hearing concerning facts in controversy. He stated that at the time he completed his PHDF-II, he also completed a Personal History Disclosure Form - IV (PHDF-IV) for licensure as a casino hotel employee. The PHDF-IV only required that he disclose convictions, not arrests, indictments or charges. He completed both applications at the same time. He disclosed his conviction for shoplifting in Egg Harbor Township on February 4, 1977 on both applications. Although he acknowledged that question 46 on PHDF-II required disclosure of his arrests and charges, as set forth above, he mistakenly omitted that information. He assumed that PHDF-II merely required the disclosure of convictions, as did PHDF-IV. The applicant denied that he intentionally or purposefully withheld the undisclosed information. Rather, he contended that the omission was the result of a mere mistake on his part.

Mr. DiGiacinto also testified concerning the underlying circumstances of the two arrests. Regarding the incident in Northfield, he was not charged, as originally contended by the Division, with possession of heroin; rather, he was charged with possession of what was believed to be marijuana, which consisted of residue found in a small brass pipe in his motor vehicle. Regarding the incident in Atlantic City, the applicant was at a party, to which the police were called to investigate loud noise. The police discovered marijuana cigarettes and some heroin. Nobody at the party would admit possession; therefore, the police arrested and charged all 15 persons in the apartment. Mr. DiGiacinto denied the possession of marijuana or heroin.

Mr. DiGiacinto admitted that he had been arrested and found guilty of shoplifting in Egg Harbor Township on February 4, 1977. He had taken a "T" shirt. The applicant paid a fine.

Mr. DiGiacinto also testified that he was the holder of a casino hotel employee license, No. 02093-40, issued in July 1979, which has not been revoked. He worked for Resorts International Hotel, Inc. as a bartender and had a good employment record.

Since Mr. DiGiacinto was the only witness to testify concerning facts in issue, his credibility is of primary importance. I recognize that he had a direct interest in the outcome of the proceedings. I observed the applicant at the prehearing conference and at the hearing. At all times he conducted himself in a completely proper and respectful manner. He testified consistently and convincingly. His version of the events concerning the two arrests in issue were fully corroborated by the police reports submitted by the

Division (R-1 and R-3). His explanation of the reason for his failure to disclose the two arrests and charges was plausible, not surprising, suspicious or incomplete. Mr. DiGiacinto was a credible witness and his testimony was completely worthy of belief.

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

1. Mr. DiGiacinto was arrested by the Northfield Police on June 28, 1971 and charged with a violation of N.J.S.A. 24:21-20A.

2. On January 26, 1972, he was found not guilty of the charges by the Municipal Court of the City of Northfield.

3. On March 27, 1974, Mr. DiGiacinto was arrested by the Atlantic City Police and charged with possession of heroin and marijuana under 25 grams.

4. Mr. DiGiacinto was found not guilty by the Municipal Court of the City of Atlantic City.

5. Mr. DiGiacinto failed to disclose his arrest in Northfield on June 28, 1971 and charges, and his arrest on March 27, 1974 in Atlantic City and charges, in response to Question 46 on his PHDF-II.

6. At the time Mr. DiGiacinto completed his PHDF-II he also completed a PHDF-IV for licensure as a casino hotel employee.

7. The PHDF-IV required disclosure of convictions, but not arrests, indictments or charges.

8. Mr. DiGiacinto was found guilty of shoplifting in Egg Harbor Township on February 4, 1977. He paid a fine.

9. Mr. DiGiacinto failed to disclose the two arrests and charges as a result of a mistake due, in part, to completing a PHDF-IV at the same time he completed his PHDF-II.

10. Mr. DiGiacinto is licensed by the Casino Control Commission as a casino hotel employee, License No. 02093-40, issued July 1979.

11. Mr. DiGiacinto has a positive employment record.

NONDISCLOSURE

The failure to disclose material facts or the provision of misleading information to the Division will automatically disqualify an applicant from licensure. In the Matter of the Application of Robert J. Alois for a Gaming School Resident License, 78-EA-8 at p. 19 (January 30, 1980). Although an inadvertent or ignorant failure to make a disclosure will not warrant a disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversly affected, is grounds for mandatory disqualification. In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), CCC 1275-79 (N.J.O.A.L. August 29, 1979), modified by Casino Control Commission, 19-EA-34 at p. 16 (February 7, 1980); In the Matter of the Application of Steven M. Cohen for Licensure as a Casino Employee (Dealer), CCC 3133-79 (N.J.O.A.L. December 6, 1979), modified by Casino Control Commission, 79-EA-9, at p. 3 (June 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), CCC 68480 (N.J.O.A.L. July 17, 1980), modified by Casino Control Commission, 80-EA-4 (September 5, 1980). However, the Commission has held that a failure to disclose a material fact would be considered sufficient for disqualification only after an analysis of the surrounding factors. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission, at p. 13. Factors to be considered are whether the failure to disclose was willful, ". . . .a conscious disregard for the regulatory system," inadvertent or ignorant.

The issue is whether Mr. DiGiacinto's failure to disclose the two arrests and charges, as a result of his mistake when he completed the PHDF-II, should be deemed a disqualifying event. It must first be noted that there was no dispute that the omitted information was material to licensure. As I have stated, Mr. DiGiacinto testified credibly

and his explanation of the reason for his failure to disclose was plausible. The applicant also disclosed his conviction for shoplifting in response to Question 45 on his PHDF-II, rather than to the appropriate Question 46. It appears that Mr. DiGiacinto was confused at the time he completed his application. I do not believe that he would have disclosed his shoplifting conviction in response to Question 45 and omitted information under Question 46 as a preconceived plan to deceive the Commission. It is also interesting to note that the Division produced no evidence that an investigator reviewed with Mr. DiGiacinto his responses to the PHDF-II prior to issuing its objection to licensure. From my experience in these matters, it is standard operating procedure for a Division investigator to review the responses to a PHDF prior to conducting a full scale investigation. The purpose of this review is to ensure that the application is complete. Had an investigator reviewed the PHDF-II with Mr. DiGiacinto, there is every reason to believe the errors would have been uncovered. Although it is clear that Mr. DiGiacinto failed to disclose material information requested by the Division and conceded that the omission was the result of his mistake, I believe that the reason testified to was reasonable and constitutes an omission by inadvertence. This does not mandate disqualification.

I **CONCLUDE** that Mr. DiGiacinto did not violate the provisions of N.J.S.A. 5:12-86b.

AFFIRMATIVE CRITERIA - SECTION 89b(2)

Under Section 89b(2) of the Act, Mr. DiGiacinto is required to establish by clear and convincing evidence his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, supra. Although no character witnesses were called to testify on behalf of the applicant, of primary concern was his alleged involvement in the two matters for which he was arrested and charged and the shoplifting conviction.

Because of my determination that Mr. DiGiacinto was a credible and believable witness and that his failure to disclose material information was the result of inadvertence, I have drawn no negative inferences against his good character, honesty and integrity.

There was no dispute that Mr. DiGiacinto was arrested and charged in the two matters involving alleged possession of marijuana and/or heroin. The mere nature of the

charges raises serious suspicions regarding his good character, honesty and integrity. However, he was not convicted. Further, he provided an explanation of the underlying circumstances which was corroborated in full by the respective police reports (R-1 and R-3). Concerning the incident in Northfield, it would be fair to assume that the not guilty decision was the result of a failure to prove that the residue in the pipe was not marijuana. Certainly this cannot be held against the applicant. Regarding the Atlantic City incident, although controlled dangerous substances were found at the apartment where the party was held, mere presence of the applicant at the party does not create significant doubts as to his good character, honesty and integrity. The shoplifting conviction is a negative factor to be considered. However, absent any other negative criteria, and given the fact that the applicant has not been involved in any unlawful conduct since that date, the conviction is not sufficient to negate his application. It is also noted that Mr. DiGiacinto candidly admitted his errors and impressed this court as a very responsible person.

The absence of character witnesses, although unusual, is not surprising in light of the fact that Mr. DiGiacinto represented himself. Of course, a pro se litigant should not be accorded any special treatment. However, this applicant successfully explained away the alleged failures to disclose material information and his involvement in those incidents. Therefore, the only factor existing contrary to his qualifications is the shoplifting conviction, the impact of which has also been substantially minimized. Regardless of the absence of character witnesses, my observations of Mr. DiGiacinto lead me to believe that he is a person of good character, honesty and integrity. His conduct in this matter was above reproach and, uncommonly, he complied fully with all the requirements placed upon him by the court.

I CONCLUDE that Samuel DiGiacinto has proven, by clear and convincing evidence, his good character, honesty and integrity.

ORDER

Therefore, I ORDER that Samuel V. DiGiacinto be GRANTED a casino employee license (alcoholic beverage employee).

This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMMISSION, which by law is empowered to make a final decision

in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

March 19, 1981
DATE

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

Receipt Acknowledged:

March 20, 1981
DATE

Nancy O. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ph

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1	Personal History Disclosure Form - II, Samuel V. DiGiacinto, July 31, 1978 (29 pages)
R-1	Arrest Report - Northfield Police Department, Samuel V. DiGiacinto, June 28, 1971 (2 pages)
R-2	Municipal Court, City of Northfield - Memorandum, January 16, 1981
R-3	Investigation Report and Arrest Report - Atlantic City Police Department, Samuel V. DiGiacinto, March 27, 1974 (3 pages)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NOS. CCC 6938-80
AND CCC 2706-80
CCC DOCKET NOS. 80-EA-17
AND 80-EA-33

IN THE MATTER OF THE APPLICATIONS OF :
MILTON P. DURHAM FOR LICENSURE AS A :
CASINO EMPLOYEE (DEALER) AND AS A :
CASINO HOTEL EMPLOYEE (TICKET SELLER) :

FINAL ORDER

This matter having been opened to the Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein filed March 24, 1981, and the Commission having considered the entire record of the proceedings and the said Initial Decision, no exceptions or objections thereto having been filed by either party; and the Commission having resolved at its public meeting of April 29, 1981 to affirm and adopt said Initial Decision as modified herein and to deny both applications for licensure;

IT IS on this 6th day of May, 1981 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is ADOPTED by the Commission except as modified below; and

IT IS FURTHER ORDERED that the portion of the Initial Decision which addresses the issue of whether the Applicant has committed offenses indicating that his licensure would be inimical to the policies of the Casino Control Act and to casino

operations pursuant to N.J.S.A. 5:12-86(c)(4) be and hereby is REJECTED by the Commission as being unnecessary; and

IT IS FURTHER ORDERED that the portion of the Initial Decision which concludes that the Applicant has failed to disclose other names which he had used or been known by in violation of N.J.S.A. 5:12-86(b) be and hereby is REJECTED by the Commission as being unnecessary; and

IT IS FURTHER ORDERED that the portion of the Initial Decision which concludes that the Applicant has failed to disclose his previously filed application for a casino hotel employee license on his application for licensure as a casino employee be and hereby is REJECTED by the Commission as being unnecessary; and

IT IS FURTHER ORDERED that the applications of Milton P. Durham for licensure as a casino employee (dealer) and casino hotel employee (ticket seller) be and hereby are DENIED for the reasons stated in the Initial Decision which, as modified above, is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: May 6, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6938-80

AGENCY DKT. NO. 80-EA-177

AND

OAL DKT. NO. CCC 2706-80

AGENCY DKT. NO. 80-EA-33

CONSOLIDATED

IN THE MATTER OF:

THE APPLICATION OF
MILTON P. DURHAM FOR LICENSURE
AS A CASINO HOTEL EMPLOYEE (roulette
dealer, CCC 6938-80) and LICENSURE
AS A CASINO EMPLOYEE (ticket
seller, CCC 2706-80)

Record Closed: February 18, 1981

Decided: March 19, 1981

Received by Agency: 3/24/81

Mailed to Parties: 3/25/81

APPEARANCES:

Mary Jo Flaherty, Deputy Attorney General,
for the Division of Gaming Enforcement,
Department of Law and Public Safety
(John J. Degnan, Attorney General of New Jersey, attorney)

Milton P. Durham appeared Pro Se

Milton P. Durham filed applications, including Personal History Disclosure (PHD) forms numbers 2 and 4, with the Casino Control Commission (Commission) for licensure to work both as a casino hotel employee (ticket seller) and a casino hotel employee (roulette dealer). The applicant received letters from the Commission dated November 13, 1979 and September 9, 1980 stating that, based upon initial reports of the Division of Gaming Enforcement (Division), there was a substantial possibility that the Commission would deny his applications. The applicant requested a hearing on his applications. The matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matters were consolidated at the hearing on November 7, 1980. Final memoranda of law were received from the Division on January 8, 1981. After the applicant was given an opportunity to respond to the Division's memoranda and/or submit additional supporting documents, the record was closed on February 19, 1981.

Investigator Irwin Schecter authenticated various police department rap sheets, judgments of conviction, and orders of commitment. The applicant denied arrests for: (1) larceny of an automobile on February 12, 1973 in Washington, D.C.; (2) petty larceny on October 27, 1973 in Washington, D.C.; (3) assault with a deadly weapon, i.e., a baseball bat, on October 29, 1973 in Washington, D.C.; and (4) disorderly conduct on March 23, 1974 in Washington, D.C.

On cross-examination the applicant also offered detailed explanations about his other arrests and convictions.

Substantial testimony dealt with conflicting versions of an episode on April 22, 1979 at Resorts International Hotel and Casino. The Division produced Israel Reyes, formerly employed by Resorts International Hotel and Casino as a shift steward supervisor, and Milton Brown, Supervisor of Security at Resorts International.

Reyes testified that on April 22, 1979 the applicant was assigned to supervise the main kitchen and the front part of the Superstar Theatre. He was not assigned to the backstage of the Superstar Theatre, a restricted area. Around 2:05 p.m. Reyes was informed that the applicant was having "problems" backstage of the Superstar Theatre with some show girls and that security requested his immediate presence. Reyes observed the applicant and a security officer in an argument. John Valaria, Assistant to the Food and Beverage Manager, told the applicant to give his identification to the security officer.

The applicant threw his identification on the floor and walked out before his shift ended. His departure constituted grounds for and did, in fact, result in his termination. Reyes stated that he would not rehire the applicant to work for him.

Milton Brown, Supervisor of Security, testified that on April 22, 1979, certain show girls at the Superstar Theatre asserted that the applicant had harassed them and had uttered profane language. The show girls accused the applicant of looking into their dressing rooms and attempting to engage them in conversation. When Brown asked the applicant for his identification, the latter stated that he was the Supervisor of Food and Beverage, and that he was going to call his supervisor and have Brown "straightened out." The applicant also threw his identification on the floor and tried to push over three 200 computers as he left the building.

Brown interviewed a show girl the following day, who asserted that the applicant attempted to engage her in conversation, grabbed her, and told her not to identify him. Other show girls were reluctant to give a statement because they feared the applicant. The show girls did state that if the applicant was rehired they would "stick together" and refuse to perform in the show.

The applicant testified that he was assigned to work the backstage area of the Superstar Theatre on April 22, 1979. One of the show girls asked him for identification. The word "steward" was written on his jacket. The applicant found her interrogation offensive. A security guard asked him for identification. After his supervisor arrived on the scene, he became angry about the episode. He conceded that he pushed certain machines as he left the building.

It is sufficient to state that I do not find applicant's version of the episode credible.

It is uncontroverted that the applicant attended Howard University, Washington, D.C. from 1970 to 1974. From 1974 to 1976 he attended Temple University, Philadelphia, Pennsylvania. He graduated from Temple in 1976 with a degree in communications.

I

The following issues have been framed with respect to Mr. Durham's application for licensure as a casino hotel employee (ticket seller):

A. Is the applicant disqualified from licensure as a casino hotel employee by virtue of N.J.S.A. 5:12-86(c)(4) of the Casino Control Act (act), which is rendered applicable to the applicant by N.J.S.A. 5:12-91(b) of the act as a result of convictions for certain offenses which are inimical to the policies of the act and to casino operations.

B. Is the applicant disqualified from licensure as a casino hotel employee by virtue of N.J.S.A. 5:12-86(b) of the act, which is rendered applicable to the applicant by N.J.S.A. 5:12-91(b) as a result of his nondisclosure of certain convictions in respect to question 8 on his PHD form number 4.

C. Is the applicant disqualified from licensure as a casino hotel employee by virtue of N.J.S.A. 5:12-86(a), which is rendered applicable to the applicant by N.J.S.A. 5:12-91(b) of the act as a result of his failure to prove by clear and convincing evidence that he has the requisite reputation for good character, honesty and integrity in light of various arrests, convictions, and conduct during the course of employment at Resorts International Hotel and Casino, and nondisclosure of convictions in response to question number 8 on his PHD number 4.

D. Has the applicant affirmatively demonstrated by clear and convincing evidence his rehabilitation under N.J.S.A. 5:12-91(d).

Having reviewed the testimony and other documentary evidence offered in this matter (see inventory of exhibits listed in the transcript), and having given fair weight thereto, and having observed the demeanor of the witnesses and assessed their credibility, I FIND that:

A. The applicant was convicted of the following offenses:

(1) disorderly conduct on March 23, 1974 in Washington, D.C.;

(2) resisting arrest under 18 Pa. Cons. Stat. Ann. § 5104 (Purdon) on December 8, 1977 in Philadelphia, Pennsylvania;

(3) possession of marijuana (under 25 grams) under N.J.S.A. 24:21-20(a)(4) on June 29, 1978 in East Brunswick, New Jersey;

(4) assault and battery under N.J.S.A. 2A:170-26 in East Brunswick, New Jersey, affirmed on appeal to Middlesex County Court on September 29, 1978;

(5) larceny under N.J.S.A 2A:170—30.1 in East Brunswick, New Jersey, affirmed on appeal to Middlesex County Court on September 29, 1978; and

(6) unlawful taking of a means of conveyance under N.J.S.A. 2C:20-10 on February 15, 1980 in Northfield, New Jersey.

I **CONCLUDE** that the applicant's convictions are inimical to the policies of the Casino Control Act and the casino operations under N.J.S.A. 5:12-86(c)(4) and N.J.S.A. 5:12-91(b).

B. Question number 8 of PHD form number 4 reads: "Have you ever been convicted of a crime or disorderly persons offense in this state or in any other jurisdiction?" The applicant checked off the block designated "no."

I **FIND** that the applicant intentionally failed to disclose the following convictions in response to that question:

(1) resisting arrest under 18 Pa. Cons. Stat. Ann. §5104 (Purdon) on December 8, 1977 in Philadelphia, Pennsylvania;

(2) possession of marijuana (under 25 grams) under N.J.S.A. 24:21-20(a)(4) on June 29, 1978 in East Brunswick, New Jersey;

(3) assault and battery under N.J.S.A. 2A:170-26 in East Brunswick, New Jersey, affirmed on appeal to Middlesex County Court on September 29, 1978; and

(4) larceny under N.J.S.A. 2A:170-30.1 in East Brunswick, New Jersey, affirmed on appeal to Middlesex County Court on September 29, 1978.

Deliberate nondisclosures or misleading disclosures must be regarded as disqualifiers when they occasion impediments to the investigatory/regulatory process and evince a conscious disregard of it.

I FIND that applicant's explanation that he was confused about differences between crimes, misdemeanors and disorderly persons offenses, and thought that disorderly persons offenses did not have to be reported, is unpersuasive.

I CONCLUDE that the applicant is disqualified from licensure as a casino hotel employee (ticket seller) by virtue of N.J.S.A. 5:12-86(b) and N.J.S.A. 5:12-91(b).

C. I FIND from the credible proofs in the entire record that the applicant has failed to prove by clear and convincing evidence that he has the requisite reputation for good character, honesty and integrity based upon the following reasons:

(1) the conviction for disorderly conduct on March 23, 1974 in Washington, D.C.;

(2) the conduct underlying the applicant's arrest on July 28, 1973 for unauthorized use of a motor vehicle and grand larceny in Washington, D.C.;

(3) the conduct underlying the applicant's arrest on August 27, 1973 for unauthorized use of a motor vehicle in Washington, D.C.;

(4) the conviction for resisting arrest under 18 Pa. Cons. Stat. Ann. §5104 (Purdon) on December 8, 1977 in Philadelphia, Pennsylvania;

(5) the conduct underlying the applicant's arrest on May 24, 1978 for assault and battery, lewdness, possession of marijuana, possession of stolen property and larceny in East Brunswick, New Jersey;

(6) the conviction for assault and battery under N.J.S.A. 2A:170-26, affirmed on September 29, 1978 in Middlesex County Court, New Jersey;

(7) the conviction for larceny under N.J.S.A. 2A:170-30.1, affirmed on September 29, 1978 in Middlesex County Court, New Jersey;

(8) the conduct underlying the applicant's arrest on October 8, 1979 for possession of a stolen vehicle in Northfield, New Jersey;

(9) the conviction for the unlawful taking of a means of conveyance under N.J.S.A. 2C:20-10 on February 15, 1980 in Northfield, New Jersey;

(10) the applicant's conduct on April 22, 1979 while employed by Resorts International Hotel and Casino, Atlantic City, New Jersey;

(11) the nondisclosure of any of the applicant's convictions in response to question 3 of his Personal History Disclosure Form 4, submitted with regard to this application for licensure as a casino hotel employee as a ticket seller without a credible explanation for same;

(12) the nondisclosure of other names used by the applicant or by which the applicant is known in response to question 2 of his Personal History Disclosure Form 2, submitted with regard to this application for licensure as a casino employee as a roulette dealer and failure to state a credible explanation for same (see conclusions of law with regard to application for licensure as a casino employee as a roulette dealer);

(13) the nondisclosure of the applicant's previous application for licensure as a casino hotel employee as a ticket seller in response to question 38 of his Personal History Disclosure Form 2, submitted with regard to his application for licensure as a casino employee (roulette dealer) and his untenable explanation for same (see conclusions of law with regard to application for licensure as a casino employee as a roulette dealer);

(14) the nondisclosure of the applicant's numerous arrests and charges which did not result in convictions in response to question 46 of his Personal History Disclosure Form 2, submitted with regard to his application for licensure as a casino employee as a roulette dealer and untenable explanation of same (see conclusions of law with regard to application for licensure as a casino employee as a roulette dealer); and

(15) the nondisclosure of the applicant's conviction for possession of marijuana in East Brunswick, New Jersey in response to question 46 of his Personal History Disclosure Form 2, submitted with regard to his application for licensure as a

casino employee as a roulette dealer and untenable explanation for same (see conclusions of law with regard to application for licensure as a casino employee as a roulette dealer).

I CONCLUDE that the applicant is disqualified from licensure as a casino hotel employee (ticket seller) by virtue of N.J.S.A. 5:12-86(a) and N.J.S.A. 5:12-91(b).

D. I FIND that the applicant has not affirmatively demonstrated by clear and convincing evidence rehabilitation under N.J.S.A. 5:12-91(d).

The statute reads in part:

> In determining whether the applicant has affirmatively demonstrated his rehabilitation the Commission shall consider the following facts:
>
> (1) The nature and duties of the position applied for;
>
> (2) the nature and seriousness of the offense;
>
> (3) the circumstances under which the offense occurred;
>
> (4) the date of the offense;
>
> (5) the age of the applicant when the offense was committed;
>
> (6) whether the offense was an isolated or repeated incident;
>
> (7) any social conditions which may have contributed to the offense; and
>
> (8) any evidence of rehabilitation;...or the recommendations of persons who have or who have had the applicant under supervision.

The criteria of rehabilitation set forth in the statute are not applicable to intentional or misleading nondisclosures on the Personal History Disclosure form. Moreover, even under the criteria set forth above, I CONCLUDE that the applicant has not affirmatively demonstrated his rehabilitation because of the nature of his criminal offenses, the recentness of those offenses, including his convictions in New Jersey, the

lack of any social conditions appearing in his background which may have contributed to those offenses, as evidenced by the fact that he is a university graduate, and the nature of the position applied for which requires daily contact with the public.

II

The following issues have been framed with respect to Mr. Durham's application for licensure as a casino employee (roulette dealer):

A. Is the applicant disqualified from licensure as a casino employee (roulette dealer) by virtue of the fact that he has failed to meet the educational and experiential requirements of N.J.S.A. 5:12-90(b), since he has not received a certificate of successful course completion from a duly licensed gambling facility.

B. Is the applicant disqualified from licensure as a casino employee (roulette dealer) by virtue of N.J.S.A. 5:12-86(c)(4) of the act, which is rendered applicable to the applicant by N.J.S.A. 5:12-90(e) as a result of certain convictions which are inimical to the policies of the act and to casino operations.

C. Is the applicant disqualified from licensure as a casino employee (roulette dealer) by virtue of N.J.S.A. 5:12-86(b)(1) rendered applicable to the applicant by N.J.S.A. 5:12-90(e) as a result of his nondisclosure of certain arrests, charges and convictions in response to question 46 of his PHD number 2.

D. Is the applicant disqualified from licensure as a casino employee (roulette dealer) by virtue of N.J.S.A. 5:12-86(b) of the act, which is rendered applicable to the applicant by N.J.S.A. 5:12-90(e) as a result of his nondisclosure of pseudonyms or other names, which he has used or has been known by in the past, in response to question number 2 of his PHD form.

E. Is the applicant disqualified from licensure as a casino employee (roulette dealer) by virtue of N.J.S.A. 5:12-86(b), which is rendered applicable to the applicant by N.J.S.A. 5:12-90(e), as a result of his nondisclosure of his previously submitted application for licensure as a casino hotel employee (ticket seller) which information was material to the Division's investigation.

F. Is the applicant disqualified from licensure as a casino employee (roulette dealer) by virtue of N.J.S.A. 5:12-86(a) of the act which is rendered applicable to the applicant by N.J.S.A. 5:12-90(b) as a result of his failure to prove by clear and convincing evidence that he has the requisite reputation for good character, honesty and integrity in light of his arrests, convictions, and nondisclosures and conduct while employed on April 22, 1979 at Resorts International Hotel and Casino.

G. Has the applicant affirmatively demonstrated by clear and convincing evidence rehabilitation under N.J.S.A. 5:12-90(h).

H. It is undisputed that the applicant has not received a certificate of completion from a duly licensed gambling school as a roulette dealer and that he presently owes $800 in tuition to the East Brunswick gaming School.

I CONCLUDE that the applicant failed to meet the educational and experience requirements of N.J.S.A. 5:12-90(b).

B. I FIND that the applicant has been convicted of the following offenses:

1. disorderly conduct on March 13, 1974 in Washington, D.C.;

2. resisting arrest under 18 Pa. Cons. Stat. Ann. §5104 (Purdon) on December 8, 1977 in Philadelphia, Pennsylvania;

3. possession of marijuana (under 25 grams) under N.J.S.A. 24:21-20(a)(4) on June 29, 1978 in East Brunswick, New Jersey;

4. assault and battery under N.J.S.A. 2A:170-26 in East Brunswick, New Jersey, affirmed on appeal to Middlesex County Court on September 29, 1978;

5. larceny under N.J.S.A. 2A:170-30.1 in East Brunswick, New Jersey, affirmed on appeal to Middlesex County Court on September 29, 1978; and

6. unlawful taking of a means of conveyance under N.J.S.A. 2C:20-10 on February 15, 1980 in Northfield, New Jersey.

I **CONCLUDE** that the applicant is disqualified from licensure as a casino employee by N.J.S.A. 5:12-86(c)(4) and N.J.S.A. 5:12-90(e). These accumulated offenses are inimical to the policy of the Casino Control Act and to casino operations.

C. Question 46 on the PHD form inquires "Have you or has any member of your immediate family, (as defined in page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or in any other jurisdiction?" The applicant checked the block designated "yes" and stated "disorderly" - East Brunswick, New Jersey - 5/20/78 - 30 days;

Assault and battery - misunderstanding while jogging; Disorderly; Petty larceny of a car battery - East Brunswick, New Jersey - 5/20/78 - 30 days; Low Misdemeanor; Resisting Arrest and police brutality - Philadelphia, Pa. - 10/78 - $250 fine; Accused of robbing my own car - officer would not allow to get out of car proof of ownership.

I FIND that the applicant was arrested and charged with the following offenses:

1. arrest for and charges of indecent exposure and two counts of assault on September 15, 1971 in Washington, D.C.;

2. arrest for and charge of assault and battery on September 25, 1973 in Manassas, Prince William County, Virginia;

3. arrests on bench warrants on June 5, 1973, December 2, 1973 and March 7, 1974 in Washington, D.C.;

4. arrest for and charges of unauthorized use of a vehicle and grand larceny on July 28, 1973 in Washington, D.C.;

5. arrest for and charge of unauthorized use of a vehicle on August 27, 1973 in Washington, D.C.;

6. arrest for and charge of receiving stolen property on January 22, 1974 in Washington, D.C.;

7. arrest for and charge of indecent exposure and open lewdness on September 16, 1974 in Philadelphia, Pennsylvania;

8. arrest for and charge of possession of a controlled dangerous substance on September 19, 1977 in Philadelphia, Pennsylvania;

9. he was charged with being a fugitive from another jurisdiction on September 19, 1977 in Philadelphia, Pennsylvania;

10. arrest for and charges of theft, receiving stolen property and aggravated assault on a police officer on October 22, 1977 in Philadelphia, Pennsylvania;

11. arrest for and charge of robbery on October 26, 1977 in Washington, D.C.;

12. arrest for and charge of lewdness under N.J.S.A. 2A:115-1, later downgraded to soliciting indecent acts under N.J.S.A. 2A:170-5, on May 24, 1978 in East Brunswick, New Jersey;

13. arrest for and charge of possession of stolen property under N.J.S.A. 2A:170-41.1 on May 24, 1978 in East Brunswick, New Jersey;

14. arrest and indictment for possession of stolen credit cards under N.J.S.A. 2A:111-42 on June 13, 1978 in East Brunswick, New Jersey;

15. arrest and conviction for possession of marijuana (under 25 grams) under N.J.S.A. 24:21-20(a)(4) on May 24, 1978 and June 29, 1978, respectively, in East Brunswick, New Jersey.

I **CONCLUDE** that the applicant is disqualified from licensure as a casino employee by virtue of N.J.S.A. 5:12-86(b) and N.J.S.A. 5:12-90(e). The applicant's explanation, that he felt that he need not disclose bench warrants for arrests because he did not consider them as arrests and that he thought certain matters in his record were expunged, strains credulity.

D. Question 2 on the Personal History Disclosure form reads "give any other names you have used or by which you have been known."

I **FIND** that the applicant had left that space blank. The applicant testified that he has been known as "Cookie," "Bishop," "Matoon," and "Paul."

It is a legitimate inquiry by a State agency to find out what nicknames or surnames a person has used on different occasions. The purpose is twofold: to find out if a person has used a false name for a fraudulent purpose and to aid the investigative staff who must contact people in different geographic regions about a prospective applicant. Such omissions, as here, can only frustrate that legitimate State goal.

I CONCLUDE the applicant, therefore, is disqualified from licensure by virtue of N.J.S.A. 5:12-86(b) and N.J.S.A. 5:12-90(e) of the Casino Control Act as a result of his nondisclosure of other names which he had used or had been known by.

E. Question 38 on the PHD form reads "Have you ever made application to a licensing agency for any permit, license, certificate or qualification for the sale or distribution of alcoholic beverages in connection with any gambling venture?" The applicant checked the block designated "no."

I FIND that the applicant did not disclose his previous application for licensure as a casino hotel employee (ticket seller), DGE No. 2374-40, filed with the Casino Control Commission October 18, 1978. The applicant's explanation, that he did not believe it was necessary to disclose that application because he was applying to the same agency, is devoid of merit.

I CONCLUDE that the applicant is disqualified from licensure as a casino employee by N.J.S.A. 5:12-86(b) and N.J.S.A. 5:12-90(e) as a result of his nondisclosure.

F. I FIND that the applicant has failed to prove by clear and convincing evidence that he has the requisite reputation for good character, honesty and integrity based upon the following matters in his background:

1. the conviction for disorderly conduct on March 23, 1974 in Washington, D.C.;

2. the conduct underlying the applicant's arrest on July 28, 1973 for unauthorized use of a motor vehicle and grand larceny in Washington, D.C.;

3. the conduct underlying the applicant's arrest on August 27, 1973 for unauthorized use of a motor vehicle in Washington, D.C.;

4. the conviction for resisting arrest under 18 Pa. Cons. Stat. Ann. §5104 (Purdon) on December 8, 1977 in Philadelphia, Pa.;

5. the conduct underlying the applicant's arrest on May 24, 1978 for assault and battery, lewdness, possession of marijuana, possession of stolen property and larceny in East Brunswick, New Jersey;

6. the conviction for assault and battery under N.J.S.A. 2A:170-26, affirmed on September 29, 1978 in Middlesex County Court, New Jersey;

7. the conviction for larceny under N.J.S.A. 170-30.1, affirmed on September 29, 1978 in Middlesex County, New Jersey;

8. the conduct underlying the applicant's arrest on October 8, 1979 for possession of a stolen vehicle in Northfield, New Jersey;

9. the conviction for the unlawful taking of a means of conveyance under N.J.S.A. 2C:20-10 on February 15, 1980 in Northfield, New Jersey;

10. the applicant's conduct on approximately April 22, 1979 in the course of his employment at Resorts International Hotel and Casino, Atlantic City, New Jersey;

11. the nondisclosure of any of the applicant's convictions in response to question 8 of his Personal History Disclosure Form 4, submitted with regard to his application for licensure as a casino hotel employee as a ticket seller without a credible explanation for same;

12. the nondisclosure of other names which the applicant has used or by which the applicant is known in response to question 2 of his PHD Form 2, submitted with regard to his application for licensure as a casino employee as a roulette dealer and he failed to state a credible explanation of same;

13. the nondisclosure of the applicant's previous application for licensure as a casino hotel employee as a ticket seller in response to question 38 of his Personal History Disclosure Form 2, submitted with regard to his application for licensure as a casino employee as a roulette dealer and incredible explanation for same;

14. the nondisclosure of numerous arrests and charges which did not result in convictions in response to question 46 of his Personal History Disclosure Form 2, submitted with regard to his application for licensure as a casino employee as a roulette dealer and incredible explanation of same.

I CONCLUDE that the applicant is disqualified from licensure as a casino employee under N.J.S.A. 5:12-86(a) and N.J.S.A. 5:12-90(b).

G. N.J.S.A. 5:12-90(h) provides that an applicant shall not be denied a casino employee license on the basis of certain prior acts provided that he has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation, the following factors have to be considered:

(1) the nature and duties of the position applied for;

(2) the nature and seriousness of the offenses;

(3) the circumstances under which the offenses occurred;

(4) the date of the offenses;

(5) the age of the applicant when the offenses were committed;

(6) whether the offenses are isolated or repeated incidences;

(7) whether there are any social conditions which may have contributed to the offenses;

(8) any evidences of rehabilitation including . . . the recommendations of persons who had the applicant under their supervision.

I FIND that the rehabilitation statute only applies to conduct and does not apply to wilful and intentional nondisclosures on the PHD form. Moreover, even under the criteria set forth, I CONCLUDE that the applicant has not affirmatively demonstrated, by clear and convincing evidence, his rehabilitation because of the repeated nature of the criminal offenses, the recentness of these offenses, especially his convictions in New Jersey, the lack of any social conditions appearing in his background which may have contributed to the offenses, as evidenced by the fact that he is a university graduate, and the nature of the position applied for, which requires daily contact with the public.

It is my recommendation that the applications of Milton P. Durham for licensure as a casino hotel employee (ticket seller) and for licensure as a casino employee (roulette dealer) be DENIED.

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

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

March 19, 1981
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

March 24, 1981
DATE

David Araji
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

March 25, 1981
DATE

Ronald L Parker/el
OFFICE OF ADMINISTRATIVE LAW

gyd

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-104
OAL DOCKET NO. CCC 4714-80

IN THE MATTER OF THE APPLICATION :
OF VENNON H. HAYES FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (DEALER) :

A hearing having been conducted on March 19, 1981 in the above-captioned matter before the Administrative Law Judge Solomon A. Metzger of the Office of Administrative Law; and the Commission having considered the entire record of these proceedings and the Initial Decision of the Administrative Law Judge; and the Commission having resolved at its public meeting of June 3, 1981 to adopt the Initial Decision and to deny the application for licensure;

IT IS on this 9th day of June 1981, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted; and

IT IS FURTHER ORDERED that the application of Vennon H. Hayes for licensure as a casino employee (dealer) be and hereby is denied for the reasons stated in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: June 9, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4714-80

AGENCY DKT. NO. 80-EA-104

IN THE MATTER OF:

VENNON HAYES,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Charging Party.

Record Closed: March 19, 1981
Received by Agency:

Decided: April 14, 1981
Mailed to Parties:

APPEARANCES

John A. Mennite, Deputy Attorney General (James R. Zazzala, Attorney General of New Jersey, Attorney) for Charging Party, Division of Gaming Enforcement

BEFORE SOLOMON A. METZGER, ALJ:

The Division of Gaming Enforcement (Division) has recommended to the Casino Control Commission that Vennon Hayes be denied a license as a Blackjack Dealer as a result of alleged failures on her part to disclose information on the personal history disclosure form (PHDF) and because she has not satisfied the Division that her character and reputation are such as to entitle her to a license. Petitioner sought a hearing to contest these allegations 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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Petitioner is forty-six years old. She submitted a PHDF to the Casino Control Commission in March of 1979. The disclosure failures alleged by the Division relate to her prior arrest record and history of Civil Litigation.

DISCLOSURE

A. Arrest Record. The proofs in this area are generally undisputed. Petitioner did not answer question forty-six (46) on the PHDF which asks whether she had ". . . ever been arrested, indicted, charged with or convicted of a criminal or disorderly person's offense in this state or in any other jurisdiction?" This question is found on page 19 of the form. The page contains one other question, question forty-five (45) which asks whether the applicant had ever been arrested or charged with any juvenile offenses. Petitioner did respond to this question by marking the "no" line. She also initialed the page at the bottom right hand corner where the page calls for initialling. Additionally, she certified to the truthfulness of her responses at the end of the form as is required.

The Division presented records which indicate that petitioner was arrested on eight separate occasions between 1955 and 1971. The records indicate that bail was posted on three of these occasions, and that she was convicted on one occasion. These charges consist primarily of assault and battery and disorderly persons offenses, and petitioner explained that for the most part they involved minor altercations between neighbors at the housing project in which she then lived. While admitting that these incidents had taken place, petitioner testified that no police officer ever came to her home and actually took her into custody. Rather she testified that summonses had always been served requiring an appearance in court. Petitioner maintained that she was, thus, not arrested in the truest sense of that word. Petitioner has been a Camden County Sheriff's Officer since 1975.

B. Civil litigation history. The Division asserts as well that petitioner was not forthcoming in her answer to question fifty-one (51) of the PHDF. That question asks whether she had ever been party to a Civil Suit. She checked off the answer indicating that she had not been. A credit check developed that petitioner had been sued in various consumer credit matters and indeed she admitted on cross-examination that judgment had been entered against her in suits involving Campbell's employees Federal Credit Union, Bambergers, and Ritter Finance Co. Petitioner explained that she read question fifty-one

of the PHDF to require disclosure of suits which she brought as plaintiff. She indicated that in any event, the debts concerning which judgment had been entered & others had now for the most part been paid off.

I FIND the facts as follows:

1. Petitioner was charged with eight different crimes or offenses between 1955 and 1971. These resulted in one conviction.

2. Petitioner has been a Camden County Sheriff's Officer since 1975.

3. Judgment has been entered against petitioner on at least three occasions in Consumer Credit matters.

4. Petitioner gave false or misleading answers to questions forty-six (46) and fifty-one (51) of the PHDF.

The statutory basis for the Division's recommended denial of a license in this instance is based primarily on N.J.S.A. 5:12-86b, which requires that the applicant reveal material facts forthrightly, and upon its assertion that petitioner has failed in her affirmative obligation to establish herself as a person of good character, honesty, integrity and financial stability in accordance with N.J.S.A. 5:12-86, 89, and 90.

Question forty-six (46) of the PHDF makes clear that it is a broad based inquiry into any charges filed against an applicant for a license as well as into arrests and convictions. The question also directs the reader to further explanatory material at the beginning of the form which would be difficult for anyone, let alone a sheriff's officer, to misconstrue. The explanations with respect to petitioner's failure to disclose information concerning Consumer Credit Suits in which she had been involved is also lacking in credibility. There is nothing about the question which is misleading, and which should not, given some reflection, call forth all past history of civil litigation.

It appears, that the Division's recommendation to deny a license based both on the disclosure failures and on petitioner's affirmative obligation is founded, and its action is, therefore, AFFIRMED.

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

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

April 14, 1981
DATE

Solomon A. Metzger
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

April 15, 1981
DATE

James O. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ms

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-132
OAL DOCKET NO. CCC 6135-80

IN THE MATTER OF THE APPLICATION	:	
OF JANICE JAMES FOR LICENSURE	:	FINAL
AS A CASINO HOTEL EMPLOYEE	:	ORDER
(TIMEKEEPER)	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein dated March 30, 1981; and the Commission having considered the entire record of these proceedings the Initial Decision, the exceptions filed by the Division of Gaming Enforcement and the reply to those exceptions filed by the Applicant; and the Commission having resolved at its public meeting on June 10, 1981 to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 16th day of June 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is ADOPTED by the Commission; and

IT IS FURTHER ORDERED that the license application of Janice James be and hereby is GRANTED based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: June 16 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6135-80

AGENCY DKT. NO. 80-EA-132

IN THE MATTER OF:

JANIE JAMES,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: February 13, 1981

Received by Agency: 3/30/81

Decided: March 30, 1981

Mailed to Parties: 4/1/81

APPEARANCES:

Frank Tunnero, Esq. for applicant (Shackleton, Hazeltine and Dasti, attorneys)

Jane Lafferty, Deputy Attorney General for respondent (John J. Degnan, Attorney General of New Jersey, attorney)

BEFORE JOSEPH F. FIDLER, ALJ:

This matter concerns the application of Janie James to the Casino Control Commission for licensure to work in a casino hotel as a timekeeper. By letter report to the Casino Control Commission dated July 29, 1980, the Division of Gaming Enforcement interposed an objection to the applicant's licensure. The applicant was advised by letter from the Casino Control Commission dated September 9, 1980 that there was a "substantial possibility" that the Commission would deny her application and that she had a right to a hearing. The applicant requested a hearing and the matter was transmitted to

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

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

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

2. Whether the applicant has been convicted of any offense which is an enumerated statutory disqualifier within the meaning of section 86c(2) of the Casino Control Act, as incorporated in section 91b of the Act.

3. Whether, notwithstanding her conviction of any offense enumerated in the Casino Control Act as an automatic disqualifier, the applicant has demonstrated her rehabilitation pursuant to section 91d of the Casino Control Act.

At the hearing, two joint exhibits were admitted into evidence. The applicant's Personal History Disclosure Form, received by the Casino Control Commission in March 1979, was admitted into evidence as Exhibit J-1. A certified criminal judgment dated December 19, 1977 was admitted into evidence as Exhibit J-2. The certified judgment reveals that the applicant entered a plea of guilty on one count of an indictment for welfare fraud on November 10, 1977. Upon her conviction of welfare fraud, contrary to the provisions of N.J.S.A. 2A:111-2, the applicant was sentenced to the county jail for a term of 60 days, with credit for one day of confinement, and seven days to be served, with the balance of her sentence suspended. In addition, the applicant was placed on probation for a term of five years and was ordered to make restitution of fraudulently received financial assistance in the amount of $2,873, minus $496 which had already been repaid.

N.J.S.A. 5:12-86c, as amended by P.L. 1979, c. 282, provides that the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. Pursuant to section 86c(2), a conviction for welfare fraud under N.J.S.A. 2A:111-2 is an automatic disqualifier

from licensure. However, pursuant to section 91d of the Casino Control Act, the applicant shall not be denied a casino hotel employee license on the basis of her welfare fraud conviction, provided that she has affirmatively demonstrated her rehabilitation. In determining whether the applicant has affirmatively demonstrated her rehabilitation, the following factors should be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed

(6) Whether the offense was an isolated or a repeated incident;

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

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

The first witness to testify on behalf of the applicant was Dorothy Faulkner, who is a shift manager in the timekeeper's office of Caesar's Boardwalk Regency in Atlantic City. According to Ms. Faulkner, she has supervised the applicant during the evening shift in the timekeeper's office for approximately two years. The applicant's duties include receiving sick calls and recording late arrivals for payroll purposes. Although no cash is handled by the timekeeper's office, the office staff does distribute payroll checks. Ms. Faulkner evaluated the applicant's performance in her position as outstanding, with potential for job advancement. Noting that the applicant treats her superiors with respect, Ms. Faulkner stated that she trusts the applicant and does not

question her honesty. It was the view of Ms. Faulkner that the applicant should be granted a license to work in a casino hotel as a timekeeper.

Also testifying on behalf of the licensee was her landlord, James Curtis, who stated that he has known the applicant for approximately five years. Mr. Curtis stated that he believes the applicant to be a nice person who maintains her home well for herself and her two sons. According to Mr. Curtis, the applicant pays her rent on time.

The applicant is a 28 year old resident of Atlantic CitY and the mother of two children who are six and seven years old. The father of the children has not contributed to their support. According to the applicant, she is one of 11 children of an alcoholic mother who died in 1973. The applicant last saw her father in 1965 and the family depended on welfare assistance and social security for its support.

The applicant's first child was born when she was 19 years old, and because the child's father did not contribute support, the applicant found it necessary to apply for welfare assistance. The applicant's second child was born in February 1976. The applicant testified with candor and sincerity concerning her receipt of welfare benefits while she was gainfully employed. According to the applicant, her welfare grant was not sufficient to support her own children, as well as her brothers and sisters, and she therefore neglected to tell the welfare agency that she received income from employment.

The applicant did not deny to the welfare agency that she had committed welfare fraud, and she began making restitution to the agency prior to being sentenced on December 12, 1977 upon her plea of guilty. Since her conviction, the applicant reported her earnings from employment to the welfare agency and her monthly welfare grant was reduced appropriately. The applicant had been employed as a hotel maid. Seeking to improve herself by obtaining a better job, the applicant applied and was hired for her present position in the timekeeper's office. As a result of her higher wages, the applicant is no longer eligible for welfare assistance and is able to support herself and her two sons. The applicant testified that she loves her job and she expressed the desire to advance her career even further. According to the applicant, she has renewed arrangements to fulfill her obligation to make restitution to the welfare agency.

The applicant has no record of criminal involvement aside from her conviction for welfare fraud. She testified frankly and openly concerning the circumstances which lead her to receive welfare benefits while failing to disclose to the welfare agency that she was employed. The witnesses who testified on behalf of the applicant have clearly demonstrated her reputation for good character, honesty and integrity. By sincerely seeking to improve her lot in life by honest means, the applicant has overcome the economic hardship which accompanied her difficult family situation. She has been able to perform her present position of timekeeper with integrity, and in an outstanding manner.

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

1. The applicant has applied for a license to permit her to work in a casino hotel as a timekeeper.

2. The applicant was convicted upon a plea of guilty on November 10, 1977 of fraudulently receiving financial assistance from the Atlantic County Welfare Board by concealing her income from employment, contrary to the provisions of N.J.S.A. 2A:111-2.

3. N.J.S.A. 2A:111-2 is a specifically enumerated automatic disqualifier for licensure under section 86c(2) of the Casino Control Act.

4. Since her conviction for welfare fraud pursuant to N.J.S.A. 2A:111-2, the applicant has held responsible positions and has performed her employment duties with honesty and integrity.

5. The applicant has demonstrated by clear and convincing evidence that she possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the applicant has overcome her disqualification from licensure on the basis of her conviction of an offense enumerated under section 86c(2) of the Casino Control Act by demonstrating her rehabilitation, within the meaning of section

86c(2) of the Casino Control Act, by clear and convincing evidence. I further **CONCLUDE** that the applicant has sustained her affirmative burden of establishing by clear and convincing evidence her requisite qualifications for licensure, within the meaning of section 89b of the Casino Control Act, as incorporated in section 91b of the Act.

It is, therefore, **ORDERED** that a casino hotel employee license, permitting the applicant to work as a timekeeper, be granted to the applicant.

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

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

March 30, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

March 30, 1981
DATE

David Amaji
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

April 1, 1981
DATE

Ronald L. Parker Jr.
OFFICE OF ADMINISTRATIVE LAW

plb

INVENTORY OF EXHIBITS

JOINT EXHIBITS:

J-1 Personal History Disclosure Form.
J-2 Certified Criminal Judgment dated December 19, 1977.

WITNESSES

For the Applicant:

Dorothy Faulkner
James Curtis
Janie James

For the Division of Gaming Enforcement:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4284-79
CCC DOCKET NO. 79-EA-133

IN THE MATTER OF THE APPLICATION :
OF CARROLL A. JOHNSON FOR LICENSURE : FINAL ORDER
AS A CASINO HOTEL EMPLOYEE :

This matter having been opened to the Casino Control Commission on appeal from the decision of Chairman Lordi which denied licensure to the Applicant by Order dated June 2, 1980; and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, the exceptions thereto filed by both parties, the Final Decision of the Chairman, and the briefs submitted on this appeal by the Applicant and the Division of Gaming Enforcement; and the Commission having found, pursuant to N.J.S.A. 5:12-91(e), that the waiver of the Applicant's disqualification would be consistent with the public policy of the Casino Control Act and appropriate in the interests of justice; and the Commission having heard the arguments of counsel for the parties and having resolved at its public meeting on January 28, 1981 to waive the Applicant's disqualification and to grant his application for licensure;

IT IS on this 30th day of January 1981, ORDERED that the application of Carroll A. Johnson for licensure as a casino hotel employee be and hereby is granted; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: January 30, 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4284-79
CCC DOCKET NO. 79-EA-133

IN THE MATTER OF THE APPLICATION	:	
OF CARROLL A. JOHNSON FOR	:	
LICENSURE AS A CASINO HOTEL	:	ORDER
EMPLOYEE.	:	

A hearing having been conducted in the above-captioned matter by Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law, and the Chairman having considered the record of that hearing, the Initial Decision of the Administrative Law Judge and the exceptions thereto filed by the Applicant and the Division of Gaming Enforcement,

It is on this 2nd day of June 1970, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is affirmed in part and rejected in part by the Chairman; and

It is further ORDERED that the application of Carroll A. Johnson for a casino hotel employee license be and hereby is denied based upon the reasons set forth in the Final Decision of the Chairman which is being issued simultaneously herewith; and

It is further ORDERED that copies of this Order and the Final Decision of the Chairman be served upon the Applicant

and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: June 2, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4284-79
CCC DOCKET NO. 79-EA-133

IN THE MATTER OF THE APPLICATION	:	
OF CARROLL A. JOHNSON FOR	:	FINAL
LICENSURE AS A CASINO HOTEL	:	DECISION
EMPLOYEE	:	OF THE CHAIRMAN

Jorge Aviles, Esquire, appeared for the Applicant.

Robert J. Melillo, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

On February 12, 1979 Carroll A. Johnson [hereinafter: Applicant] filed an application for licensure as a casino hotel employee in the position of waiter with the Chairman of the Casino Control Commission [hereinafter: Chairman]. The application was duly forwarded to the Division of Gaming Enforcement [hereinafter: Division] which shortly thereafter conducted an investigation into the background of the Applicant.

As a result of this investigation, the Division submitted a letter-report dated July 16, 1979, to the Chairman, interposing an objection to the licensure of the Applicant. By letter dated September 20, 1979, the Applicant was advised by the Casino Control Commission's legal staff that there was a substantial

possibility that the Chairman would deny his application for licensure. The Applicant thereupon requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1, et seq.

A prehearing conference was held on November 1, 1979, with the following issues being framed for administrative review:

> A. Whether the Applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).
>
> B. Whether the Applicant is disqualified from licensure pursuant to N.J.S.A. 5:12-86(c) and (g) on the basis of having possessed and sold illegal lottery slips in Maryland in 1976, which resulted in the conviction of the Applicant for operating a lottery.
>
> C. Whether the Applicant has demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-91(d).

The matter proceeded to formal hearing on January 8, 1980.

Administrative Law Judge R. Jackson Dwyer filed his Initial Decision in this matter on February 7, 1980. A copy of the same is appended hereto at A-1 through A-6. The Initial Decision was served upon the parties on February 11, 1980. Pursuant to N.J.S.A. 52:14B-10(c), the parties were afforded 10 days from their receipt of said Initial Decision to file a statement of exceptions or objections to the findings and conclusions of the Administrative Law Judge.

The Applicant's exceptions were filed on April 8, 1980. The Division filed its exceptions on March 3, 1980. Pertinent issues raised therein will be addressed infra.

In his Initial Decision the Administrative Law Judge concluded that the Applicant should be denied licensure. This conclusion is based in part upon the finding that the Applicant had entered a plea of guilty to the possession and sale of lottery slips in the State of Maryland in 1976. Prior to its recent amendment, N.J.S.A. 5:12-86(c) listed N.J.S.A. 2A:170-18 (possession of illegal lottery slips), as an enumerated statutory disqualifier.[1] The Administrative Law Judge also found that the Applicant had failed to demonstrate his rehabilitation under N.J.S.A. 5:12-91(d). No express conclusion was reached by the Administrative Law Judge concerning the Applicant's reputation for good character, honesty and integrity N.J.S.A. 5:12-89(b)(2) and 91(b). Although I affirm the ultimate decision denying licensure, there are certain issues which require further discussion.

The recent amendments to N.J.S.A. 5:12-86(c), L.1979, c.282, eff. January 9, 1980, not only modify the list of enumerated offenses under N.J.S.A. 2A:1-1, et seq., they also list those offenses which are statutory disqualifiers under

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[1] The Legislature's amendments to N.J.S.A. 5:12-86(c) and their effect upon this issue will be discussed in detail infra.

the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., which became effective on September 1, 1979. On the date of the hearing, January 8, 1980, the recent amendments to N.J.S.A. 5:12-86(c) were not law. Close scrutiny of these amendments and the entire record in this matter reveals that the resolution of certain issues not addressed in the Initial Decision must be undertaken and that certain other issues have been rendered moot.

In July 1976, the Applicant was charged in the State of Maryland with the possession and sale of lottery slips. A review of the Annapolis, Maryland police department records introduced into evidence at the hearing reveals that the Applicant was found guilty of having sold lottery slips, the charge of possession of lottery slips apparently having been merged therewith.[2] Under N.J.S.A. 2A:1-1 et seq., these offenses translate to violations of N.J.S.A. 2A:170-18 (possession of lottery slips) and N.J.S.A. 2A:121-1 (sale of lottery slips).

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[2] Notwithstanding the apparent dismissal of the possession charge, it is clear that the Applicant engaged in conduct violative of laws proscribing both the possession and sale of lottery slips and therefore is subject to the mandate of N.J.S.A. 5:12-86(g) which provides for the disqualification from licensure for the commission of any act or acts which would constitute an offense under N.J.S.A. 5:12-86(c), even if such conduct has not or may not be prosecuted under the criminal laws of this State.

As noted above, prior to its amendment, N.J.S.A. 5:12-86(c) listed N.J.S.A. 2A:170-18 as a per se disqualifying offense. N.J.S.A. 2A:121-1 was not so listed. Under N.J.S.A. 5:12-86(c)(2) as amended, N.J.S.A. 2A:121-1 is now a listed disqualifying offense. However, N.J.S.A. 2A:170-18 has been deleted from this subsection.

At first blush, the end result of this amendment appears to be inconsequential since under N.J.S.A. 5:12-86(c)(2) and/or (g), it would appear that the Applicant faced disqualification for either offense. However, pursuant to N.J.S.A. 5:12-86(c)(4), all applicants are now afforded the opportunity to demonstrate by clear and convincing evidence that the offense forming the basis for disqualification (in this case the sale of lottery slips), would not form the basis for disqualification from licensure pursuant to N.J.S.A. 5:12-86(c)(1), which lists disqualifying offenses as defined in the new penal code, N.J.S.A. 2C:1-1 et seq. It should be noted here that although N.J.S.A. 2A:170-18 (possession of lottery slips) is no longer listed in N.J.S.A. 5:12-86(c)(2) as amended, in limited instances the possession of gambling records is an enumerated offense under N.J.S.A. 5:12-86(c)(1) as amended. Therefore, analysis of the underlying conduct which gave rise to the aforedescribed criminal charges against the Applicant, as well as of N.J.S.A. 2C:37-1 et seq. (gambling offenses), is necessary to determine whether this conduct constitutes the commission of any offenses enumerated under N.J.S.A. 5:12-86(c)(1), as amended.

At the hearing the Applicant testified on direct examination that people would ask him to put in numbers for

them because they were in a hurry to go to work or someplace else and that this course of conduct became a regular activity. (T11-22 to T12-4).[3] The Applicant nevertheless denied being a bookmaker and also denied "taking" the numbers himself. It is apparent from the context in which this testimony was offered that the Applicant attempted to portray himself as having transmitted bets on numbers to a third party as an accommodation to the bettors, as distinguished from a person who accepts bets on numbers from third parties and realizes a profit from their efforts.

On cross-examination a different picture of the nature and scope of the Applicant's illegal activities came into focus At the time of the Applicant's arrest and after being advised of his constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966) and its progeny, the Applicant made the following statement:

> The money that you found on me, in my 1974 Plymouth Black in color ENJ123 and in my home 203 Center Street Apt "G" Ann.A.A.Co.Md. are a results of my playing numbers and taking bets on numbers. I hit the number myself. I played 210 for (6 to 1, $1200) $2.00 and it came out that day. This was in the past two weeks. I don't go anywhere or spend a lot of money so I saved it. Part of it is were[sic] someone will hit a number on my book and I get 10% of what every [sic] the money that is paid out plus the person that plays the number will give me a tip. I have been in the in this business for about 2 years. I want to stop right here. I don't want to say anymore. I want to consult an attorney. I rather talk to him before I say anymore.

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3 "T" refers to the transcript of the hearing herein held on January 8, 1980.

The Applicant acknowledged at the hearing that he had been advised of his "Miranda" rights and further that the statement given to the Maryland authorities was accurate (T36-16 to T37-23). Further testimony at the hearing revealed that the Applicant would deduct 10% from the amount collected from bettors as his fee and would then pay the remainder to some third party (T38-14 to T39-3).

Applying these facts to the relevant sections of N.J.S.A. 2C:37-1 et seq., it appears that N.J.S.A.2C:37-2 and 37-3 are controlling. N.J.S.A. 2C:37-3 provides in pertinent part:

> a. A person is guilty of possession of gambling records when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:
>
> (1) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, including any paper or paper product in sheet form chemically converted to nitrocellulose having explosive characteristics as well as any water soluble paper or paper derivative in sheet form; or
>
> (2) Of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise.
>
> * * * *
>
> c. Grading. Possession of gambling records is a crime of the third degree and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $25,000.00 and any other appropriate disposition authorized by 2C:43-2b. when the writing, paper, instrument or article:

* * * *

> (2) In the case of a lottery or policy scheme or enterprise, constitute, reflect or represent more than one hundred plays or chances therein.
>
> Otherwise, possession of gambling records is a disorderly persons offense and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $10,000.00 and any other appropriate disposition authorized by 2C:43-2b.

A careful review of the entire record, although there is evidence of possession of lottery slips, yields no indication as to the number of plays or chances the Applicant possessed. Consequently, it is impossible to determine whether the Applicant engaged in conduct under N.J.S.A. 2C:37-3 which would constitute a crime of the third or forth degree or a disorderly persons offense. The distinction is critical since pursuant to N.J.S.A. 5:12-86(c)(1), only those offenses characterized as third or fourth degree offenses under N.J.S.A. 2A:37-1, et seq., are enumerated disqualifying offenses.

With respect to N.J.S.A. 2C:37-2, it is similarly apparent that the record fails to reflect what gradation the Applicant's illegal conduct deserves. N.J.S.A. 2C:37-2 provides in pertinent part:

a. Promoting Gambling Defined. A person is guilty of promoting gambling when he knowingly:

(1) Accepts or receives money or other property, pursuant to an agreement or understanding with any person whereby he participates or will participate in the proceeds of gambling activity; or

(2) Engages in conduct, which materially aids any form of gambling activity. Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or record phases, or toward any other phase of its operation.

b. Grading. A person who violates the provisions of subsection a. by:

* * * *

(2) Receiving, in connection with a lottery or policy scheme or enterprise (a) money or written records from a person other than a player whose chances or plays are represented by such money or records, or (b) more than $100.00 in any 1 day of money played in such scheme or enterprise, is guilty of a crime of the third degree and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $25,000.00 and any other appropriate disposition authorized by 2C:43-2b.

* * * *

*** Otherwise, promoting gambling is a disorderly persons offense and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than $10,000.00 and any other appropriate disposition authorized by 2C:43-2b.

* * * *

The record is silent as to whether the Applicant received, in connection with a lottery or policy scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records, or more than $100 in any one day of money played in a lottery or policy scheme or enterprise.

As noted previously, an Applicant must ordinarily demonstrate by clear and convincing evidence that a Title 2A disqualifying offense, listed in N.J.S.A. 5:12-86(c)(2) would not form the basis for disqualification under N.J.S.A. 5:12-86(c)(1), listing Title 2C disqualifying offenses. N.J.S.A. 5:12-86(c)(4). In the instant matter, since N.J.S.A. 5:12-86(c)(4), as amended, was not law at the time of the hearing, the Applicant was deprived of the opportunity to make such a showing. In light of this fact, and also because the record is unclear as to whether the Applicant's offenses would constitute per se disqualifying events pursuant to N.J.S.A. 5:12-86(c)(1), I decline to find the Applicant automatically disqualified for having committed an offense listed in N.J.S.A. 5:12-86(c). Nevertheless, in view of the nature and duration of the Applicant's illegal gambling conduct, it is necessary to consider whether the licensure of the Applicant would be inimical to the policy of the Casino Control Act [hereinafter Act] and casino operations. N.J.S.A. 5:12-86(c)(4).

The Commission has settled, In the Matter of the Application of Resorts International for a Casino License, Docket No. 79-CL-1 at 15, that:

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

Without again reciting all of the facts surrounding the Applicant's lottery conviction, it is apparent that the Applicant's conduct was a means of earning income and was not limited to accommodating bettors with whom he was acquainted. It is also clear that the Applicant engaged in this unlawful activity on a regular basis from 1974 to 1976. Hence, the Applicant's conduct was not sporadic. It evinced a life-style inextricably intertwined with unlawful criminal activity. Apart from the duration and extent of the Applicant's unlawful conduct, it is important to focus upon the nature of the offense in issue.

It is readily apparent that a cornerstone to the policy of the Act is the prevention from participation of any person who has pursued economic gain in an occupational manner or context which is in violation of the criminal laws of this State, either directly or indirectly, in casino operations or ancillary industries. N.J.S.A. 5:12-1(b)(9). In this regard, I agree entirely with the observation of the Administrative Law Judge that illegal gambling activities are known have close ties to, and in many instances to be dependant upon, organized crime. See State v. Destasio, 49 N.J. 247 (1967). Accordingly the nature of the illegal gambling offenses here is particularly repugnant to the policies of the Act. N.J.S.A. 5:12-1(b)(7) and (9).

I am not insensitive to the fact that the Applicant's illegal lottery offenses occurred in 1976 and that there appears to be nothing in the record to suggest that the Applicant has continued to engage in illegal gambling activities. Notwithstanding these factors, it is clear to me that participation of the Applicant in legalized gaming would justifiably undermine public confidence in the integrity of the regulatory process and gaming operations in the circumstance noted above. Therefore, based upon a careful review of the entire record, I have concluded that the Applicant's offenses render his licensure inimical to the policy of the Act and casino operations. N.J.S.A. 5:12-86(c)(4).

Inasmuch as the issue I have resolved was not addressed at the hearing, it might conceivably be argued that the Applicant has suffered some prejudice as a result of my conclusion upon it. However, upon close scrutiny it is apparent that all relevant evidence which might inure to the benefit of the Applicant on this issue was addressed by the Applicant's proofs in the context of his attempt to demonstrate his reputation for good character, honesty and integrity. N.J.S.A. 5:12-91(b). In attempting to demonstrate his reputation for good character, honesty and integrity, the Applicant testified concerning the offense of which he was convicted, the events and circumstances surrounding his arrest and conviction, and his conduct since the offense. In addition, the Applicant, who was represented by counsel at the hearing, had the opportunity and incentive to bring to the fore any mitigating factors which may have been present with respect to the conduct in issue. Based upon all the foregoing, I conclude that the Applicant has suffered no prejudice in this regard.

Having determined that licensure of the Applicant would be inimical to the Act and casino operations, it is necessary to consider whether the Applicant has successfully demonstrated his rehabilitation. N.J.S.A. 5:12-91(d). The Administrative Law Judge concluded that the Applicant failed in this regard. Upon careful review of the entire record, I am compelled to agree and to adopt that conclusion.

Although the conclusion reached by the Administrati Law Judge is supported by ample, credible evidence, I note the particular significance of the following factors. First, the Applicant was 52 years of age at the time of his illegal lottery conviction. At such an age, the decision to engage in an extended course of illegal conduct creates a greater obstacle to a showing of rehabilitation than the same or simila conduct by a juvenile or young adult, in whom it is generally assumed that notions of good character, honesty and integrity may be more readily instilled after an encounter with law enforcement authorities. Secondly, the Applicant's criminal conduct was not isolated. Thirdly, and perhaps most importantl the Applicant's lottery conviction is less than four years old.

In his Initial Decision, the Administrative Law Judge concluded that a minimum of two additional years should elapse before the Applicant is permitted to reapply to the Commission for licensure. This conclusion must be rejected. The Office of Administrative Law is simply not vested with the jurisdiction to consider whn and if this or any other Applicant may reapply for licensure. Cf. In the Matter of the Applicatio of Benjamin Kirk for Licensure as a Gaming School Instructor, Docket No. 79-EA-24.[4]

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[4] The Commission has recently adopted N.J.A.C. 19:41-8.8 governing reapplication by natural persons following denial of licensure. N.J.R. 165 (March 6, 1980).

The final issue framed for administrative review was whether the Applicant has demonstrated by clear and convincing evidence, his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 91(b). As noted earlier on, no express conclusion was reached by the Administrative Law Judge on this issue. Therefore, a de novo review of the entire record is necessary in order to properly assess the proofs on this issue.

The Commission has recognized that while the proofs necessary to establish rehabilitation, and a reputation for good character, honesty and integrity are not necessarily coextensive, there is, in most instances, significant overlap. See, In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113, at 22 (1980). The facts of this case substantiate this principle. In the instant matter, the factors which reflect adversely upon the Applicant's rehabilitation also impact negatively upon his reputation for good character, honesty and integrity. Hence, repetition of the detailed discussion above in the context of the Applicant's disqualification from licensure under N.J.S.A. 5:12-86(c)(4) and his failure to demonstrate his rehabilitation under N.J.S.A. 5:12-91(d) is unnecessary.

In addition to the foregoing, some comment regarding the candor of the Applicant's hearing testimony is appropriate. On direct examination, the Applicant testified that various persons would ask him to put numbers in for them as an accommodation. (T11-22 to T12-4). This, of course, is to be distinguished from a person who accepts bets on numbers for the

purpose of profiting from their efforts. On cross-examination the Applicant, after being confronted with his prior written statement to the Annapolis, Maryland police at the time of his arrest, conceded that he had accepted bets on numbers, not merely as an accommodation to third parties but for profit (T38-14 to T39-3). The Applicant's obvious lack of candor in his direct testimony impacts negatively upon his good character, honesty and integrity. I so find. Based upon the questionable credibility of certain of the Applicant's testimony and all of the foregoing, I am convinced that the Applicant has failed to establish by clear and convincing evidence, his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 91(b).[5]

For the reasons set forth herein, I find that the licensure of the Applicant would be inimical to the policy of the Act and casino operations. N.J.S.A. 5:12-86(c)(4). Furthermore the Applicant has failed to sufficiently demonstrate either his rehabilitation pursuant to N.J.S.A. 5:12-91(d) or his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2) and 91(b). Accordingly, the application of Carroll A. Johnson for licensure as a casino hotel employee is denied.

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[5] At A-3 of the Initial Decision, the following language appears:

> The applicant was arrested and/or convicted of intoxication nine times in Washington, D.C. between 1958 and 1963. Alcoholism is an illness. I CONCLUDE that no adverse inferences should be drawn about the applicant's character, honesty and integrity pursuant to N.J.S.A. 5:12-91(b) and N.J.S.A. 5:12-89(b) based upon his overall arrest or conviction record.

To the extent that such language might be construed to mean that the Applicant's 1976 conviction for sale of lottery slips does not reflect adversely upon his character, honesty and integrity, it is expressly rejected.

Joseph P. Lordi

JOSEPH P. LORDI, CHAIRMAN
NEW JERSEY CASINO CONTROL COMMISSION

DATED: June 2, 1980

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF:	:	INITIAL DECISION
	:	
THE APPLICATION OF	:	OAL DKT. NO. CCC 4284-79
CARROLL A. JOHNSON	:	AGENCY DKT. NO. 79-EA-133
FOR LICENSURE AS A	:	
CASINO AND HOTEL EMPLOYEE (WAITER)	:	
	:	

APPEARANCES:

Jorge Aviles, Esq., Cape-Atlantic Legal Services, appeared on behalf of the Applicant, Carroll A. Johnson

Robert J. Melillo, Esq., Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement

Anthony J. Sposoro, Esq., appeared on behalf of the Casino Control Commission

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

In January, 1979, Carroll A. Johnson (Applicant) filed an application for a license as a Casino Hotel Restaurant Employee. On January 16, 1979, the Division of Gaming Enforcement (Division) submitted a report to the Casino Control Commission (Commission) wherein the Division objected to the licensure of Mr. Johnson based upon the fact that he was arrested nine times for intoxication and convicted of that charge several times, and that he was convicted of the possession and sale of lottery slips, N.J.S. 2A:170-18, and N.J.S. 2A:121-1, a statutory disqualifier under N.J.S.A. 5:12-86(c) of the Casino Control Act.

On September 20, 1979, the Commission's counsel advised the applicant by letter, with a copy of the Division's report enclosed, that there was a substantial possibility that the Commission would deny his application and that he had a right to a hearing.

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By letter dated September 27, 1979, the applicant requested a hearing. The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A prehearing conference was held on November 1, 1979, at which time, the specific issues to be resolved at the hearing were identified. The matter was heard on January 8, 1980. Proposed findings of fact and conclusions of law were received from Deputy Attorney General Melillo on January 30, 1980 and from Jorge Aviles, Esq. on January 29, 1980. The hearing was closed on the former date.

The applicant testified briefly. He was arrested and/or convicted of intoxication nines times between 1958 and 1963 in Washington, D.C. He sought professional assistance and stopped drinking in 1970. He pleaded guilty to both the possession and the selling of lottery slips in the State of Maryland in 1976. He asserts that he will never again become involved in illegal gambling activities. He set forth his prior employment history. He arrived in Atlantic City in 1977 and held various jobs, including waiter and bus driver in a Comprehensive Employment Training Act (CETA) program. He intends to pursue a general equivalency diploma for high school. He was honorably discharged from the United States Army in 1944 after having served overseas. He had been working at Bally's Park Place for two weeks under a temporary casino permit, which was temporarily suspended pending the outcome of this hearing. He has been issued an Unlimited Rehabilitative Permit by the Division of Alcoholic Beverage Control which allows him to work with and sell alcoholic beverages.

Certain character witnesses, Ms. Rosalyn A. Farrell, Ms. Geneva Middleton and Ms. Dorothy T. Henderson testified that they had contact with the applicant while he was employed by the Atlantic County Human Resources; that they were unaware of his prior gambling convictions; however, those convictions did not alter their opinion that he was a man of honesty, integrity and good character.

FINDINGS OF FACT

1. Carroll A. Johnson is an applicant for a license as a casino hotel restaurant employee.

2. He was arrested and/or convicted of intoxication nine times between 1958 and 1963 in Washington, D.C.

3. He sought professional help and stopped drinking in 1970.

4. He pleaded guilty to the possession and sale of lottery slips in the State of Maryland in 1976.

5. The possession of lottery slips, N.J.S. 2A:170-18 (now N.J.S.A. 2C:37-1 et seq.) is a disqualifier under N.J.S.A. 5:12-86(c) of the Casino Control Act.

6. He came to Atlantic City in 1977 and worked at various jobs, including waiter and bus driver. He has twenty-nine years experience as a waiter.

7. He intends to pursue a general high school equivalency diploma in the future.

8. He was honorably discharged from the United States Army in 1944 after serving overseas.

9. He has been working at Bally's Park Place as a waiter for two weeks prior to this hearing under a temporary casino permit. That permit was temporarily suspended pending the outcome of this hearing.

10. He was issued an Unlimited Rehabilitative Permit (URP) by the Division of Alcoholic Beverage Control which allows him to work with and sell alcoholic beverages.

CONCLUSIONS OF LAW

I CONCLUDE that the Rehabilitated Convicted Offenders Act (RCOA) N.J.S.A. 2A:168-A 1-6 does not come within the purview of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq. However, N.J.S.A. 5:12-91(d), as recently amended, contains an almost verbatim recitation of the eight rehabilitation criteria set forth in the (RCOA).

The applicant was arrested and/or convicted of intoxication nine times in Washington, D.C. between 1958 and 1963. Alcoholism is an illness. I CONCLUDE that no adverse inferences should be drawn about the applicant's character, honesty and integrity pursuant to N.J.S.A. 5:12-91(b) and N.J.S.A. 5:12-89(b) based upon his overall arrest or conviction record.

I have considered the eight criteria set forth under N.J.S.A. 5:12-91(d), as recently amended.

1. The applicant is applying for the position as a casino hotel employee (waiter).

2. I regard the applicant's 1976 Maryland lottery convictions as serious because the offenses are directly related to the business for which the license is now being sought.

Possession of lottery slips, N.J.S.A. 2A:170-18 is a per se statutory disqualifier under N.J.S.A. 5:12-86(c). Justice Weintraub in State v. Destasio 49 N.J. 247 (1967) cited a report by the President's Commission on Law Enforcement and The Administration of Justice called "The Challenge of Crime in a Free Society" (February 1967). With respect to organized crime the report read at page 188:

> "Law enforcement officials agreed almost unanimously that gambling is the greatest source of revenue for organized crime. It ranges from lotteries, such as 'numbers' or 'bolita', to off-track horse betting, bets on sporting events, large dice games and illegal casinos. In large cities where organized criminal groups exist, very few of the gambling operators are independent of a large organization. Anyone whose independent operation becomes successful is likely to receive a visit from an organization representative who convinces the independent through fear or promise of greater profit, to share his revenue with the organization".

It adds (at p. 199):

> "Gambling is the largest source of revenue for the criminal cartels, but the members of organized crime know they can operate a free of significant punishment. Street workers have little reasons to be deterred from joining the ranks of criminal organizations by fear of long jail sentences or large fines. Judges are reluctant to jail bookmakers and lottery operators. Even when offenders are convicted, the sentences are often very light. Fines are paid by the organization and considered a business expense".

3. The circumstances under which the offenses occurred are set forth in the applicant's statement (JE-1D) given to the Annapolis, Maryland Police Department which reads as follows:

> "The money that you found on me, in my '74 Plymouth Black in color ENJ 123 and in my home 203 Center Street Apt. "G" Ann. A.A.Co. Md. are a result of my playing numbers and taking bets on numbers. I hit the number myself. I played 210 for (6 to 1 $1,200 at $2.00) and it came out that day. This was in the past two weeks. I don't go anywhere or spend a lot of money so I saved it. Part of it is were some one will hit a number on my book and I get 10% of what every the money that is paid out plust the person that plays the number will give me a tip. I have been in the in this

business for about 2 years. I want to stop right here. I don't want to say anymore. I want to consult an attorney. I rather talk to him before I say anymore. Carroll A. Johnson C.A.J.".

The applicant was operating a book and was receiving ten per cent of all monies which he collected upon the sale of number slips.

4. The gambling offenses occurred in Maryland in 1976. In my opinion, those convictions are not sufficiently remote in time to affirmatively establish rehabilitation. The greatest evidence of rehabilitation is the passage of time. Had the applicant been convicted of non-gambling offenses, a different opinion might obtain.

5. It can be stipulated that the applicant was 52 years of age at the time of his lottery convictions.

6. It is clear that the offenses were not isolated. The applicant was engaged in the lottery business at that time for approximately two years.

7. I have considered the testimony of the character witnesses with respect to the social conditions which may have contributed to the offense. They have asserted that there is a general acceptances of illegal numbers operations in the urban black community. However, to accept such an argument would undermine the public policy consideration that the New Jersey legislature has enunciated with respect to the strict regulatory framework established by the Casino Control Act.

8. I have considered the testimony of the applicant and the character witnesses with respect to any and all evidence of his rehabilitation, including his employment history since he arrived in the Stated of New Jersey in 1977. I note that he received a temporary work permit as a waiter at the Bally Park Place casino hotel in Atlantic City, New Jersey and worked full-time until January 5, 1980 when he was suspended pending the outcome of this proceeding. I have also considered that he has been issued an Unlimited Rehabilitative Permit by the New Jersey State Division of Alcoholic Beverage Control and has applied for a renewal of that permit upon the expiration of his current one.

The casino control industry is highly sensitive and susceptible to the inherent evils of organized crime. It occupies a unique status. My responsibility is to strike a proper balance between the public interest and the applicant's opportunity to offer evidence of rehabilitation.

Based upon the totality of circumstances presented here, I am not clearly convinced that the applicant has "affirmatively demonstrated his rehabilitation" under N.J.S.A. 5:12-91(d). I do not believe that the 1976 lottery convictions are sufficiently remote in time, considering that the convictions are directly related to the business for which the license is now being sought. I CONCLUDE that a minimum of two additional years should elapse before the applicant can reapply for licensure to the commission.

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

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

Feb 4, 1980
Date

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

Feb 7, 1980
Date

Receipt Acknowledged:

AGENCY HEAD
BY: ROBERT JAMIN CHIEF DEPUTY GENERAL COUNSEL

Feb 11, 1980
Date

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

jrp
2/4/80

S1 E OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 4778-80
CCC DOCKET NO. 80-EA-95

IN THE MATTER OF THE APPLICATION :
OF RONALD F. JORDAN FOR LICENSURE :
AS A CASINO KEY EMPLOYEE and :
GAMING SCHOOL INSTRUCTOR :

FINAL ORDER

This matter having been brought before the Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein dated February 11, 1981; and the Commission having carefully considered the entire record of the proceedings, the said Initial Decision and the exceptions filed by both parties; and the Commission, at its public meeting of April 8, 1981, having heard the arguments of counsel and having resolved to affirm and adopt the Initial Decision as modified herein and to deny the application for licensure,

IT IS on this 20th day of April 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is AFFIRMED except as modified below;

IT IS FURTHER ORDERED that the portion of the Initial Decision finding that the information provided by the Applicant concerning his termination of employment at Mullet Bay Casino was not misleading, and therefor not a basis for disqualification under N.J.S.A. 5:12-86(b), be and hereby is REJECTED ;

IT IS FURTHER ORDERED that the Applicant be and hereby is DISQUALIFIED by reason of his having provided false and misleading information to the Division of Gaming Enforcement contrary to N.J.S.A. 5:12-86(b);

IT IS FURTHER ORDERED that the portion of the Initial Decisio finding that the Applicant had failed to affirmatively establish by clear and convincing evidence his reputation for good character, honesty and integrity solely because of his diqualification under N.J.S.A. 5:12-86(b), be and hereby is REJECTED:

IT IS FURTHER ORDERED that the Applicant be and hereby is DISQUALIFIED pursuant to N.J.S.A. 5:12-89(b)(2) for his failure to affirmatively establish by clear and convincing evidence his reputation for good character, honesty and integrity in light of the following:

1. The Applicant's disqualification under N.J.S.A. 5:12-86(b) for failure to disclose his employment at the Colony Club in London in March to May 1967; and

2. The Applicant's disqualification under N.J.S.A. 5:12-86(b) for providing false and misleading information concerning his termination from the Mullet Bay Casino in May 1972; and

3. The Applicant's conduct in May 1972 in attempting to collect on credit extended as casino manager of Mullet Bay Casino.

IT IS FURTHER ORDERED that the Application of Ronald F. Jordan for licensure as a casino key employee and gaming school instructor be DENIED based upon the Initial Decision , which

as modified, is incorporated herein by reference and made a part thereof;

IT IS FURTHER ORDERED that the Chairman be and hereby is authorized to issue a Final Decision on behalf of the Commission explaining the reasons for the rejection, in part, of the Initial Decision and setting forth the reasons for denying the application of Ronald F. Jordan for licensure as a casino key employee and gaming school instructor;

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: April 2 19

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4778-80

AGENCY DKT. NO. 80-EA-95

IN THE MATTER OF:

THE APPLICATION OF RONALD F. JORDAN FOR LICENSURE AS A CASINO KEY EMPLOYEE AND AS A GAMING SCHOOL INSTRUCTOR (BLACKJACK, BACCARAT, CRAPS AND ROULETTE)

Record Closed: December 30, 1980

Received by Agency: 2/13/81

Decided: February 11, 1981

Mailed to Parties: 2/18/81

APPEARANCES:

Morris M. Goldings, Esq., admitted pro hac vice, for the Petitioner/Applicant (Kenneth F. Hense, Esq., attorney)

Michael Grodjeski, Deputy Attorney General, for the Respondent, Division of Gaming Enforcement (John J. Degnan, Attorney General of New Jersey, attorney)

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

This matter concerns the application of Ronald F. Jordan, petitioner/applicant, for licensure by the Casino Control Commission (Commission) as a casino key employee and gaming school instructor (blackjack, baccarat, craps and roulette). N.J.S.A. 5:12-89 and 92. The applicant was advised by letter from the Commission, dated July 3, 1980, that based upon information received in a report from the Division of Gaming Enforcement (Division), respondent, dated May 9, 1980, there was a "substantial

possibility" the Commission would deny his application and that he had a right to a hearing. Mr. Jordan requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq. A prehearing conference was held on October 7, 1980 and the matter heard on October 30, 31, December 1, 4, 5, 10 and 12, 1980. The record was closed on December 30, 1980, upon receipt of briefs.

The Division objected to Mr. Jordan's application on several grounds. At issue is whether the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b, because of his alleged failure in response to Question No. 37 on his Personal History Disclosure Form (PHDF) to disclose that he was employed by the Colony Club in London, England between March and May 1967 and that he misrepresented the true nature of the termination of his employment with the Mullet Bay Casino Hotel (Mullet Bay) in June 1972. The second issue is whether the applicant can establish that he possesses a reputation for good character, honesty and integrity under N.J.S.A. 5:12-89b(2), in consideration of the alleged violations of Section 86b of the Act, circumstances concerning the issuance of credit at Mullet Bay and his general employment history. Third, whether he can establish that he has sufficient business ability and experience to succeed in the position of casino manager and gaming school instructor under N.J.S.A. 5:12-89b(3), in light of the previously stated objections.

Mr. Jordan is 58 years old and a citizen of the United States. He graduated from the Long Beach Polytechnic High School. In 1946 Mr. Jordan was discharged from the USAAF as a First Lieutenant, he was a pilot. He then went to Nevada and commenced employment in the casino industry as a dealer. Between 1946 and 1951, he held various positions as a dealer. Between 1951 and 1953, he was employed in the aircraft part industry. From 1954 until 1967 he was continuously employed, with the exception of short periods of unemployment, as a dealer, manager, assistant casino manager and casino manager, by various casino hotels in Nevada, Cuba, Ecuador, Aruba and Lebanon.

In March 1967, Mr. Jordan left the Casino DuLiban in Beirut, Lebanon due to an order of the Lebanese government excluding foreigners from employment. He went to Paris, France with his wife and child. His wife was a French national and they visited her family. It was his intention to return to Nevada. At that time Mr. Jordan and his wife

were having serious marital difficulties. In mid March he went to London, England alone to visit the casinos and see friends. It was not his intention to seek employment.

During either his first or second trip to England, Mr. Jordan was approached by Freddie Ayoub, whom he believed managed the Colony Club, and was offered a job of surveilling the gambling operations. Mr. Jordan agreed to perform the services with the understanding that he would be traveling to Paris frequently in an attempt to resolve the differences with his wife. In a ten week period between March and April 1967 he traveled between Paris and London a minimum of ten times.

Mr. Jordan worked at the Colony Club on a regular basis. His work day was from eight to ten hours and he was paid 125 pounds ($350) per week. He believed that he needed a work permit from the English government, but made no effort to apply for one. On May 25, 1967, he was advised by an official at the Colony Club that they had secured his work permit, which they had in their possession for several weeks. On May 26, 1967, Mr. Jordan returned to the United States alone.

Mr. Jordan offered a written opinion by English counsel regarding The Aliens Order to support his contention that an employer, not an employee, was responsible to obtain a work permit in 1967 (P-9, see attached List of Exhibits Admitted Into Evidence). The Division objected to the admission of the opinion. Although Mr. Jordan's state of mind at the time he filed his PHDF, that he was responsible to have obtained a work permit, is of the greatest significance, a determination of which party had the obligation to secure the permit is relevant to this matter. Therefore, the opinion is admitted into evidence, however, only page two is relevant.

Mr. Jordan did not include his employment at the Colony Club on his original PHDF filed with the Commission (J-2). He stated that he was unemployed during the period in question. He was confronted by the Division with this apparent nondisclosure during his interview on October 24, 1979 (J-8). He then conceded the nondisclosure which he attributed, in part, to the absence of a British work permit. He subsequently submitted an amendment to his PHDF disclosing the employment at the Colony Club (J-3). At the hearing, Mr. Jordan admitted the nondisclosure and that he misrepresented he was unemployed. He testified that at the time he completed his PHDF, the Commission was conducting hearings on the application of Resorts International Hotel, Inc. (Resorts) for a temporary license as a casino hotel. During the course of that hearing, Mr. Jordan

became aware that the Commission was concerned with the Colony Club, Freddie Ayoub and others employed there. He feared that the disclosure of this employment would impair his chances for licensure, therefore, he deliberately omitted any reference to his employment at the Colony Club.

Between 1967 and 1972, Mr. Jordan was employed by various casino hotels in Nevada and the Bahamas as a boxman, gaming inspector and supervisor. In November 1970 he commenced work as the Casino Manager at Mullet Bay on St. Maarten, Netherlands, Antilles. The Division objected to licensure because of his involvement in the issuance of and attempts to collect approximately $100,000 of casino credit during April and May 1972.

Mullet Bay was owned by Island Gem Enterprises Ltd., M.V., a Netherlands, Antilles Corporation (Island Gem). Mullet Bay was the concept of and had been developed between 1968 and 1970 by Herbert Merser. The enterprise was syndicated and stock was sold to several large investors, including Henry Ford II and various other individuals and institutions. The casino was included to ensure that the project would be profitable. However, it was the desire of Island Gem to have a hotel with a casino, i.e., the emphasis was upon the hotel operation. In the early summer of 1970 Island Gem, through contacts with Robert D. Peloquin, President of Intertel, a wholly owned subsidiary of Resorts, entered into a three party agreement with Resorts and Mr. Merser for the operation of the casino. The casino license was in Mr. Merser's name. Resorts was vested with virtually total jurisdiction over the operation and control of the casino. Mr. Merser was consulted on questions of policy. Mr. Jordan was employed by Resorts. St. Maarten was a sleepy island with small hotels and some casinos. Mullet Bay adjoined the Concord Casino.

Mr. Jordan arrived a Mullet Bay in November 1970. He had 30 days to set up the casino and recruit, hire and train employees. The casino opened on December 1, 1970. The casino consisted of approximately six blackjack tables, two or three Amercian roulette games, two craps games and fifty slot machines. During 1971 and the first half of 1972, the casino operation was small and not profitable. Mullet Bay had a policy of one junket at a time with a limit of 30 people. Mr. Jordan was fully aware of the disappointment of Island Gem and Resorts concerning the lack of profitability.

Although Resorts and Mr. Jordan were responsible for the entire operation of the casino, including the issuance of credit, Mr. Jordan would occasionally consult with Mr. Merser when there was an application for $5,000 or more. Prior to the opening of Mullet Bay, Resorts had photocopied its extensive credit files at its Paradise Island Casino in the Bahamas. However, due to the low level of gambling volume at Mullet Bay, Resorts did not keep these files up-to-date. Another means of checking credit was to contact the Paradise Island Casino or a Nevada credit bureau by telephone. However, in 1972 the telephone service on St. Maarten was extremely poor. It was necessary to travel to the nearby town to make a call off the island. A call would take a minimum of several hours and a maximum of several days to complete. Credit checks were usually accomplished by the fourth day of a guest's one week stay. Resorts issued no written procedures concerning the issuance of credit and Mr. Jordan essentially had unlimited authority, within his discretion. There was seldom a request for credit in excess of $3,000. The usual means of verification of credit was to examine the credit cards of the person requesting the credit.

The Division raised Mr. Jordan's employment at Mullet Bay as an objection because of an incident that occurred between April 28 and May 18, 1972. This was during the off season at the casino and activity was at a bare minimum. Mr. Merser was not on the island. On a Friday evening a large group of 20 to 30 people arrived at the casino and attempted to bet with $100 chips from the Concord Casino. Although Mr. Merser did not favor any dealings with the Concord, Mr. Jordan frequently allowed play with chips from other casinos on the island. However, $100 chips were unusual. Mr. Jordan believed the group included "high rollers" and permitted them to play with the Concord chips in the hopes of a substantial win that evening.

On either that Friday evening or on the following Saturday the apparent leader of the group, Isadoro DeCicco, approached Mr. Jordan with a request that the members of his group be given a substantial amount of credit. Mr. Jordan and DeCicco met privately during which time DeCicco made assurances that the members of the group were good for any debts, agreed to be personnally responsible for the collection of any losses and intimated the possibility of bringing other junkets to Mullet Bay.

Mr. Jordan, in light of the lack of profitability of the casino, the off season and DeCicco's representations, was persuaded to authorize the issuance of a substantial amount of credit to the various members of the group. He also agreed to give DeCicco

five percent of the net casino win. This arrangement was similar to that between Mullet Bay and its lone approved junketeer, Fran Fromer, and which existed in the casino industry at that time. Mr. Jordan advised his staff, including Charles Mercier, Assistant Casino Manager, of the arrangement and told them DeCicco would designate the amount of credit to be issued to the individual members of his group. Mr. Jordan did not require the group submit credit applications, nor did he make any attempt to verify their credit status with any of the sources available to him, with the exception of the Concord.

Mr. Jordan walked to the Concord Casino and spoke with Jack Maxheimer, who was in charge of the cashier's cage. He examined the credit limits issued by the Concord and the amounts used by members of the DeCicco group. The Concord on St. Maarten made no independent evaluation of credit requests, rather it received approved lines of credit from its New York office when a junket group arrived. Mr. Jordan made no attempt to use any other source to verfiy the credit status of the group, because they were scheduled to leave the island on Sunday and the communication difficulties precluded a timely response. His approval of the credit request failed to comply with Resorts' vague and unwritten standard operating procedures. Mr. Jordan also arranged to meet DeCicco in New York City the following week to collect on the markers.

Mullet Bay had a good win on Friday night. During the remainder of the weekend, members of the DeCicco group signed credit markers for an amount in excess of $105,000. The $105,000 of markers was by far the largest amount of credit ever extended at Mullet Bay. However, members of the group managed to cash chips out for an amount in excess of $26,000. Saturday and Sunday were the two biggest nights ever at Mullet Bay.

After the DeCicco group left Mullet Bay, Mr. Jordan made arrangements to go to New York City to collect on the markers. It was not uncommon for him to make trips to collect markers. Prior to leaving, he had a conference with Mercier, Paul Shealy, who was in charge of security, and Mark Stein, the Cashier. Although there was some discrepancy, Mr. Jordan apparently took between $4,000 and $5,000 from the casino bank, which represented DeCicco's five percent commission of the net win of $80,000. Messrs. Jordan, Mercier and Shealy, testified at the hearing. Messrs. Jordan and Mercier recalled that Mr. Jordan signed a marker for the monies removed from the bank, on which the others also signed as witnesses. Mr. Shealy did not recall a marker being signed. However, all agreed that Mr. Jordan took the money with their express knowledge for the

purpose of collecting on the markers. No receipt for these monies was discovered by the parties.

Mr. Jordan arrived in New York City with his wife on May 2, 1972. He intended to combine business and a vacation while on the trip. He attempted to contact DeCicco on May 3, 1972. DeCicco denied having been at Mullet Bay or responsibility for the markers. Mr. Jordan then unsuccessfully attempted to collect from several of the other persons in the group. He ultimately came to the conclusion that the markers would not be honored. Mr. Jordan went to the New York office of the Concord Hotel and spoke with the person in charge of arranging junkets. He was advised that DeCicco owed the Concord $50,000. He then contacted Fran Fromer, Mullet Bay's lone junketeer, who was also a personal friend. She gave him the name of a person whom she claimed could assist in the collection. On May 5, 1972, Mr. Jordan spoke with Howard Katz, who claimed that he could collect on the markers. On May 7, 1972, Mr. Jordan made arrangements with Katz to meet the following day. On Monday morning, May 8, 1972, Mr. Jordan went to Intertel for assistance. He spoke with Adolph Villafana and John O'Connell for several hours. He discussed the previous events. Messrs. Villafana and O'Connell were able to identify DeCicco and the members of his group as unsavory persons. Mr. Jordan and Messrs. Villafana and O'Connell differed on what transpired during the remainder of the meeting. Mr. Jordan stated that he was desperate and in the need of Intertel's assistance. He advised Intertel of the meeting set for that afternoon with Katz. He also claimed that he was instructed to proceed to the meeting, which would be surveilled. On the other hand, Mr. Villafana testified he advised Mr. Jordan that the people he was dealing with were members of organized crime, Mr. Jordan told them to stay out of his activities and represented that he had experience dealing with organized crime. The representatives of Intertel took no action to stop Mr. Jordan from meeting with Katz.

Mr. Jordan met with Katz and another man, Tony Rocco, on the afternoon of May 8, 1972. During that meeting Rocco intimated he was connected and was able to assist in the collection on the markers. Mr. Jordan gave Katz and Rocco $5,000 front money to finance the collection efforts and agreed to compensate them 25% of the amount collected. Of the $5,000, $4,000 was the monies taken from Mullet Bay and the remaining $1,000 was from his personal funds. Rocco signed a receipt for the $5,000 (J-4, page 3). Mr. Jordan observed Mr. Villafana surveil the meeting.

On May 9, 1972, Mr. Jordan heard nothing from Katz or Rocco and collected on markers from persons not in the DeCicco group.

Mr. Jordan arranged to meet with Katz on May 10, 1972, however, Katz did not appear.

On May 11, 1972, Mr. Jordan met with Robert D. Peloquin, President of Intertel, in Washington, D.C. They discussed the preceeding events. Mr. Jordan's testimony was substantially in agreement with that of Mr. Peloquin, which was based solely upon Exhibit J-1. However, Mr. Jordan denied stating that he had experience dealing with members of organized crime or that he had any idea prior to May 7, 1972 that the members of the DeCicco group were connected with organized crime. Mr. Peloquin directed Mr. Jordan to return to New York City and to meet with I. G. Davis, President of Resorts, on the following Saturday.

On May 12, 1972, Mr. Jordan again unsuccessfully tried to contact Katz and Rocco.

On May 13, 1972, Mr. Jordan was at Mr. Davis' office at Resorts. He observed Mr. Merser meet with Mr. Davis.

Mr. Merser testified that during his meeting with Mr. Davis he examined Exhibit J-1. Thereafter, he and Mr. Davis mutually agreed to sever the relationship between Island Gem and Resorts. Mr. Merser was not satisfied with the arrangement and was happy at the prospects of operating the casino on his own. Apparently, Resorts was equally happy to be out of the arrangement, due to lack of profitability of the casino.

Following the meeting, Mr. Merser advised Mr. Jordan that he had purchased the casino and, according to the applicant, stated that he did not have to worry about his job. Mr. Jordan assumed that he would remain in his position as Casino Manager.

Mr. Jordan then met with Mr. Davis. Mr. Davis expressed his displeasure for the manner in which the DeCicco incident was handled and requested Mr. Jordan's resignation, which he immediately submitted.

On Monday, May 17, 1972, Mr. Jordan again met with Katz. He advised Katz that Resorts wanted out of the arrangement and requested the return of the $5,000. Katz advised that the money had been spent and would not be returned. Mr. Jordan stated that Resorts would report the expenditure to the Internal Revenue Service. This terminated Mr. Jordan's contact with Katz and Rocco.

On May 18, 1972, Mr. Jordan appeared at the offices of Intertel and meet with Messrs. Villafana and O'Connell. He provided the information from which they prepared statements concerning the incident which he signed (J-5 and J-7). Mr. Jordan agreed with the facts as represented in the statements. However, he denied the implication that he was aware DeCicco was in any way involved with organized crime or that he had experience dealing with members of organized crime.

The testimony of Messrs. Jordan, Merser and Peloquin was consistent, in that each evaluated his involvement in the DeCicco incident as a serious error in judgment, and nothing more.

Mr. Jordan returned to Mullet Bay and turned over to the cashier the sum of $8,800, which he had collected on other markers while in New York City. The cashier gave Mr. Jordan a receipt for the funds (P-6).

Mr. Jordan met with Mr. Merser concerning the subject of his remaining at Mullet Bay as the Casino Manager. Mr. Merser informed him that the severing of the contractual relationship with Resorts, which he directly attributed to Resorts' breach of the contract due to the manner in which the DeCicco incident was handled, made it not feasible to retain him. Although Mr. Merser did not recall informing him that his employment at Mullet Bay would continue, during his testimony he gave the same reasons as Mr. Jordan had recalled why he could not remain. Mullet Bay took over the operation of the casino by June 1, 1972.

From June 1972 until the present, Mr. Jordan has been continuously employed, with the exception of two short periods of unemployment, in the casino industry as a general manager, boxman, floorman, shift manager and assistant manager for various casinos in Curacao, Nevada and Monaco.

On January 15, 1979, Mr. Jordan commenced employment with Bally's Park Place, Inc. (Park Place) as Casino Manager for its New Jersey casino. Mr. Jordan arrived in New Jersey on March 21, 1979 and his family followed shortly thereafter. He set up the casino, recruited, hired and trained casino staff. Mr. Jordan resigned as Casino Manager for Park Place following objections raised by the Division to his application for licensure (J-9). Park Place and Mr. Jordan entered into an agreement whereby Park Place would compensate Mr. Jordan for one year and provide him with employment if his application was ultimately approved by the Commission (J-9).

In response to Question 39 on his original PHDF, Mr. Jordan indicated that he had been discharged or asked to resign from employment on three occasions. At issue in this matter is the statement by Mr. Jordan concerning his employment at Mullet Bay, that the reason for his discharge or resignation was "casino sold" (J-2). He acknowledged that he had chosen to make that statement because it was innocuous. He also stated on his PHDF that his supervisor's were Herb Merser from Island Gem and Steve Norton from Resorts. Mr. Jordan believed that the sale of the Mullet Bay casino was the ultimate factor for his discharge, because Mr. Merser was unable, for reasons other than his performance, to retain him as casino manager.

With the exception of the disagreement between Mr. Jordan and Messrs. Peloquin, Villafana and O'Connell concerning his awareness that the DeCicco group was connected with organized crime and his representations of prior experience with members of organized crime, and the status of his employment as Casino Manager at Mullet Bay immediately following his resignation from Resorts, the facts were not significantly in dispute.

Messrs. Peloquin, Villafana and O'Connell testified that Mr. Jordan was aware that the DeCicco group was connected with organized crime, had been fully informed of this connection and professed experience in dealing with such persons. Mr. Jordan disputed these statements. I am persuaded to accept Mr. Jordan's version of his knowledge concerning the DeCicco group. It is apparent that while in New York and prior to May 8, 1972 he became aware that he was dealing with unsavory individuals However, I am convinced that he was unaware the DeCicco group was connected with organized crime, as such. Further, I am not persuaded that Mr. Jordan fully understood the essence of the information given to him by Messrs. Villafana and O'Connell regarding the relationship between the DeCicco group and organized crime or that Howard Katz was

directly connected with organized crime. I am persuaded to so find because of the testimony of Mr. Peloquin and Mr. Villafana. Initially, Mr. Villafana's testimony was consistent with that of Mr. Jordan, that he came to Intertel for assistance and was in way over his head. The testimony of Mr. Peloquin fully supported Mr. Jordan's claim that he was unaware of the type of person he was dealing with. Mr. Peloquin stated, in his opinion, that Mr. Jordan's knowledge of organized crime and his apparent attempts to collect on the markers indicated his experience with organized crime, if any, came from "comic books." It is apparent that Mr. Jordan's knowledge of organized crime and that of Intertel were on two very divergent wave lengths. It is also apparent that the information Mr. Jordan gave to Messrs. Villafana and O'Connell was interpreted according to Intertel's standards. Messrs. Peloquin, Villafana and O'Connell had a substantially greater knowledge and experience than Mr. Jordan regarding the activities of organized crime. Clearly, Mr. Jordan was out of his league, even when he discussed the events as he preceived them to be. The statements signed by him at Intertel's request, Exhibits J-5 and J-7, although correct as to dates, times, places and persons, represent Intertel's sophisticated and knowledgeable interpretation of the information, which was not consistent with Mr. Jordan's perceptions.

Following the agreement between Messrs. Merser and Davis to terminate the contractual relationship between Resorts and Island Gem, Mr. Jordan contended that he believed he would continue as Casino Manager at Mullet Bay. Mr. Merser testified that he did not offer to continue Mr. Jordan in that position. However, it is apparent that they discussed the matter at Mullet Bay after May 13, 1972. Again, I am persuaded to accept Mr. Jordan's testimony that he believed his employment would be continued. Mr. Merser's testimony did not contradict the basis for this belief. There was obvious confusion at that time. Resorts and Island Gem were in the process of terminating their contractual relationship. Island Gem was taking over the operation of the casino. Mr. Jordan resigned from Resorts. The fact that Mr. Jordan returned to Mullet Bay with collected funds and resumed his duties as Casino Manager, even for brief a period, support his contention. Further, Mr. Jordan and Mr. Merser did discuss the possibility of his continuing as Casino Manager. Mr. Merser stated that he would have retained Mr. Jordan had it not been for the practical impossibility under the circumstances, i.e., that Mr. Merser held Resorts responsible for the DeCicco incident, because he believed it had used inadequate credit procedures and Intertel and Resorts had knowingly condoned Mr. Jordan's collection activities. Mr. Jordan's statement on his PHDF that his employment at Mullet Bay was terminated because "casino sold" had a reasonable basis.

No proofs were submitted by Mr. Jordan on behalf of his application for licensure as a gaming school instructor. He apparently intended to withdraw this portion of his application.

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

1. On March 27, 1979, Ronald F. Jordan applied to the Commission for licensure as a casino key employee and as a gaming school instructor and filed his Personal History Disclosure Form (J-2).

2. The statements made by Mr. Jordan on his PHDF were true, with the exception of that portion of his answer to Question 37 which indicated that he was unemployed between March and May 1967.

3. Between and March and May 1967 Mr. Jordan was employed as an observer at the Colony Club in London, England.

4. His employment at the Colony Club was not disclosed on his original PHDF.

5. On October 24, 1979, Mr. Jordan was confronted by representatives of the Division with, among other things, his failure to disclose his employment at the Colony Club.

6. Subsequent to October 24, 1979, Mr. Jordan filed an amendment to his PHDF disclosing his employment at the Colony Club (J-2).

7. Mr. Jordan did not disclose his employment at the Colony Club because of his knowledge of the Commission's concern, expressed during the hearing on Resorts' application for temporary licensure as a casino hotel, with its connections to the Colony Club, Fred Ayoub and the Cellini family.

8. Mr. Jordan deliberately omitted his employment at the Colony Club because he believed that his association there would negatively affect his application for a gaming license in New Jersey.

9. Between November 1970 and May 13, 1972, Mr. Jordan was employed by Resorts as the Casino Manager at the Mullet Bay Casino Hotel.

10. Mr. Jordan was responsible for the operation of the casino, including the issuance of credit.

11. Resorts issued no written procedures for the issuance of credit. The credit card information system provided at Mullet Bay was not maintained in an up-to-date status.

12. In 1972, telephonic communications on St. Maarten were extremely poor.

13. On the weekend of April 28-30, 1972, a Concord Hotel junket group, known as the DeCicco group, gambled extensively at Mullet Bay.

14. DeCicco requested Mr. Jordan to issue substantial amounts of credit to the members of the group.

15. DeCicco assured Mr. Jordan that the members of the group were good for the markers and that he, DeCicco, would personally be responsible for the collection and payment.

16. Mr. Jordan authorized credit to the members of the DeCicco group in excess of $105,000. He authorized the credit because of the lack of profitability of the casino, the off season and his acceptance of DeCicco's representations.

17. Mr. Jordan agreed to pay to DeCicco five percent of the net casino win from his group. This arrangement was similar to that between other casinos and junketeers at that time.

18. As of April 19, 1972, the Mullet Bay casino was not profitable and Mr. Jordan was aware of the dissatisfaction of both Mr. Merser and Resorts.

19. The DeCicco group left markers at Mullet Bay in excess of $105,000 and cashed out chips for an amount in excess of $26,000.

20. The issuance of credit was not in conformance with standard operating procedures.

21. Mr. Jordan's actions regarding the DeCicco incident constitute a serious error in judgment.

22. After April 30, 1972, Mr. Jordan removed approximately $4,000 from the casino bank at Mullet Bay in the presence of key members of his staff and signed a marker, which made him personally responsible for the funds.

23. On May 2, 1972, Mr. Jordan arrived in New York City on a combination vacation/business trip.

24. Mr. Jordan was unsuccessful in this attempts to collect on the markers from DeCicco and other members of the group.

25. Mr. Jordan went to the Concord Hotel in New York and learned that DeCicco owed the Concord approximately $50,000.

26. Mr. Jordan sought the assistance of Fran Fromer to collect on the markers.

27. On May 7, 1972, Mr. Jordan arranged with Howard Katz to meet the following day in an effort to enlist his aid in collecting on the markers.

28. On the morning of May 8, 1972, Mr. Jordan met with Messrs. Villafana and O'Connell at the offices of Intertel in New York City to seek their assistance regarding the collection on the markers.

29. Messrs. Villafana and O'Connell informed Mr. Jordan that DeCicco was probably connected with organized crime.

30. Messrs. Villafana and O'Connell cautioned Mr. Jordan concerning his attempts to deal with Katz, but took no action to prevent the meeting scheduled for that afternoon.

31. On the afternoon of May 8, 1972, Mr. Jordan met with Howard Katz and Tony Rocco and solicited their assistance in the collection effort.

32. Mr. Jordan gave to Katz and Rocco the sum of $5,000, which consisted of the $4,000 taken from Mullet Bay and $1,000 of his own funds, as front money for the collection effort.

33. Mr. Jordan observed Mr. Villafana surveil the meeting.

34. On May 9, 1972, Mr. Jordan collected on other markers owed to Mullet Bay.

35. On May 11, 1972, Mr. Jordan met with Mr. Peloquin at Intertel's offices in Washington, D.C.

36. On May 13, 1972, Mr. Jordan met with Mr. Davis, President of Resorts, and submitted his resignation upon request.

37. On May 17, 1972, Mr. Jordan again met with Katz and attempted to recoup the $5,000 paid to him. He was unsuccessful.

38. On May 18, 1972, Mr. Jordan was again interviewed by Messrs. Villafana and O'Connell and executed the statements prepared by them from information he provided (J-5 and J-7).

39. On May 13, 1972, Messrs. Merser and Davis agreed to terminate the contract for the operation of the Mullet Bay casino.

40. Following his resignation from Resorts, Mr. Jordan had reason to believe that he would continue in his position as Casino Manager at Mullet Bay.

NON DISCLOSURE

A. Amendment to Personal History Disclosure Form

Mr. Jordan filed an amendment to his PHDF on January 2, 1980, in which he disclosed his employment at the Colony Club (J-3). The amendment was filed pursuant to N.J.A.C. 19:41-8.5. The date of filing was subsequent to his interview under oath by Division investigators, wherein the omission was brought to his attention (J-8). Mr. Jordan contended that the amendment to the PHDF cured any possible violation of N.J.S.A. 5:12-86b that may have existed prior thereto.

Under N.J.A.C. 19:41-8.5, an applicant for licensure is required to file with the Commission an amendment to his application in the event of a change in facts or circumstances regarding any matter set forth in the original application which occurs subsequent to the filing thereof. The amendment in issue does not concern any change in circumstances which occurred subsequent to the filing of the original PHDF. Rather, the amendment attempts to correct a misstatement on the original PHDF concerning Mr. Jordan's employment history.

The Commission has held that subsequent amendments to an application for licensure do not cure willful nondisclosures. In the Matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), CCC 756-79 (N.J.O.A.L. November 8, 1979), modified by Casino Control Commission, 79-EA-70 (March 20, 1980). In that matter the applicant for a casino employee license as a dealer submitted an amendatory letter to the Commission setting forth the existence of 13 unsatisfied judgments in an attempt to "cure" an omission from his PHDF. The Commission rejected the concept that an application can be cured subsequent to objection having been raised by the Division, and stated at page 5:

> "The belated furnishing by an Applicant of this information after it has been unearthed by the Division's investigation and has become the basis of an objection to licensure under N.J.S.A. 5:12-86(b) cannot serve to cure an otherwise objectionable nondisclosure. Nor can an Applicant's candor or contrition at a later hearing serve to circumvent the clear meaning of N.J.S.A. 5:12-86(b). In the Matter of the Application of Angelo J. Ruggiero for Licensure as a Casino Key Employee, Docket No. 79-EA-69 (1979)."

Mr. Jordan knowingly, willfully and deliberately omitted the fact of his employment at the Colony Club from his PHDF for the purpose of enhancing his chances for licensure. These circumstances preclude the omission from being cured by the amendment filed subsequent to objection by the Division.

B. Materiality of the Omission

Mr. Jordan argued that when Section 86b is raised in objection to licensure, the issue is whether the subject matter of the omission or the misleading statement would itself constitute a reasonable basis for disqualification of the applicant. This argument is without merit.

The Commission has succinctly described the purposes for the inclusion of Section 86b within the Act as well as its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), CCC 1275-79 (N.J.O.A.L. August 29, 1979), modified by Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at page 15:

> "So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure From 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, 78-EA-8 at p. 19 (January 30, 1980). Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualfication from licensure. Harl Lee Cooper, supra at p. 16; Steven Cohen, supra; In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), CCC 684-80 (N.J.O.A.L. July 17, 1980), modified by Casino Control Commission, 80-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under Section 89 of the Act. To excuse a failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. If the mere absence of negative factors were the standard for licensure Mr. Jordan's argument might be plausible. However, under the Act the applicant has the affirmative burden to establish his qualifications to the satisfaction of the Commission.

Furthermore, the Commission has repeatedly held that information concerning employment history is a fact material to qualification. In the Matter of the Application of Steven M. Cohen for Licensure as a Casino Employee (Dealer), CCC 3133-79 (N.J.O.A.L. December 6, 1979), modified by Casino Control Commission, 79-EA-9, at page 3 (June 30, 1980); Application of Christine William Paul for Licensure as a Casino Employee (Dealer), CCC 1275-79 (N.J.O.A.L. August 31, 1979), approved by Casino Control Commission, 79-EA-48 (October 9, 1979).

Mr. Jordan's failure to disclose his employment at the Colony Club was deliberate and made with the knowledge that the omitted information was of specific concern to the Commission. He consciously feared that inclusion of the information would negatively affect his application. Further, he supplied untrue information in its place on the PHDF. Consequently, the omission was intentional and demands disqualification of the applicant.

I am not persuaded that Mr. Jordan provided a misleading statement on his PHDF when he stated "casino sold" as the reason for the termination of his employment at Mullet Bay. The totality of the circumstances must be examined. Mr. Jordan was requested to and did resign as an employee of Resorts on May 13, 1972. However, he had reasonable grounds to believe that Island Gem under the direction of Mr. Merser would continue to employ him in the position of Casino Manager at Mullet Bay. His conduct at that time, he returned to Mullet Bay, turned over collected receipts and resumed his duties, supports his belief. Further, the testimony of Mr. Jordan and Mr. Merser indicated that a discussion took place between them at which time Mr. Merser indicated the reasons he could not remain as Casino Manager. Also, on the PHDF Mr. Jordan identified both Mr. Merser of Island Gem and Mr. Norton of Resorts as his supervisors. Mr. Jordan disclosed that had lost his position at Mullet Bay for other than voluntary reasons and sufficiently identified the persons who could be contacted by the Division or the Commission in their investigatory efforts to discover the underlying circumstances. The mere fact that Mr. Jordan chose to phrase the reason for his removal in a positive and hopefully beneficial manner does not constitute providing a misleading statement and does not mandate disqualification.

I CONCLUDE that the failure of Mr. Jordan to disclose his employment at the Colony Club in London, England between March and May 1967 on his original PHDF mandates that he be disqualified from licensure under N.J.S.A. 5:12-86b.

AFFIRMATIVE CRITERIA

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

Mr. Jordan, in his attempt to establish his reputation for good character, honesty and integrity, called numerous character witnesses. Of primary concern was the issuance of credit and attempts to collect on markers while Casino Manager at Mullet Bay in 1972.

Mr. Merser, a graduate of Harvard University, once Vice President of Ford Motor Credit, originator, developer and chief executive officer of Mullet Bay for nine years and presently a real estate and investment consultant through his firm of H. B. Merser and Associates, testified in full support of Mr. Jordan's application. In 1972, Mr. Merser and the interests he represented at Mullet Bay were in the position of being

severely damaged as a result of the DeCicco incident. However, Mr. Merser, although he concedes Mr. Jordan made a serious error in judgment, continues to hold Resorts solely responsible for the incident. Mr. Merser believes Mr. Jordan's involvement in the issuance of credit, although a bad decision, was the result of positive motivation to improve the profitability of the casino, and that his attempts to collect the markers were made with the full knowledge and implied approval of Resorts through the representative of Intertel. Mr. Merser offered his opinion that one error of $26,000 in scope was not sufficient to disqualify Mr. Jordan from licensure. Mr. Merser holds Mr. Jordan in high esteem and stated convincingly that he was the best casino manager ever at Mullet Bay. He affirmatively stated that he wishes he had hired Mr. Jordan to run the casino after the termination of the contract between Island Gem, himself and Resorts. Mr. Merser believes that Mr. Jordan enjoys an excellent reputation in the casino industry.

Jack Maxheimer, Charles Mercier, Paul Shealy and Russell A. Hood are all currently employed in various positions by licensed or prospective casino hotels in New Jersey. Each testified that Mr. Jordan has an excellent reputation for good character, honesty and integrity within the casino industry. Each has worked closely with Mr. Jordan.

Robert D. Peloquin is the President of Intertel. He has known Mr. Jordan since 1970. Mr. Peloquin and his staff investigated the DeCicco incident in depth. Mr. Peloquin is of the opinion that Mr. Jordan committed a serious, but one time error in judgment concerning the DeCicco group, but that he learned from the incident. Mr. Peloquin believes that Mr. Jordan had no knowledge of or any connection with organized crime. Mr. Peloquin is of the opinion that Mr. Jordan is an honest man and has integrity.

David G. Bowden is Vice President and Comptroller for Resorts. In 1972 he was employed by Resorts as an Assistant to the Vice President and Comptroller. Following the DeCicco incident he was directed to investigate and review it from an accounting standpoint. He attributed no wrongdoing to Mr. Jordan. He testified that he had no reason in 1972 nor does he have any at this time to doubt Mr. Jordan's integrity.

Fenelon A. Richards is currently a self-employed security consultant and works principally for Intertel. In 1972 he was employed by Resorts as Director of Security for its Paradise Island Casino, Nassau, Bahamas. He also had jurisdiction over Mullet Bay.

Mr. Richards investigated the DeCicco incident and attributed no wrongdoing to Mr. Jordan. He testified that Mr. Jordan enjoys a favorable reputation for honesty and integrity in the casino industry.

No witness testified in opposition to Mr. Jordan's reputation for good character, honesty and integrity in the casino industry.

Mr. Jordan testified on his own behalf for several days. Although there were some apparent contradictions in his testimony from statements he had made at earlier times and there were some disagreements between his version of what transpired during the DeCicco incident from those presented by Messrs. Peloquin and Villafana, Mr. Jordan appeared to testify as openly and candidly as his memory would serve. I do not believe he attempted in any way to distort the truth as he preceived it to be at the present time or at the time the incidents occurred. Mr. Jordan was entirely credible and believable.

However, the Commission has held that the disqualification criteria found in N.J.S.A. 5:12-86 cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under N.J.S.A. 5:12-89. William Gonzales, supra at p. 8. Consequently, I am compelled, based upon the finding and Mr. Jordan's admission that he intentionally omitted his employment at the Colony Club from his PHDF, and for that reason only, to decide that he failed to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89b(2).

I CONCLUDE that Mr. Jordan has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity and that his application for licensure must be denied. N.J.S.A. 5:12-89b(2).

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

Under Section 89b(3) of the Act, Mr. Jordan is "....required to establish by clear and convincing evidence that the applicant has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular position involved." The proofs established that Mr. Jordan has in excess of 30 years experience in the casino industry. The only negative factor during his employment history was the DeCicco incident at Mullet Bay. The representatives of Island Gem and Resorts, who were most likely injured by the DeCicco incident, wholeheartedly and

emphatically supported his application for licensure. Park Place, with knowledge of Mr. Jordan's involvement in the DeCicco incident, hired him as its Casino Manager for Atlantic City and, when objection was raised to licensure, entered into a contract with him in order to preserve his availability if and when he was licensed.

Mr. Jordan's involvement in the DeCicco incident is best examined in light of the testimony of Mr. Merser and Mr. Peloquin. As stated, they represented the interests most likely to be negatively affected by the incident. Both witnesses were of extremely high caliber and were most credible. Both strongly and enthusiastically supported his application for licensure. Both considered the incident as a one time error in judgment and not of a sufficient magnitude to warrant a denial of licensure.

I CONCLUDE that Ronald F. Jordan has proven, by clear and convincing evidence, his business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the position of casino manager.

Therefore, I ORDER that the application of Ronald F. Jordan for licensure as a casino key employee and as a gaming school instructor be DENIED.

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

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

2/11/81
DATE

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

Receipt Acknowledged:

2/13/81
DATE

Joseph P. Lordi
CASINO CONTROL COMMISSION

Mailed to Parties:

February 18, 1981
DATE

Ronald L. Parker/bt
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Memorandum to James Crosby and others from Robert D. Peloquin, May 12, 1972, with attachments (10 pages)

J-2 Personnel History Disclosure Form - 1, Ronald F. Jordan (90 pages)

J-3 Amendment to Application of Ronald F. Jordan for Licensing as a Principal Employee of Bally's Park Place, Inc.

J-4 Memorandum to File from John D. O'Connell, May 23, 1972, with attachments (25 pages)

J-5 Statement by Ronald F. Jordan, May 18, 1972 (5 pages)

J-6 Memorandum to R. D. Peloquin from John D. O'Connell, May 9, 1972, with attachments (5 pages)

J-7 Statement of Ronald F. Jordan, May 18, 1972

J-8 Transcript of Interview of Ronald F. Jordan by the Division of Gaming Enforcement, October 24, 1979 (160 pages)

J-9 Letter to Detective Colbridge from Charles G. Cusick, January 22, 1980, with Investigative Report Concerning Ronald F. Jordan by Bally's Park Place, Inc. (23 pages)

P-1 Memorandum to I. G. Davis from J. O. Golden, September 17, 1980 (2 pages)

P-2 Passport for Ronald F. Jordan, Issue date July 31, 1963, Cancelled

P-3 Application for Employment with Paradise Enterprises, Ltd., Ronald F. Jordan, August 22, 1967

P-4 Memorandum to Bill Jordan from Steve Norton, January 10, 1972

P-5 Letter to Mr. Steve Norton from Bill Jordan, January 22, 1972 (2 pages)

P-6 Receipt of Payment Markers from Bill Jordan, May 21, 1972

P-7 Page 1 - Letter to William S. Weinberger from Bill Jordan, November 4, 1979
Page 2 - Letter to Ronald F. Jordan from William S. Weinberger, November 5, 1979

P-8 The Aliens Order, 1953, Made November 19, 1953, Laid before Parliament November 19, 1953 and Coming into Operation April 1, 1954 (26 pages)

P-9 Letter Opinion of English Counsel, to Morris M. Goldings, Esq., from G. A. Yablon, Partner, November 27, 1980 (2 pages)

R-1 Memorandum to I. G. Davis and others from Robert D. Peloquin, November 29, 1971 (3 pages)

R-2 Memorandum of Record from D. G. Bowden, July 20, 1972 (4 pages)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-194
OAL DOCKET NO. CCC 0020-80

IN THE MATTER OF THE APPLICATION :
OF ROBERT LEMONS FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (DEALER) :

A hearing having been conducted on June 6, 1980, in the above-captioned matter before Administrative Law Judge R. Jackson Dwyer of the Office of Administrative Law; and the Commission having considered the entire record of these proceedings, the Initial Decision of the Administrative Law Judge and the exceptions filed by the Applicant; and the Commission having resolved at its public meeting of January 7, 1981, to adopt in part and reject in part the Initial Decision and to deny the application for licensure;

IT IS on this 24TH day of February 1981, ORDERED as follows:

1. That part of the Initial Decision which finds that the Applicant's failure to disclose, in response to Question No. 46 on the Personal History Disclosure Form, either his July 6, 1976, arrest for damage to property, or his May 18, 1978, arrest for possession of marijuana and possession of marijuana with intent to distribute serve as the basis for disqualification from licensure pursuant to N.J.S.A. 5:12-86(be and hereby is rejected.

2. That part of the Initial Decision which finds that the Applicant's failure to disclose in response to Question No. 49 on his Personal History Disclosure Form his possession of marijuana in May 1978, serves as the basis for disqualification from licensure pursuant to N.J.S.A. 5:12-86(b), be and hereby is rejected.

3. That part of the Initial Decision which finds that the Applicant failed to sustain his burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b) be and hereby is rejected.

4. That part of the Initial Decision which finds that the Applicant is not a resident of New Jersey pursuant to N.J.S.A. 5:12-42.1 be and hereby is adopted.

IT IS FURTHER ORDERED that the application of Robert Lemons for licensure as a casino employee (dealer) be and hereby is denied; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: February 24, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0020-80

AGENCY DKT. NO. 79-EA-194

IN THE MATTER OF:

THE APPLICATION OF ROBERT LEMONS
FOR LICENSURE AS A CASINO EMPLOYEE
(BLACKJACK DEALER)

Record Closed: October 7, 1980 Decided: November 18, 1980

Received by Agency: 11/19/80 Mailed to Parties: 11/21/80

APPEARANCES:

Neil L. Sternstein, Esq., appeared on behalf
of the Applicant, Robert Lemons

Joseph J. Mussomeli, Esq., Deputy Attorney General,
Division of Gaming Enforcement
(John J. Degnan, Attorney General of New Jersey, attorney)

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

In February 1979 Robert Lemons (applicant) filed an application, including a Personal History Disclosure (PHD) form, with the Casino Control Commission (Commission) for licensure to work in a casino as a blackjack dealer. The applicant was advised by letter from the Commission's Senior Assistant Counsel, dated December 13, 1979, that based upon information received by letter from the Division of Gaming Enforcement (Division), dated November 13, 1979, there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing.

The applicant requested a hearing on December 22, 1979 and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 6, 1980, at which time the issues were framed. The hearing was held on June 6, 1980. Proposed findings of fact and conclusions of law were received from Deputy Attorney General Mussomeli on August 29, 1980 and from Neil I. Sternstein, Esq. on October 7, 1980. I closed the record on the latter date.

The pertinent testimony was as follows: the applicant stated, at the time he filled out his application and PHD with the Commission, he was maintaining a dual residency in New Jersey and Pennsylvania. He usually spent the week in New Jersey at listed residences, and the weekends at his grandmother's house at 830 Uearp Street, Philadelphia, Pennsylvania.

The applicant conceded that he answered question 46 on his PHD negatively. That question asks whether he had ever been arrested, indicted, charged or convicted of criminal or disorderly persons offense in this State or in any other jurisdiction. On July 6, 1976, the applicant was arrested in Wildwood Crest, New Jersey for damage to property. On July 15, 1976 that charge was dismissed. The applicant asserted that, since the matter was dismissed, he had both forgotten about the matter, and was informed by the judge and certain police officers involved in the matter that he need not disclose the arrest if he should seek future employment. The applicant was also arrested on May 18, 1978 in Philadelphia for possession of marijuana with intent to distribute. That arrest was expunged in March 1979, some two months after he filled out his PHD.

The applicant also conceded that he answered question 49 on the PHD negatively. That question asks whether the applicant had ever used, distributed or possessed any narcotic, hallucinogenic drug, barbiturate, amphetamine or any other substance that was listed on Schedule I through IV of N.J.S.A. 24:21-20 during the past ten years other than pursuant to a valid prescription issued by a licensed physician. The applicant admitted that he possessed marijuana during that time frame.

The applicant further admitted that he was receiving welfare payments from Pennsylvania while residing in New Jersey until he was terminated, at his request, some time in July 1979, after being informed by Investigator Goldman of the New Jersey Division of Gaming Enforcement that he was ineligible to receive those payments. Some time in August the applicant had a dispute with his girlfriend, with whom he was residing, and moved back to Philadelphia where he resumed receiving Pennsylvania welfare.

The Division of Gaming Enforcement produced certain exhibits captioned Pennsylvania Application for Food Stamps dated August 29, 1979 (R-4), a Stamp Plan Authorization Sheet dated January 24, 1980 (R-5), and an Authorization Sheet (R-6). The applicant did not list a New Jersey residence on those exhibits. The Division of Gaming Enforcement also produced an Exhibit (R-2) from the applicant's grandmother which reads in full as follows:

"To Whom It May Concern:

> My grandson Robert Lemons lives with me at 830 Uearp Street and gives me $20.00 every two weeks."

The applicant stated that the money was "not rent" but "board."

Ms. Fran Viesti testified that in February 1979 until the present, except for a four to six week interval in August 1979, when the applicant moved back to Philadelphia, she and the applicant lived together at the listed addresses on his PHD. She spent her weekends in Philadelphia with her mother, while the applicant went to his grandmother's residence at 830 Uearp Street, Philadephia.

Ms. Viesti stated that she votes in Philadelphia, and that she has a Pennsylvania driver's license. She considers herself a resident of both New Jersey and Pennsylvania.

She also testified that she assisted the applicant in filing out his PHD, and advised him to answer questions 46 and 49 in the negative. She asserted that the applicant's lawyer advised them the conviction for a controlled dangerous substance did not have to be disclosed because it was going to be momentarily expunged.

The Division of Gaming Enforcement presented its case through two witnesses. Investigator Thomas DeLorenzo obtained the applicant's various welfare documents at the Welfare Board in Philadelphia, Pennsylvania on April 18, 1980 from a Ms. Fred, the Supervisor at the Welfare Board.

Investigator Michael Goldman testified that the applicant's grandparents advised him that the applicant "was still residing at the Philadelphia address, (and) was staying in Atlantic City since early May and it was - mail was still being forwarded or received at the 830 Uearp Street address."

Investigator Goldman, when he checked with the New Jersey postal authorities, could not find a listed address for the applicant at 14 Nashville Avenue, Ventnor, or anyplace in New Jersey. When Investigator Goldman called the Atlantic County Board of Elections, he found that the applicant was not registered to vote. His investigation revealed that the applicant had a Pennsylvania driver's license. Investigator Goldman made two telephone calls between 9 a.m. and 5 p.m. at the applicant's listed New Jersey address on June 27 and July 10, 1979, and he was unable to contact the applicant. Investigator Goldman spoke to the landlord, at the applicant's listed Atlantic City address, who related that he had observed the applicant there, but Investigator Goldman did not conclude from his investigation that the applicant was living there on a permanent basis.

Investigator Goldman obtained an N.C.I.C. check and found that the applicant's arrest for a controlled dangerous substance was expunged April 19, 1979.

Investigator Goldman spoke to a Mr. Melvin, the applicant's caseworker, in Philadelphia, Pennsylvania and informed him that the applicant had filed a document in the State of New Jersey disclosing that his residence was in Ventnor, New Jersey. Mr. Melvin told Investigator Goldman that if the applicant stated that he was a resident ofNew Jersey on a document he was in violation of the Pennsylvania welfare laws. Mr. Melvin further stated an investigation would be initiated by the Pennsylvania Welfare Department.

Having reviewed the testimony and other evidence offered in this matter, having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I FIND:

1. The applicant filed an application and PHD form in February 1979 to work as a casino employee (blackjack dealer).

2. Question 46 on the PHD reads: "Have you or has any member of your immediate family (as defined on page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?".

   The applicant placed an "x" after the word "no" on his application. On July 6, 1976, the applicant was in Wildwood Crest, New Jersey for damage to property. On July 15, 1976, the applicant was found not guilty of that charge.

   On May 18, 1978, the applicant was arrested for possession of marijuana with intent to distribute in Philadelphia. That arrest was expunged in March 1979, some two months after he filled out his PHD.

3. Question 49 on the PHD reads as follows: "Have you ever used, distributed or possessed any narcotic, hallucinogenic drug, barbiturate, amphetamine, or any other substance that is listed in Schedule I through IV of N.J.S.A. 24:21-20 during the past ten-year period other than pursuant to a valid prescription issued by a licensed physician?".

   The applicant conceded that he had used marijuana during the past ten years.

4. The applicant asserts that he has maintained a dual residency at various addresses in New Jersey, except for approximately four to six weeks in August 1979, and at 830 Uearp Street, Philadelphia, Pennsylvania since he filed his PHD with the Commission.

5. The applicant possesses a Pennsylvania driver's license.

6. The applicant is not registered to vote in New Jersey.

7. The postal authorities have no listed address for the applicant in New Jersey.

8. A Division Investigator attempted to contact the applicant without success on the telephone between 9 a.m. and 5 p.m. on June 27 and July 10, 1979. That investigator spoke to a landlord at the applicant's listed address. The landlord related that he had seen the applicant on the premises; however, the investigator did not conclude from his total investigation that the applicant was residing there.

9. When the applicant was allegedly residing in New Jersey, he was receiving Pennsylvania welfare payments. The Pennsylvania welfare documents placed into evidence did not list a New Jersey residence, but an address at 830 Uearp Street, Philadelphia, Pennsylvania.

10. A Pennsylvania welfare caseworker informed the Division's investigator that if the applicant listed a New Jersey residence on documentation for a job in New Jersey that the applicant was ineligible to receive Pennsylvania welfare benefits. That caseworker also stated that an investigation would be initiated by the Pennsylvania Welfare Department.

CONCLUSIONS OF LAW

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

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

The applicant failed to disclose two prior arrests and the possession of marijuana in response to questions 46 and 49 on his PHD.

I CONCLUDE that the applicant's explanation for the misleading and inaccurate material information in his PHD strains credulity. Total candor is an indispensable requisite for licensure under the act.

The Division of Gaming Enforcement asserts that the applicant fraudulently received welfare payments, in violation of N.J.S.A. 2C:20-4, from Pennsylvania while he was a resident of New Jersey, and that his conduct consitutes a per se disqualification under N.J.S.A. 5:12-86(c).

I disagree. The applicant, in my opinion, was never a "resident" of New Jersey under the act. "Resident", within the meaning of the act, requires something more than "having a place to live in New Jersey." The applicant is required to establish by clear and

convincing evidence an ongoing physical presence within the State which is something more than transitory in nature. I find no support in the act for the proposition that an applicant can maintain a dual residency. The applicant had a Pennsylvania driver's license. He did not vote in New Jersey. He could not be contacted by a Division Investigator at his listed New Jersey address. The applicant did not list a New Jersey residence on his Pennsylvania welfare documents. His grandparents related to a Division Investigator that he was paying $20. bi-weekly at 830 Uearp Street Philadelphia, Pennsylvania. He received his mail at that address. All of these facts militate in the direction that the applicant was always a Pennsylvania resident, and that he misrepresented to the Commission that he was, in fact, a New Jersey resident.

I CONCLUDE that the applicant's intentional misrepresentations on his PHD about his two prior arrests, his possession of marijuana in response to questions 46 and 49 on his PHD, and his New Jersey residency reflect adversely upon his character, honesty and integrity as to compel denial of his licensure under N.J.S.A. 5:12-90(b) and N.J.S.A. 5:12-89(b)2.

It is, therefore, my decision that a casino employee license, permitting the applicant to work as a blackjack dealer, be **DENIED.**

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

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

Nov 18, 1980
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

Nov 19, 1980
DATE

Joseph P. Lordi
CASINO CONTROL COMMISSION

Mailed to Parties:

November 21, 1980
DATE

Ronald L. Parker /bb
OFFICE OF ADMINISTRATIVE LAW

bb

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-134
OAL DOCKET NO. CCC 3511-80

IN THE MATTER OF THE RENEWAL APPLICATION OF SONYA LEWIS FOR LICENSURE AS A CASINO HOTEL EMPLOYEE:

FINAL ORDER

This matter having been opened to the Casino Control Commission upon the Initial Decision of the Office of Administrtive Law herein dated April 10, 1981; and the Commission having carefully considered the entire record of the proceedings, the arguments of counsel and the said Initial Decision, no exceptions or objections thereto having been filed by the parties; and the Commission having found, pursuant to N.J.S.A. 5:12-91(c), that the waiver of the Applicant's disqualification would be appropriate in the interests of justice and consistent with the public policy of the Casino Control Act; and the Commission having resolved at its public meeting of May 20, 1981 to affirm and adopt the said Initial Decision, as modified herein, to waive the Applicant's disqualification and to grant the application for licensure,

IT IS on this 28Th day of May, 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is ADOPTED by the Commission, as modified herein; and

IT IS FURTHER ORDERED that the Applicant be and hereby is found DISQUALIFIED based upon the reasons set forth in the said

Initial Decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the disqualification criterion for the Applicant be and hereby is WAIVED based upon the Commission's findings that said waiver would be appropriate in the interests of justice and consistent with the public policies of the Casino Control Act; and

IT IS FURTHER ORDERED that the conclusion in the said Initial Decision to deny the license renewal application of Sonya Lewis be and hereby is REJECTED; and

IT IS FURTHER ORDERED that the license renewal application of Sonya Lewis be and hereby is GRANTED; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: May 28, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3511-80

AGENCY DKT. NO. 79-EA-134

IN THE MATTER OF:

SONYA LEWIS,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: February 24, 1981

Received by Agency: April 10, 1981

Decided: April 10, 1981

Mailed to Parties: April 14, 1981

APPEARANCES:

Daniel L. Cohen, Esq., for applicant (Land & Finifter, attorneys)

Jane G. Lafferty, Deputy Attorney General, for respondent (John J. Degnan, Attorney General of New Jersey, attorney)

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

This matter concerns the application of Sonya Lewis to the Casino Control Commission for renewal of a license permitting her to work in a casino hotel as a cashier. By letter report to the Casino Control Commission, dated July 17, 1979, the Division of

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Gaming Enforcement interposed an objection to the renewal of the applicant's casino hotel employee license. The applicant was advised by letter from the Casino Control Commission, dated September 20, 1979, that there was a "substantial possibility" that the Commission would deny her application and that she had a right to a hearing. The applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

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

1. Whether the applicant has established by clear and convincing evidence her reputation for good character, honesty and integrity, within the meaning of section 89b of the Casino Control Act, as incorporated in section 91b of the Act.

2. Whether the applicant has been convicted of any offense which would indicate under section 86c(4) of the Casino Control Act, as incorporated in section 91b of the Act, that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations.

3. Whether, notwithstanding her conviction of any offense which would be a disqualifier from licensure pursuant to section 86c(4) of the Act, the applicant has demonstrated her rehabilitation pursuant to section 91d of the Casino Control Act.

The applicant is a twenty-eight year old mother of two children who has lived in Atlantic City, New Jersey since 1976. In June 1978, the applicant was licensed as a casino hotel employee and was hired to work as a cashier at Resorts International Hotel Casino. During the early morning hours of July 16, 1978, the applicant was arrested at Resorts International Hotel Casino on the charge of solicitation for prostitution, in violation of N.J.S.A. 2A:170-5. After a trial in the Atlantic City Municipal Court the applicant was convicted of this offense on September 14, 1978, (Exhibit R-1).

It is well settled that the applicant's conviction, established by evidence satisfying the burden of proof beyond a reasonable doubt, cannot be collaterally attacked

or relitigated in an administrative proceeding. Nevertheless, testimony concerning the circumstances giving rise to the conviction is relevant to the material issues in this matter.

Testifying on her own behalf, the applicant stated that she had celebrated her birthday on the evening of July 15, 1978, by going to Resorts International Hotel Casino with her sisters Cheletha and Davida Lewis. It had been there intention to play the slot machines and then go to the discotheque. However, the slot machine area was crowded, and the sisters went to the discotheque at about midnight and remained there until the early morning hours.

The applicant testified that she left her sisters for a moment for a trip to the ladies' room near the Rendezvous Room. When she returned, she noticed that two men were standing near her sisters, and during a short period of time, both her sisters approached her and mentioned the men to her. According to the applicant, one of the men then approached and said that the women were under arrest for "soliciting or prostitution." It was the testimony of the applicant that her sisters were neither arrested nor charged with solicitation or prostitution.

Former Atlantic City Police Detective Edward Rush testified on behalf of the Division of Gaming Enforcement. On July 16, 1978, Mr. Rush worked part-time as an undercover detective at Resorts International Hotel Casino. Mr. Rush recalled testifying in the Atlantic City Municipal Court during the applicant's trial on the charge of solicitation for prostitution. (The transcript of that trial on September 14, 1978, was admitted into evidence as Exhibit P-1.) Mr. Rush recalled that the applicant had approached him on July 16, 1978, and had mentioned providing sex for a price. According to Mr. Rush, he then identified himself and placed the applicant under arrest for solicitation for prostitution.

Pursuant to section 86c(4) of the Casino Control Act, the Commission shall deny licensure to any applicant convicted of an offense which indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations. A conviction of solicitation for prostitution on the record of a previously unlicensed applicant for a casino hotel employee license, would not by necessity establish that licensure would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Thus, licensure of such an applicant may not be inimical to the policy of the Casino Control Act.

However, the public confidence in the integrity of the regulatory process would justifiably be undermined by the renewal of a casino hotel employee's license, if that employee has been convicted of solicitation for prostitution occurring on the premises of the employing casino hotel.

Nevertheless, pursuant to section 91d of the Casino Control Act, the applicant shall not be denied a casino hotel employee license on the basis of her conviction of an offense which would otherwise indicate that licensure would be inimical to the policy of the Act, if she has affirmatively demonstrated her rehabilitation.

In determining whether the applicant has affirmatively demonstrated her rehabilitation, the following factors should be considered:

(1) the nature and duties of the position applied for;

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

(5) the age of the applicant when the offense was committed;

(6) whether the offense was an isolated or a repeated incident;

(7) any social conditions which may have contributed to the offense;

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

Here, the applicant seeks renewal of a license which would permit her to work in a casino hotel as a cashier. While licensed and employed in this position, the applicant was convicted of solicitation for prostitution. The seriousness of this offense is magnified by its commission on the premises of the applicant's casino hotel employer. However, it appears that the applicant has no record of criminal involvement aside from her one conviction of solicitation for prostitution.

The applicant testified that she had a good work record while employed at Resorts International Hotel Casino, but she did acknowledge that she had been written up for being late. According to the applicant, she is presently unemployed, and has held only one job since leaving her position at Resorts International. However, it was the testimony of the applicant that she has sought employment all over the Atlantic City area, but that no one has been hiring.

Testimony was also offered by the applicant that her children are attending school, achieve excellent grades, and that she is able to support these children by receipt of Aid to Families with Dependent Children benefits. Finally, a letter of recommendation, written on behalf of the applicant by Pastor Fred D. Tennie, Jr., was admitted into evidence as Exhibit P-2.

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

1. The applicant has applied for renewal of a license to permit her to work in a casino hotel as a cashier.

2. After a trial in the Atlantic City Municipal Court on September 14, 1978, the applicant was convicted of solicitation for prostitution, in violation of N.J.S.A. 2A:170-5.

3. The applicant's solicitation for prostitution occurred on the premises of her casino hotel employer.

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4. The applicant is presently unemployed, having quit the only employment which she was able to obtain since her conviction.

5. The applicant has no record of criminal involvement aside from her 1978 conviction of solicitation for prostitution.

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this Act are designed to extend strict state regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the applicant is disqualified from renewal of licensure, on the basis of her conviction of an offense which indicates that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(4) of the Act. I further **CONCLUDE** that the applicant is unable to overcome this disqualification from licensure due to her failure to demonstrate by clear and convincing evidence her rehabilitation, within the meaning of section 91d of the Act. Finally, I **CONCLUDE** that the applicant is disqualified from licensure based upon her failure to prove, by clear and convincing evidence, her qualifications for licensure, within the meaning of section 86a of the Casino Control Act.

It is, therefore, **ORDERED** that the application of Sonya Lewis for renewal of a casino hotel employee license is **DENIED.**

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

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

April 10, 1981
DATE

Joseph D Fidler
JOSEPH D FIDLER, ALJ

Receipt Acknowledged:

April 10, 1981
DATE

Nancy A. Shudak
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

April 14, 1981
DATE

Elizabeth J. Lazzara, Bs.
OFFICE OF ADMINISTRATIVE LAW

sub

276.

INVENTORY OF EXHIBITS

For the applicant:

P-1 Transcript of proceedings on September 14, 1978

P-2 Letter of recommendation dated September 29, 1980

For the Division of Gaming Enforcement:

R-1 Certified complaint and conviction record dated September 14, 1978

R-2 Application for hotel employee license renewal dated May 15, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 5782-80
CCC DOCKET NO. 80-EA-124

IN THE MATTER OF THE APPLICATION OF	:	
ANNETTE MACKEY FOR LICENSURE AS A	:	FINAL ORDER
CASINO EMPLOYEE (DEALER)	:	

This matter having been brought before the Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein dated February 23, 1981; and the Commission having carefully considered the entire record of the proceedings and the said Initial Decision; and the Commission, at its public meeting of April 29, 1981, having resolved to reject the Initial Decision and to grant the application for licensure,

IT IS on this 4th day of May 1981, ORDERED that the Initial Decision of the Office of Administrative Law be and is hereby REJECTED by the Commission; and

IT IS FURTHER ORDERED that the application of Annette Mackey for licensure as a casino employee (dealer) be and is hereby GRANTED based upon the Commission's findings that: (1) the Applicant, in light of her limited education and understanding of the question asked, did not with intent or with conscious disregard of the regulatory process fail to disclose two juvenile arrests and convictions dating from 1956 and 1959; and (2) the Applicant has established her reputation for good character, honesty and integrity by clear and convincing evidence; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: May 4, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5782-80

AGENCY DKT. NO. 80-EA-124

IN THE MATTER OF:

APPLICATION OF
ANNETTE MACKEY
FOR LICENSURE AS A
CASINO EMPLOYEE (BLACKJACK)

Record Closed: January 23, 1981

Received by Agency:

Decided: February 20, 1981

Mailed to Parties:

APPEARANCES:

Nathan Davis, Esq., for the Applicant Annette Mackey

Steven D. Schrier, Esq., Deputy Attorney General, for the Respondent Division of Gaming Enforcement

BEFORE JEFF S. MASIN, ALJ:

Annette Mackey seeks permanent licensure as a Casino Employee (Blackjack Dealer). Her application is opposed by the Division of Gaming Enforcement. Ms. Mackey sought a hearing and the Casino Control Commission transferred the case to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1, et seq. A hearing was held before Administrative Law Judge Jeff S. Masin on January 23, 1981 at the Office of Administrative Law in Trenton.

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As part of her application, Ms. Mackey filed with the Commission a Personal History Disclosure-2 Form, J-1 in evidence. The form contains Question No. 45 which reads:

> "Have you ever been arrested or charged with any juvenile offense whether in this State or in any other jurisdiction?"

Ms. Mackey's answer to this question was "No".

Question 46 reads:

> "Have you or has any member of your immediate family (as defined on page IV of the application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?"

Ms. Mackey answered, "No".

By letter of June 25, 1980, the Division of Gaming Enforcement, in opposing Ms. Mackey's licensure, advised that it had determined that she had in fact been convicted on two occasions of offenses in Virginia and that the failure of the Applicant to divulge this information in her Personal History Disclosure Form required a denial of licensure pursuant to Section 86B of the Casino Control Act, N.J.S.A. 5:12-86b.

Prior to the commencement of testimony herein, counsel stipulated that:

1. The Applicant was arrested as a juvenile in July 1956 and charged with soliciting for immoral purposes. She was convicted of this offense and sentenced to six months probation.

2. The Applicant was arrested in December 1959 and charged with juvenile delinquency. She was convicted of this charge and sentenced to a term of three months to three years at the State Farm for Women at Goochland, Virginia.

3. The Applicant failed to disclose either of the above arrests and convictions on her Personal History Disclosure Form No. 2 in response to Question No. 45 or Question No. 46. This form was filed with the Casino Control Commission in August, 1979.

The Casino Control Act, N.J.S.A. 5:12-86a provides that an applicant is required "to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this Act; ...".

Section 90 provides that each:

> "Applicant for a casino employee license must, prior to the issuance of any ...license, produce sufficient information, documentation and assurances to meet the qualification criteria ...contained in subsection b of Section 89 ... ."

Section 89b(2) requires an applicant for a casino key employee license to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Finally, Section 86 provides that the

> "Commission shall deny a casino license to any applicant who is disqualified on the basis of ...:
>
> a. ...
>
> b. Failure of the applicant 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 the qualification criteria."

Since the parties have stipulated both the arrests and convictions and the failure of Ms. Mackey to note these items in answer to either Question 45 or 46, the sole issues before me are whether this failure constitutes the type of act for which Section 86b requires a mandatory disqualification from licensure. During the hearing, based on the testimony of the witnesses, it was agreed and stipulated between the parties that there was no dispute that Ms. Mackey had in fact fully and completely answered Question 46 in a truthful manner. However, while it was agreed that there had been no violation of her obligations to provide information of a truthful nature with respect to the answer to this question, it was agreed that her failure to note her juvenile arrests and convictions in either Question 45 or, while not required, incidentially in the answer to Question 46, was a circumstance to be considered with respect to the determination of whether she had failed to provide material information.

The Applicant testified as the first witness. She lives in Somers Point, New Jersey and has been in the Atlantic City area for a year and a half. She is presently

an unlicensed dealer at Bally's Park Place Casino. Prior to her arrival in the Atlantic City area, she resided in New York State, working for ten years as a Psychiatric Attendant at Rockville State Hospital.

Ms. Mackey acknowledged that she had filled out the Personal History Disclosure-2 Form and had signed the same. She recalled having seen Questions 45 and 46. When she read Question 45 she did so in a hurry, as is her habit. She answered, "No." She stated that she was mostly concerned about whether she had ever been arrested. She was not thinking about matters occurring on a "childhood level" or "delinquent level". She thought she was being truthful when she responded. She is almost sure that when she answered Question 45 she did not understand it. She first became aware of her arrest when an investigator from the Division of Gaming Enforcement called her. When he mentioned her 1959 arrest she realized that she must have forgotten about it. She did not deny her arrests to the investigator. She testified that she didn't think that something so many years ago was important. She had "washed" the incident "out of her mind".

Ms. Mackey stated that she had left her job at the Rockville State Hospital because after 10 years she was tired of the job. She said that she "tended to forget things after so long."

On cross-examination, the Applicant said that she might not have read the whole of page 2 of the Personal History Disclosure-2 Form. This page contains a section entitled, "Personal History Disclosure Form" and provides instructions for filling out the form which advise the applicant to answer each question completely and then states:

> "Under the Casino Control Act, failure to provide information, documentation or assurances 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 is grounds for denial of a license. Failure to properly complete and return this form may result in removal of your name or the name of the applicant business from further consideration by the Commission."

Ms. Mackey advised that she did not remember if she had read these instructions. No one helped her fill out the form. She thinks she read and understood the statutory language on Page 2 to the "best of her knowledge." She did remember reading paragraphs one through four on Page 24 of the form which state:

"1. I am the applicant identified in Question No. (sic) one (1) of this application form.

2. I personally typed the responses to this application form or personally supplied the information to be typed to the typist.

3. I understand the English language or I have had an interpreter read, explain and record the answer to each and every question on this application form.

4. I swear (or affirm) that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment."

Ms. Mackey acknowledged the signature on Page 24 to be hers. She further stated that she understood Question 45 to the best of her knowledge.

Ms. Mackey believed that she had spoken to the Division investigator in March or April of 1980. The detective called her and said he was calling to verify "different things". He did not read questions to her directly from the form. He did ask her why she didn't answer "yes" to Question 45. She then stated that she was not sure if he had read Question 45 to her. He did not read the language contained on Page 26 of the form.

The Applicant acknowledged her arrest in Virginia in 1959. She was in a state farm for a very short time. This occurred about 20 years ago.

Ms. Mackey acknowledged that she had told the investigator that she did not think the arrest was important. She said that when he asked her initially about arrests she was not thinking about this juvenile affair. She admitted the arrest when it was brought to her attention. She denied ever telling the investigator that she would "let the chips fall where they may", a term whose meaning she claimed not to understand.

The Applicant stated that she had not failed to note the arrests out of any fear that such a revelation might adversely affect her licensure. She merely had put these bad experiences out of her mind and forgotten about them.

On redirect examination, Ms. Mackey stated that she thinks she had completed 8th grade. She did not intentionally fail to answer Question 45 truthfully.

Detective William J. Perna of the New Jersey State Police was the sole Division witness. Detective Perna is assigned to the Division of Gaming Enforcement and

is a six year State Police veteran with two and a half years experience at the Division working in confidential background investigations. In March, 1980, after receiving Mackey's personal history disclosure form and information regarding a criminal record, he called her and identified himself, explaining that he was calling for the purpose of reviewing and up-dating the information on the personal history disclosure form. He read the section marked "important" on Page 26 of the form verbatim to Mackey. He then read Question 45 and 46 verbatim as well as the additional instructions for Question 46 contained at the top of Page 26. He then asked the Applicant if she understood and she said she did. She answered Question 45 "No" and 46 "No". She stated she knew that false answers could lead to denial of licensure. He then told her that he had a rap sheet regarding arrests in Virginia. He asked why she had not listed these incidents on the form and Ms. Mackey replied that she did not think they were important. She seemed a little irritated when the arrests were first brought up and commented at one point that she would have to "let the chips fall where they may."

On cross-examination, Perna acknowledged that the answer to Question 46 was correct. He stated that he had reviewed the form with Ms. Mackey beginning at Page 1 and going right on through the report. Perna took notes and then put the notes in typed form. The notes were then destroyed and the typed report sent to the Division's legal section. No copy of this typed report was ever submitted to the Applicant.

Perna stated that it was his policy to read Questions 45, 46 and the additional instructions in full and then after receiving answers to 45 and 46, disclose the existence of the rap sheet.

Ms. Mackey did acknowledge that she had indeed been arrested and convicted as the rap sheet disclosed. She said that she did not feel the matters were important. She never said that she did not understand the questions.

DISCUSSION

The sole grounds presented by the Division in opposition to the licensure of the Applicant arise from her failure to list her juvenile arrests and convictions on the Personal History Disclosure-2 Form. Since the 2nd and last of these incidents in 1959, the Petitioner has accumulated a 21 year record of apparent good citizenship covering her entire adult life. Now, as she attempts to gain a license which would permit her to

continue in a presumably well paying and responsible position, her juvenile record has once again surfaced.

The only issue before me, in light of the stipulations recited above and incorporated herein as findings of fact, is whether Ms. Mackey purposely, knowingly and intentionally failed to list the juvenile matters in answer to Question 45 or whether, as she asserts, she had forgotten the matters, having blanked them out of her mind and only remembered them when Detective Perna called them to her attention. If the former be the reason for her actions, then the failure bespeaks of an attempt at evasion and deceit, perhaps motivated by fear and uncertainty. If the latter reason be the explanation, then such mere forgetfulness certainly does not rise to a level of blameworthiness requiring the sanctions of Section 86B.

The difficulty with Ms. Mackey's story seems to lie in a rather clear and straightforward wording of Question 45. One reading it with any understanding at all would be hard pressed not to know that the question sought information as to juvenile matters. No reference to any other proceedings, except for juvenile arrests and/or charges, is made. There is really nothing in the question which could confuse a reader so long as she/he understood such terms as "arrest", "charge" and "juvenile".

In this case, the Applicant testified that she probably read this question quickly, as is her habit. Such a lack of concentration and any resultant careless failure to list the proper information is perhaps not entirely unlikely, but given the serious nature of the application and the instructions on Page 2, it is certainly not to be condoned.

Ms. Mackey testified that she believed she had understood Question 45 when she read it. I FIND that she did. I also FIND that Detective Perna did read her Question 45 in full when he called her and that she understood the question at that time as well. I FIND that the Applicant was aware that the form required her to reveal her past juvenile record. I FIND that she was aware of that record when she answered the form and when Detective Perna questioned her. I FIND that she did know that she was not being truthful when she answered the question in the negative. It may indeed be, as counsel for the Division inquired, that she withheld the information out of concern that to reveal it would adversely affect her chances of licensure. But I cannot believe that she had so totally eliminated from her mind any consciousness of these events that her memory was not jogged by so straight-forward a question. While such a mental blank is

not necessarily impossible, the proofs of it here are not convincing. It may be that Ms. Mackey was more prone to have forgotten the probation incident of 1956. However, the 1959 incident involved incarceration at a State farm. Even if the time was short, it was somewhat unlikely that someone presented with so straight-forward a question would not recall such a serious event.

The Casino Control Commission is entitled to receive from an applicant a full and honest accounting of those facets of the applicant's life history which are the subject of the questions in the personal history disclosure form. This Applicant willfully withheld such information. While the result is certainly unfortunate, especially in light of her spotless adult record and the possibility that had she disclosed the information she would have still received a license, the act requires a denial of licensure. Since I CONCLUDE that the Applicant failed to provide information required by the Act or requested by the Commission and failed to reveal facts material to qualification, as well as supplied misleading and untrue information as to material facts pertaining to qualification, I am required to conclude that the Applicant's license application must BE DENIED. It is so ORDERED.

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

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

February 20, 1981
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

Feb. 23, 1981
DATE

CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

plb

EXHIBITS IN EVIDENCE

Joint Exhibit:

J-1 - Personal History Disclosure Form-2, filed by Annette Mackey in August, 1979.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-EA-5

IN THE MATTER OF THE APPLICATION	:	
OF RAMON MARSICO FOR LICENSURE AS	:	FINAL ORDER
A CASINO EMPLOYEE (FLOORPERSON)	:	

This matter having been opened to the Casino Control Commission at its public meeting on February 11, 1981, and the Commission having considered the entire record of the proceedings, the settlement proposed by the parties and the Initial Decision of the Administrative Law Judge which embodies the proposed settlement, and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to grant Ramon Marsico's amended application for licensure as a casino employee (blackjack dealer).

IT IS on this 23rd day of February 1981 ORDERED that the Initial Decision of the Administrative Law Judge be and hereby is adopted in its entirety; and

IT IS FURTHER ORDERED that the application of Ramon Marsico for licensure as a casino employee (blackjack dealer) be and hereby is GRANTED for the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: February 23, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5322-80

AGENCY DKT. NO. 80-EA-5

IN THE MATTER OF:

THE APPLICATION OF RAMON MARSICO FOR LICENSURE AS A CASINO EMPLOYEE (FLOORPERSON)

Record Closed: 12/24/80.
Received by Agency: 1/9/81

Decided: 1/6/81
Mailed to Parties: 1/13/81

APPEARANCES:

Alfred Bennington, Jr., Esq., Attorney for Petitioner
(Blatt, Blatt, Mairone & Biel, Esqs., attorneys)

John A. Menite, Deputy Attorney General, for Division of Gaming Enforcement

BEFORE **JAMES A. OSPENSON**, ALJ:

This is a Casino Control Commission licensure proceeding in which Ramon Marsico applied for casino employee licensing as floorperson under N.J.S.A. 5:12-7, 89(b),

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90. Having filed his application originally on April 23, 1979, applicant was informed by the Commission that based on information contained in the investigative reports of the Division of Gaming Enforcement of November 28, 1979 and later May 30, 1980, there was "a substantial possibility that the Commission will deny (his) application." On August 11, 1980 applicant exercised his right to request a hearing on the proposed denial, pursuant to N.J.A.C. 19:42-2. The matter was transmitted to the Office of Administrative Law on August 22, 1980 for hearing and determination as a contested case in accordance with N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on September 26, 1980 in the Office of Administrative Law and an order entered. Before commencement of the formal hearing on December 8, 1980, the Division of Gaming Enforcement announced that the matters in dispute predicating objections to licensure by the Division had been settled amicably by the parties on terms that would permit applicant's licensure as blackjack dealer instead of floorperson. The terms of settlement were spread upon the record of the proceeding on December 8, 1980 and later confirmed by letter from applicant's attorney to the Office of Administrative Law filed on December 24, 1980, at which time the record herein was closed.

The prehearing conference order of September 26, 1980 established the following as issues:

A. Whether applicant's conviction in U.S.D.C., Philadelphia in 1969 for receiving stolen property is the equivalent under N.J.S.A. 5:12-86(c)(2) and (4), and thus disqualifying from licensure, of a conviction in N.J. under N.J.S.A. 2A:119-3 or N.J.S.A. 2A:139-1 (the Division shall allege the equivalency non-alternatively and advise applicant no later than 10 days before hearing).

B. Whether applicant shall have met the casino experiential requirements of N.J.S.A. 5:12-89(b)(3) and N.J.A.C. 19:41-7.18(c)(1) for floorperson.

C. Whether, by alleged commission of acts of welfare fraud in Philadelphia in 1971, which acts, though not prosecuted there, would nevertheless constitute a disqualifying offense in N.J. under N.J.S.A. 5:12-86(c), applicant is thereby disqualified from licensure under N.J.S.A. 5:12-86(g). (Should there be found applicant filed herein a single application on April 23, 1979, the alleged equivalent N.J. disqualifying of-

fense is N.J.S.A. 2A:111-2, 3. Should there be found applicant filed herein a second or superseding application in January, 1980, the alleged equivalent N.J. disqualifying offense is N.J.S.A. 2C:20-4.).

D. Whether applicant shall have proven by clear and convincing evidence his reputation for good character, honesty and integrity, as required by N.J.S.A. 5:12-89 (b).

E. Whether applicant shall have proven by clear and convincing evidence his rehabilitation from conviction of crime, pursuant to N.J.S.A. 5:12-90(h).

F. The Division stipulates withdrawal of objection to licensure based on applicant's residency.

In broad outline, the terms of settlement involved the Division's withdrawal of objections to licensure on issues A, C, D, E, and F as set forth in the prehearing conference order. That is to say, the Division announced that by subsequent investigation it was satisfied that the applicant's conviction in U.S.D.C., Philadelphia in 1969 for receiving stolen property was beyond the 10 year period before applicant's application was filed, that there did not appear to have been alleged acts of welfare fraud committed by the applicant in Philadelphia in 1971, that the applicant had proven by clear and convincing evidence his reputation for good character, honesty and integrity, and that applicant had proven by clear and convincing evidence his rehabilitation from conviction of crime.

It was agreed by and between the applicant and the Division of Gaming Enforcement, however, that applicant consented to modify and limit his application for casino employee licensure to blackjack dealer instead of floorperson. The Division was satisfied, for its part, that applicant met and satisfied the experiential requirements for such license within the meaning of N.J.S.A. 5:12-90(b) and N.J.A.C. 19:41-7.17(b). It was understood generally by the applicant that for any future licensure he would have to meet and satisfy any other experiential requirements of statute and code in the usual way.

Under all the circumstances, I **FIND** the settlement reasonable and in the public interest. Accordingly, I **ORDER** applicant be licensed as a casino employee (blackjack dealer), pursuant to N.J.S.A. 5:12-7, 89(b), 90, but I **ORDER FURTHER**, nonetheless, that such licensure be endorsed to reflect, presently, only the subject area of blackjack dealer, pursuant to N.J.S.A. 5:12-7, 89(b), 90 and N.J.A.C. 19:41-7.17(b).

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

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

January 6, 1981
DATE

James A. Ospenson
JAMES A. OSPENSON, ALJ

Receipt Acknowledged:

1/9/81
DATE

David Arnaiz
CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

January 13, 1981
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

thf

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 5829-80
CCC DOCKET NO. 80-EA-126

IN THE MATTER OF THE APPLICATION :
OF RUDY Q. PACHECO FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (FLOORPERSON) :

The hearing having been conducted in the above-captioned matter before the Honorable Jeff S. Masin, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge, no exceptions having been filed by the parties; and the Commission having resolved at its public meeting of June 17, 1981, to adopt the Initial Decision as modified herein and to deny the application for licensure;

IT IS on this 30th day of June 1981, ORDERED that the Initial Decision of the Administrative Law Judge be and hereby is adopted by the Commission except as modified below; and

IT IS FURTHER ORDERED that the portion of the Initial Decision which finds that the Applicant is a career offender be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the Applicant be and hereby is disqualified for his failure to show by clear and convincing evidence his good character, honesty and integrity; and

IT IS FURTHER ORDERED that the application of Rudy Q. Pacheco for licensure as a casino employee be and hereby is denied for the reasons stated in the Initial Decision which, as modified above, is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: June 30, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5829-80

AGENCY DKT. NO. 80-EA-126

IN THE MATTER OF:

RUDY Q. PACHECO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Charging Party.

Record Closed: March 20, 1981

Received by Agency:

Decided: April 27, 1981

Mailed to Parties:

APPEARANCES:

Rudy Q. Pacheco, Pro Se

Steven D. Schrier, Deputy Attorney General, for the Division of Gaming Enforcement

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

Rudy Q. Pacheco seeks licensure as a casino employee(floor person in craps). The Division of Gaming Enforcement, after conducting a review of Mr. Pacheco's application and performing other investigatory procedures, issued a letter to the applicant on August 6, 1980 advising him that the Division was opposed to his licensure and that there was a substantial possibility that the Commission would deny the application. The applicant requested a hearing and the matter was then forwarded 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 December 1, 1980 and a Prehearing Order issued on January 7, 1981. The hearing was held on March 20, 1981.

The Prehearing Order established the issues for consideration by the Administrative Law Judge. Essentially, they are concerned with whether the applicant meets the duration of residency requirement contained in N.J.S.A. 5:12-90 and 5:12-89(b)(4) and whether the applicant's activities in the City of New York related to gambling activities constitute actions which, on any of several grounds, require denial of licensure.

The facts surrounding the New York incidents are not disputed. Mr. Pacheco had informed the Division that he was employed as a dealer at Las Vegas Nights held in a synagogue in Queens. According to Pacheco's testimony, he began working in this operation in August 1977. He was employed approximately three nights a week, although not every week. He was paid $100 a night and paid no taxes on this money. He had obtained employment through a friend who had been approached by the synagogue's committee. The synagogue advertised the Las Vegas Nights openly and Mr. Pacheco claimed that he did not know they were illegal at the time he was working there. Mr. Pacheco did not list this employment on his original application to the Commission for licensure. He did mention it when the Division's investigator questioned him about his sources of income. He had not listed it because he did not feel it was a regular job.

In addition to his employment at the Las Vegas Nights, Mr. Pacheco testified that he was employed by a private concern at a gambling facility located on 83rd Street, next door to the Lexington Democratic Club. During his employment at this facility, Mr. Pacheco was arrested along with 17 others by the New York City Police Department. Documents received in evidence indicate that Mr. Pacheco was charged with promoting gambling, a violation of the New York Penal Code.

According to Mr. Pacheco, he took the jobs in New York because he had no other employment and his bills were piling up. The applicant admitted that his employment in illegal gambling operations still continues.

Mr. Pacheco was formerly employed in Puerto Rico as a croupier from January 1960 to 1977. He came to New York in 1977 when the Americana Hotel in Puerto Rico, at which he was employed, closed down and there were no other jobs available for dealers.

Mr. Pacheco has never lived in New Jersey and has attended no gaming school within this state. He is a resident of Brooklyn.

The Division of Gaming Enforcement presented testimony from Officer Gerald A. Froman and Sergeant Timothy Connolly of the New York City Police Department's Organized Crime Control Bureau. These officers were involved in the raid on the illegal gambling establishment at which Mr. Pacheco was arrested. Officer Froman described the dealers, including Pacheco, as being dressed in uniforms consisting of suits with vests. Sergeant Connolly indicated that the operation was a very large one with numerous blackjack tables, baccarat tables and dice tables. Approximately $25,000 was found in a closet. The operation included kitchen facilities and a liquor closet. Approximately 50 patrons were present at the time of the raid. According to both Officer Froman, and a letter received from Mr. Pacheco's attorneys, the charges against Pacheco, contained in the misdemeanor information filed against him, were disposed of on July 1, 1980 by an adjournment in contemplation of dismissal pursuant to Section 170.55 of the New York Criminal Procedure Law. Officer Froman testified that for someone to receive an adjournment in contemplation of dismissal one had to initially enter a plea of guilty. However, if the defendent does not get arrested or have other difficulties within a six-month period after the adjournment, the charges will be dismissed. This procedure appears to be similiar to the conditional discharge procedures contained in Title 24 of the New Jersey Statutes.

Detective Joseph Sarnecky of the New Jersey State Police, assigned to the Division of Gaming Enforcement, testified that he had conducted a telephone interview on November 13, 1979 with Mr. Pacheco. During the interview, Sarnecky asked Pacheco about his present employment and the applicant told him about his employment at the Las Vegas Nights. When he was asked the name of his supervisor and the location of the synagogue, he refused to give these. He said that he knew that the activity was illegal and that he could be arrested. He also indicated that he was not paying taxes and that this employment constituted his sole source of income. Mr. Pacheco testified that he did not remember if he refused to answer who was paying him and was not sure if he had said that he had been paying no taxes on the money received from the Las Vegas Nights employment. He also did not recall whether he had told the detective that he knew the activity to be illegal. He insisted that at the time he did not know whether it was illegal or not.

DISCUSSION, FINDINGS AND CONCLUSIONS

It is abundantly clear from the testimony that the applicant has been engaged in employment as a dealer in illegal gambling activities in the State of New York. Mr. Pacheco indicated that he initially did not know whether the Las Vegas Nights were illegal. However, he did not make the same claim with respect to the private club in which he was employed and in which he was arrested. In fact, all of the activity was illegal.

The Division has established by a preponderance of the evidence that Mr. Pacheco was engaged as a dealer in illegal gambling activities. This activity, if carried on in the State of New Jersey, would constitute a violation of N.J.A.C. 2C:37-2(a)(2), Promoting Gambling. An analysis of this activity, which is of very recent vintage and which, according to the testimony of the applicant, still continues, indicates that it is inimical to the policies of the Casino Control Act. I **FIND** that the applicant did know that his activities at 83rd Street were illegal. I **FIND** that he has continued to engage in these illegal activities even following his arrest. I **CONCLUDE** that one who has so acted, and who continues to so act in clear and intentional violation of the law, is and has engaged in practices which are inimical to the policies of the Casino Control Act, which seeks to prevent illegal activities related to the otherwise legalized gambling industry in this State.

The testimony of Detective Sarnecky, which I found to be credible, indicates that Mr. Pacheco was reluctant to provide details as to his employer at the Las Vegas Nights. Further, at the hearing, the witness refused to indicate who the friend was who had brought him into such employment. This failure to openly and honestly provide information, which, in light of the nature of the activities involved, might well be material to determinations as to the acceptability of Mr. Pacheco for licensure, constitutes a further ground for denying the licensure, N.J.S.A. 5:12-86(b).

Mr. Pacheco has previously engaged and continues to engage in illegal behavior of an occupational manner for the purpose of economic gain. While there has been no indication that he is a beneficiary in terms of being an operator of the illegal gambling activities in New York, he is paid for his services. He continues to violate the law in these pursuits. While his record does not contain any criminal convictions, and while the

arrest in New York has not ended in a conviction, I do believe that he is a career offender, as that term is defined in N.J.S.A. 5:12-86(f).

Finally, it is clear that the applicant never lived in New Jersey and does not meet the present residency requirements.

In light of the above, I **CONCLUDE** that the application of Rudy Pacheco for licensure as a casino employee must be **DENIED.** It is so **ORDERED.**

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

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

DATE — **JEFF S. MASIN,** ALJ

Receipt Acknowledged:

April 28, 1981
DATE

Nancy Q. Stuhl
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

DATE — OFFICE OF ADMINISTRATIVE LAW

sub

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EXHIBITS IN EVIDENCE

On Behalf of the Applicant Rudy Q. Pacheco:

P-1 - Letter, dated April 1980 from Honorable John J. Santucci, District Attorney, Queens County, New York

P-2 - Letter, dated September 26, 1978, from Gordon Schneider, Director, Personnel, Americana Hotels, to Mrs. C. Rizzo, President, Casino Dealers Center

P-3 - Letter, dated March 11, 1981, from Joseph Ruffalo, White Institutional Services, Inc.

P-4 - Letter, dated March 17, 1980, from Hector G. Gonzalez, Acting Director, Gaming Department, Commonwealth of Puerto Rico Tourism Company

P-5 - Letter, dated March 12, 1981, from Larry Monteforte

P-6 - Application for Certificate of Penal Record, Puerto Rico Police

P-7 - Letter, dated July 18, 1980, from Richard J. Reisch, Esq.

Joint Exhibits:

J-1 - Application form submitted by Rudy Pacheco and received by New Jersey Casino Control Commission on July 25, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-EA-155
OAL DOCKET NO. CCC 5875-80

IN THE MATTER OF THE APPLICATION :
OF DARRYL S. RAGSDALE FOR :
LICENSURE AS A CASINO EMPLOYEE :
(DEALER) :

FINAL ORDER

This matter having been brought before the Casino Control Commission upon the Initial Decision of the Office of Administrative Law dated March 5, 1981; and the Commission having carefully considered the entire record of the proceedings and the said Initial Decision; and the Commission at its public meeting on May 6, 1981, having resolved to reject the Initial Decision and to grant the application for licensure,

IT IS on this 19th day of May 1981, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the application of Darryl S. Ragsdale for licensure as a casino employee (dealer) be and is hereby granted based upon the Commission's findings that (1) the Applicant did not with intent or with conscious disregard of the regulatory process fail to disclose requested information on his Personal History Disclosure Form; and (2) the Applicant has established his reputation for good

character, honesty and integrity by clear and convincing evidence; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: May 19, 1981.

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5875-80

AGENCY NO. 80-LA-155

IN THE MATTER OF:

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,
Charging Party
v.
DARRYL RAGSDALE,
Respondent.

Record Closed: February 3, 1981
Received by Agency: 3/6/81

Decided: March 5, 1981
Mailed to Parties: 3/11/81

APPEARANCES:

Richard T. Fauntleroy, Esq. (Tomar, Parks, Seliger, Simonoff & Adourian, Attorneys), for Petitioner

Steven D. Schrier, Deputy Attorney General (John J. Degnan, Attorney General of New Jersey, Attorney), for Respondent, Division of Gaming Enforcement

BEFORE **SOLOMON A. METZGER**, ALJ:

The Division of Gaming Enforcement (Division) has recommended to the Casino Control Commission that Darryl Ragsdale be denied a license as a Blackjack Dealer as a result of alleged failures to disclose information on his application for license, (Personal History Disclosure Form or PHDF) and because he has not satisfied the Division

that his character and reputation are such as to entitle him to a license. Respondent sought a hearing to contest these allegations and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1, et seq.

Respondent is twenty-two years old. On July 31, 1978, he signed a PHDF which he then submitted to the Division. Testimony developed the following general areas of dispute.

EMPLOYMENT HISTORY

Part 7 of the PHDF requires that an applicant disclose his prior employment history and more particularly requires that he disclose whether he had ever been "discharged or asked to resign from employment?" (question 33), or whether he had been "charged with any infraction which was the subject of any disciplinary action in connection with employment during the last ten year period?" (question 34). Respondent answered the first of these questions in the negative and provided no response to the second question. He did, however, list his employment history going back from July 31, 1978 the point of application, to December of 1975. Two general areas of dispute arose with respect to these employment disclosures.

He was employed from May of 1977 through January of 1978 at Historic Gardners Basin, a non-profit organization, as a security guard through the CETA (Comprehensive Employment Training Act) Program. His PHDF indicates that he left this position for "better employment". His testimony at the hearing confirmed that in his view his departure from Historic Gardners Basin to take another CETA position as a laborer with the Atlantic City Department of Public Works was a step up. Records in the file of this employer, indicate that respondent's immediate supervisor had on a number of occasions submitted negative reports concerning both his work habits and his personal behavior (S-2a through S-2e), which resulted in a letter being sent from the employer to the Atlantic City Manpower Office on December 29, 1977 (S-2f) as follows:

> "Inclose you fine a few reports on Mr. Darry Ragsdale that were submitted to our office by our Security Supervisor, James Brance, and I am in concordance with him in this matter.
>
> Mr. Hill is there any possible way of having Mr. Ragsdale transferred? We all know how hard it is for a person to get a job in this area, but as Historic Gardners Basin grows our security

department will become more important to us, and we can't have employees in this department that will impair its operation in any way.

If you can help us in this matter we would be very grateful." (sic)

A memorandum dated January 31, 1978 from Mayor Joseph Lazzaro (A-1) makes the following direction:

"Please prepare CS-6 and any other necessary papers to effect termination of Darryl Ragsdale as security guard at the Historic Gardeners Basin. Effective date January 20, 1978."

Respondent explained that he and his supervisor were job competitors for a time at Historic Gardners Basin, and that the negative ratings which he received were the result of friction created during this period. He added that even so, he was not fired but rather was terminated as a result of the temporary nature of the employment and because he sought to move on to better employment with the City of Atlantic City. The applicable Civil Service form filed to reflect the action taken, which classifies various causes for separation from employment, indicates the reason in this case as "termination, temporary employment". Other possible choices were "disciplinary reasons". Though ample space is provided for explanations, the form makes no further comment.

The next area of dispute concerns respondent's employment history with the Atlantic City Department of Public Works. He was employed there from January 29, 1978 through January 26, 1979. At that time he was removed on various charges stemming primarily from his having publicly berated, and threatened a Mr. John Battles, an aid to City Commissioner Pierre Hollingsworth (S-1c through S-1f). Prior to this incident he was suspended for two days on October 4 and 5, 1978 on charges of breaking a telephone at the city yard (S-1h); for two days on May 1 and May 2, 1978 on charges of insubordination, refusal to obey the direct order of a supervisor, and refusal to go to a job site, (S-1j), and for one-day on March 9, 1978 for "causing a disturbance on the job" (S-1n). This first disciplinary action appears to have been the result of a complaint memorandum to Commissioner Hollingsworth from each of the foreman at the city yard detailing an incident of respondent's use of loud and abusive language and insubordination (S-1n).

Respondent explained that he was only generally aware of the suspensions prior to his dismissal and did not omit them on the PHDF intentionally. Additionally, he testified that it was his function to check and report to Commissioner Hollingsworth on the cleanliness of streets which had been cleaned by men in Mr. Battles charge, and that this role created friction between himself and Mr. Battles.

The Division pointed to another area of employment background which it felt went to respondent's ability to handle the position for which he seeks a license. Respondent was employed for approximately one week in May of 1980 as a doorman supervisor at the Bally Park Place Hotel and Casino in Atlantic City. He was dismissed from this position for insubordination and use of rude and abusive language to a Dennis Mooney, the hotel's night manager (S-3a - S-3d). Mr. Ragsdale explained that this dismissal had to do with Mr. Mooney's attempt to infringe upon his prerogatives as doorman supervisor and that his behavior was merely an attempt to protect the interests of his doormen.

ARREST RECORD

In this second general area of dispute, the parties stipulated that respondent had been arrested once prior to filing his PHDF and on a number of occasions thereafter. The Division asserted that he failed to properly disclose this information[1] (part 10, questions 45 and 46) and that these arrests and convictions reflected so adversely on respondent's character as to make his licensure inconsistent with the purposes of the Casino Control Act. The arrest record was stipulated as follows: charged with molesting and interfering on August 27, 1977 and found not guilty on December 19, 1977; charged with armed robbery on August 6, 1978 in Atlantic City, indicted on February 15, 1978 and found not guilty on June 28, 1979; charged with molesting and interfering and malicious damage to property on January 17, 1979, found guilty on May 11, 1979 and placed on one-year probation which was completed successfully; charged with armed robbery and assault on June 3, 1979, resulting in a no bill on August 7, 1979; charged with aggravated assault on March 9, 1980 and found not guilty on April 10, 1980. Charged with assault with a weapon on April 23, 1980, dismissed on July 2, 1980; charged with use of offensive language on May 6, 1980, dismissed on June 18, 1980; charged with aggravated assault on

[1]Though asserting initially that respondent was under an obligation to supplement the July 31, 1978 PHDF with information concerning his subsequent arrest record, this issue was withdrawn at the close of testimony.

May 15, 1980, dismissed; charged with the use of offensive language on May 6, 1980 and found not guilty on July 14, 1980.

The first of these charges, relating to molesting and interferring, arose prior to respondent's having filed his PHDF and the Division took the view that he failed to disclose this. Respondent took the position that while his answer to question 45 which asks whether the Applicant has "ever been arrested or charged with any juvenile offense..." did not specifically identify this particular arrest, the answer does disclose that he was charged with issuing "threats," naming the "juvenile court Atlantic City, New Jersey" as the court in which the matter was heard, and listing the disposition as "probation".

With respect to the arrests which arose after respondent filed his PHDF, respondent sought to explain that the majority of these arose out of domestic quarrels. Indeed there is no dispute that a number of these charges were leveled by his estranged wife, and were ultimately withdrawn, or dismissed. This does not explain the conviction for molesting and interfering and malicious damage to property which arose out of the same incidents for which respondent was dismissed from his position with the Atlantic City Department of Public Works. As this particular incident resulted in both a criminal conviction and Petitioner's dismissal from employment, it might have been valuable to have the matter more fully developed in testimony. However, the Division's case was presented primarily from arrest records and files in the possession of the Atlantic City Department of Public Works. As such it imparted little sense of the circumstances surrounding respondent's behavior and his ultimate dismissal and conviction.

The Division asserted additionally that respondent failed to accurately disclose the conviction record of relatives as per PHDF, question 46. Respondent answered the question "Have you or any member of your immediate family...ever been arrested, indicted, charged with or convicted of a criminal disorderly persons offense..." in the affirmative and listed one incident concerning his brother, Kevin Ragsdale, giving the court as "juvenile, Atlantic City, New Jersey". As it turns out, both his brothers, Kevin and Donny Ragsdale, have more extensive arrest and conviction records prior to July 31, 1978. Respondent explained that he was generally unfamiliar with his two brothers's activities, that they did not live together, and that any failure to disclose was not intentional.

In each of numerous instances in which they were charged and/or convicted of crimes, both Donny and Kevin listed their address as 1818 North Michigan Avenue, Atlantic City. Respondent's PHDF lists two addresses; one at 15 North Indiana Avenue, Atlantic City and the other 1818 Michigan Avenue, Atlantic City. He explained that the Michigan Avenue address was that of his mother where he and his brothers would occasionally stay, but that he actually lived at the Indiana Avenue address.

Respondent presented two respected members of the Atlantic City Community as character witnesses on his behalf; County Freeholder Lillian E. Bryant and Mitchell A. Scott, Project Director of the Atlantic City Chapter of Recruitment and Training Program, Inc. who both testified that they had known respondent for many years and that they believed him to enjoy a respected reputation in the community. They thought that the grant of a license and the possibility of employment in the casinos would help him rise beyond some of his boyhood problems.

Respondent resumed the witness stand after this character testimony to disclose voluntarily that he had been convicted in the week prior to the hearing of using foul and abusive language, that he had been unrepresented at trial, and that the matter would be appealed.

During the course of the hearing respondent exhibited difficulty reading the PHDF and other exhibits which he was asked to review. He testified that he could not read very well and that a friend had helped him fill out the form.

I FIND the facts as follows:

1. Respondent has difficulty reading.

2. Respondent's departure from his position as a security guard at Historic Gardners Basin was due primarily to the receipt of adverse performance evaluations. Though he was not officially fired, his employer requested that the city find him another position. He did not leave for "better employment."

3. Respondent failed to disclose on his PHDF that he had received a one-day suspension on March 9, 1978, and a two-day suspension on May 1 and

2, 1978, as a result of incidents which arose in the course of employment with the Atlantic City Department of Public Works.

4. Respondent and his brothers, Kevin and Donny, list at least one common address, namely the home of their mother.

5. Though respondent disclosed one arrest event for his brother, Kevin, on the PHDF he failed to list other numerous arrests for Kevin and his brother Donny.

6. Respondent adequately disclosed information relating to his one arrest prior to July 1, 1978, the date of his PHDF.

7. Respondent was removed from his employment with the Atlantic City Department of Public Works, on January 26, 1979 on charges of having publically berated and threatened a Mr. John Battles. Additionally, respondent was suspended for two days on October 4 and 5, 1978 on charges of breaking a telephone at the City Yard.

8. Respondent was fired after one week as a doorman supervisor at the Bally Park Place Hotel and Casino for having used rude and abusive language to the night manager.

9. On January 23, 1979 respondent was found guilty of molesting and interfering and malicious damage to property arising out of the incident with Mr. John Battles. Respondent successfully completed a one year period of probation.

10. In the week prior to trial, respondent was found guilty of using foul and abusive language.

The statutory basis for the Division's recommended denial of a license in this instance is based primarily on N.J.S.A. 5:12-86b, which requires that the applicant reveal material facts forthrightly, and upon its assertion that respondent has failed in his affirmative obligation to establish himself as a person of good character, honesty and integrity in accordance with N.J.S.A. 5:12-86, 89 and 90. Additionally, the Division

contends that respondent's convictions for molesting and interfering and malicious damage to property and his conviction in the week prior to the hearing of using foul and abuse language, are individually and together sufficient to disqualify him pursuant to N.J.S.A. 86c(4), as these convictions reflect characteristics inimical to the Act and to casino operations.

The Division presented evidence which adequately establishes that respondent intentionally failed in his obligation to answer the PHDF forthrightly. While respondent was not fired from his position at Historic Gardners Basin, it seems from the correspondence, and the ultimate disposition of the matter by Mayor Lazzaro, that he was transferred from one CETA position to another because Historic Gardners Basin was dissatisfied with his performance. Nothing in the record reflects that his position as a laborer with the Department of Public Works was "better employment" in any sense than the position he left with Historic Gardners Basin. This must be regarded as an intentional deception.

Respondent urged that his difficulties at Historic Gardners Basin were the result of personality conflicts with his supervisor. Even if that were the case, for purposes of the PHDF, and N.J.S.A. 5:12-86(b), the offense is the intent to mislead by reporting that he departed for "better employment" rather than the truthfulness of the assertions contained in the adverse reports.

Respondent's failure to answer the query on the PHDF, concerning prior disciplinary actions must also be regarded as intentional. The two events which might have been disclosed occurred only a few months prior to his filling out the form.

Further respondent was not forthcoming with respect to the arrest and conviction records of his brothers, Kevin and Donny Ragsdale. They do after all live in the same city and list at least one common addresss, that of their mother. As both of his brothers have had a number of arrests, over the course of a few years it is difficult to accept that he was entirely unaware of these. Moreover, this appears to be a violation of N.J.S.A. 5:12-86(b), despite the fact that a complete disclosure under these circumstances, could have carried no stigma for him.

The assertion that respondent failed to disclose his own arrest record prior to July 31, 1978 is not founded. The only arrest which the response on the PHDF could

correlate with, is the molesting and interfering charge of August 27, 1977. Though he may not have written it in the most precise manner, it was disclosed.

Respondent did evidence some difficulty in reading and counsel saw in this an explanation for the incomplete answers, inaccuracies and omissions on the PHDF. However, respondent did sign the certification on the form indicating that he understood its content, and throughout the trial exhibited an excellent memory for facts concerning the various charges and countercharges filed in respect to his criminal arrests and disciplinary proceedings. I simply do not accept that he misstated himself, or failed to answer completely, in inadvertance.

These three separate disclosure failures relating to material facts sought by the PHDF, are without more, sufficient to disqualify respondent pursuant to N.J.S.A. 5:12-86b.

Beyond the disclosure failures, the Division asserted that respondent had not established by clear and convincing evidence that he was a person of good character, honesty and integrity.

His dismissal from his position as a laborer with the Atlantic City Department of Public Works and his dismissal after one week from his position with the Bally Park Place Hotel and Casino, both of which occurred after he filed his PHDF, have in common the use of strong language and abusive conduct to superiors.

The arrests which arose after respondent filed his PHDF for the most part are the result of domestic disputes which either were never pursued or if pursued were dismissed. More importantly, however, without something more in the record concerning these arrests, it does not appear that they can stand for more than the fact that he was arrested some nine times between August of 1977 and the date of the hearing. They ought not to undermine respondent's efforts to establish his good character, honesty and integrity. The convictions of May 11, 1979 and February 1981 however, relating to the use of foul language and abusive conduct do go to these questions. While they do not to this court appear so severe, or inconsistent with casino operations, to demand denial pursuant to N.J.S.A. 5:12-86c(4), taken together with the reasons for respondent's dismissal from the Atlantic City Department of Public Works and the Bally Park Place Casino, and the nature of his difficulties at Historic Gardners Basin, they do reflect

personality traits or at least a pattern of behavior which does not argue well for one seeking employment as a blackjack dealer in this most highly structured and supervised of industries.

And while from a policy point of view one might argue that, personality, ability to get along in a job, and like considerations, are in the main more appropriately the concern of a potential employer, the Act does authorize this sort of inquiry N.J.S.A. 5:12-89, and 90b, and nothing in the Commission's regulations qualifies the use of this information in a contested case. One must therefore consider all of the facts developed in light of respondent's obligation to establish his good character by clear and convincing evidence. Under these circumstances in any event, respondent's inability to cope with supervision manifests itself in verbal abuse and threatening conduct, which seems relevant to the question of licensure. Other than his own statements concerning the unreasonableness, or bias of those who took actions against him, there is nothing concrete in the record that reflects positively on respondent's work habits, or rehabilitation. While the character witnesses which he presented spoke highly of his reputation and of his potential, this testimony alone cannot when weighed against respondent's employment and conviction record meet the clear and convincing standard required in the statute.

Respondent having misstated the circumstances of his departure from Historic Gardners Basin, having failed to disclose the two instances in which he was disciplined while employed with the Atlantic City Department of Public Works and having failed to properly disclose the arrest records of his two brothers, the Division's recommendation to deny a license is appropriate. Additionally, the record presents a predominantly negative picture of respondent, which is diminished but not shaken by the good will and good wishes reflected in the character testimony, and he has therefore failed to meet his own affirmative burden. The action of the Division is AFFIRMED.

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

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

3/5/81
DATE

Solomon A. Metzger
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

3/6/81
DATE

Henry D. Fuchs
CASINO CONTROL COMMISSION
Asst. Counsel

Mailed to Parties:

March 11, 1981
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-931-80
CCC DOCKET NO. 80-EA-8

IN THE MATTER OF THE APPLICATION :
OF BENITO V. RAHO FOR LICENSURE AS : FINAL ORDER
A CASINO EMPLOYEE (FLOORPERSON) :

A hearing having been conducted in the above-captioned matter before the Honorable Richard L. Voliva, Administrative Law Judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings and the Initial Decision of the Administrative Law Judge, no exceptions having been filed by the parties; and the Commission having resolved at its public meeting of February 4, 1981, to adopt the Initial Decision as modified herein and to deny the application for licensure;

IT IS on this 27th day of February, 1981 ORDERED that the Initial Decision of the Administrative Law Judge be and hereby is adopted by the Commission except as modified below; and

IT IS FURTHER ORDERED that the portion of the Initial Decision recommending the finding that there is insufficient evidence in the record to show that Applicant has been convicted of an offense which would have been, under New Jersey law at the time of application for licensure, a disqualifying offense under N.J.S.A. 5:12-86(c)(2) be and is hereby REJECTED by the

Commission;

IT IS FURTHER ORDERED that Applicant be and is hereby found DISQUALIFIED pursuant to N.J.S.A. 5:12-86(c)(2); and

IT IS FURTHER ORDERED that the application of Benito V. Raho for licensure as a casino employee be and hereby is DENIED for the reasons stated in the Initial Decision which, as modified above, is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: February 27, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0931-80

AGENCY DKT. NO. 80-EA-8

IN THE MATTER OF THE APPLICATION OF BENITO V. RAHO FOR LICENSURE AS A CASINO EMPLOYEE (FLOORPERSON)

Record Closed: October 6, 1980 Decided: November 20, 1980

Received by Agency: 11/26/80 Mailed to Parties: 12/2/80

APPEARANCES:

Jerold Allen, Esq., for the Applicant, Benito V. Raho (Soffian & Allen, Esqs., attorneys)

Patricia Arons, Deputy Attorney General for the Respondent, Department of Law and Public Safety, Division of Gaming Enforcement (John J. Degnan, Attorney General of New Jersey, attorney)

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

This matter concerns the application of Benito V. Raho, petitioner/applicant, to the Casino Control Commission for licensure as a casino employee-floorperson. N.J.S.A. 5:12-90. His application, including a Personal History Disclosure Form (PHDF) was filed with the Commission in March 1979. The applicant was advised by letter from the Casino Control Commission, dated January 28, 1980, that based upon information received by letter from the Division of Gaming Enforcement (Division), respondent, dated November 24, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing. Mr. Raho requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a

contested case pursuant to N.J.S.A. 52:14F-1, et seq. A prehearing conference was held on May 30, 1980, the matter heard on September 9, 1980 and the record closed on October 6, 1980.

Mr. Raho failed to appear on the hearing date. Counsel moved for an adjournment on the basis that he had spoken with the applicant five days previous, at which time he learned that Mr. Raho, although he knew of the hearing date, was in the process of moving and did not feel well. Counsel was unable to again contact Mr. Raho prior to the hearing. The Division opposed the request on the basis that it had three out-of-state witnesses present and was ready to proceed. The motion was denied, subject to Mr. Raho being allowed to submit a request per affidavit for an opportunity to testify. An affidavit in support of his request for an opportunity to testify was submitted (P-13, see attached List of Exhibits Admitted into Evidence). Mr. Raho claimed that he had not received notice of the hearing prior to the scheduled date. The request was denied on October 6, 1980.

The issues to be determined in this matter are:

1. Whether the applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89b(2).

2. Whether the applicant failed to reveal facts material to qualification under N.J.S.A. 5:12-86b(2).

3. Whether the applicant was convicted of an offense in the State of New York which would be equivalent to one of the enumerated disqualifiers under N.J.S.A. 5:12-86c(1).

4. Whether the applicant committed any act which would constitute a violation of any offense set forth in N.J.S.A. 5:12-86c. N.J.S.A. 5:12-86g.

5. Whether the applicant can affirmatively demonstrate his rehabilitation under N.J.S.A. 5:12-90h.

The applicant is 39 years old and currently employed by the casino industry in Las Vegas, Nevada. Mr. Raho has worked in the casino industry since 1965. The applicant's case consisted of 12 affadavits and/or statements in support of his application for licensure from people who have known him for the past several years (P-1 through P-12).

The Division's objection to licensure is primarily based upon Mr. Raho's negative reply to question 66 of the PHDF, which reads as follows:

> "Have you or has any member of your immediate family, (as defined on page iv. of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" (J-1)

Division Detective Frank E. Nixon met with Mr. Raho on July 30, 1979 to review the PHDF prior to a full investigation. At that time, the applicant reaffirmed his negative response to question 66. The detective subsequently discovered that Mr. Raho had pled guilty to two offenses in September 1977 in the State of New York. When confronted by Det. Nixon with this information, the applicant admitted the arrest and convictions, but stated his belief that he was not required to disclose the offenses, which belief was apparently predicated upon the advice of a former attorney.

The Division also presented the testimony of Sergeant Joseph Gulotta, Officer Robert Jensen and Officer Allen Torosian of the New York City Police Department, all of whom were assigned to the Brooklyn South Public Morals District in September 1977. On August 26, 1977, Sgt. Gulotta and Off. Jensen conducted an undercover surveillance operation at the Palm Shores Cabana Club in Brooklyn. They observed an unlawful gambling operation consisting of 20 poker tables, eight blackjack tables, one roulette wheel and one lottery booth. Approximately 200 people were in the establishment, which was a fancy Las Vegas type operation. On that date, Off. Jensen played blackjack for approximately one hour at a table where he identified the dealer to be Mr. Raho. As a result of the investigation, a search warrant was issued. On September 2, 1977, the search warrant was executed, in part by Off. Jensen and Off. Torosian. On that date, Off. Torosian observed Mr. Raho collect money from dealers at several tables. The officer arrested the applicant and found $3,600 on his person. On September 9, 1977, Off. Torosian was in Brooklyn Criminal Court and observed Mr. Raho plead guilty to two offenses, for promoting gambling and possession of gambling devices, and receive a $250 fine and a 30 days sentence.

N.J.S.A. 5:12-86b provides that the Commission shall deny licensure to any applicant disqualified on the basis of a failure to reveal a fact material to qualification. The Division contends that the applicant failed to disclose his arrest and convictions, as described above. There can be no doubt that an arrest and conviction for unlawful gambling activities, which occurred within two years of application for licensure, is clearly a fact material to qualification which must be disclosed. It was undisputed that Mr. Raho failed to disclose his arrest and conviction in response to question 66 on his PHDF. Mr. Raho also admitted the arrest and convictions to Detective Nixon. Without further explanation, the failure to disclose cannot be excused upon the claim of advice of counsel, especially when there is no record of an expungement. The applicant's failure to disclose was unquestionably within the meaning of Section 86b of the Casino Control Act (Act) and must diaqualify him from licensure.

The Division did not submit proof of what specific offenses Mr. Raho was convicted of or their New Jersey equivalent in order to establish that he should be disqualified under Sections 86c(1) and 86g of the Act.

Mr. Raho's PHDF and the affidavits in support of his application appear to establish that he has not violated the laws of any jurisdiction, other than the one occasion described above, and that he has otherwise conducted himself in a proper manner. However, that Mr. Raho failed to disclose a fact material to qualification under Section 86b of the Act precludes the establishment of rehabilitation under N.J.S.A. 5:12-90h.

The applicant has the burden of establishing his reputation for good character, honesty and integrity under Section 89b(2) of the Act by clear and convincing evidence. The Division has proven by the preponderance of the credible evidence that he was arrested and pled guilty to two charges involving unlawful gambling activity in September 1977. The proofs also established that the nature of the gambling operation was substantial. Such conduct is clearly contrary to the best interests of the State. Further, it was also clearly established that Mr. Raho failed to disclose his arrest and convictions on his PHDF, which was filed less than two years after the commission of the offenses. Consequently, the applicant has not demonstrated that he possesses the requisite attributes of good character, honesty and integrity.

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

1. Benito V. Raho applied to the Commission for licensure as a casino employee-floorperson in March 1979.

2. The applicant is currently employed by the casino industry in Las Vegas, Nevada.

3. The applicant was observed functioning as a blackjack dealer in an unlawful gambling operation on August 26, 1977, and collecting money from dealers on September 2, 1977.

4. On September 2, 1977, the applicant was arrested and charged with unlawful gambling activity.

5. On September 9, 1977, the applicant pled guilty to two offenses for unlawful gambling activity, was fined $250 and sentenced to 30 days.

6. In response to question 66 on his PHDF the applicant stated that he had never been arrested, charged or convicted of any criminal offenses in any jurisdiction. He reaffirmed his response to Det. Nixon on July 30, 1979.

7. The applicant has given no acceptable explanation of his failure to disclose his arrest and conviction in New York City in September 1977.

8. The Division offered no proof of what offenses Mr. Raho was convicted of in the State of New York or their New Jersey statutory equivalents.

I make the following CONCLUSIONS OF LAW:

1. An inexcusable failure to disclose facts material to qualification under Section 86b of the Act precludes the establishment of rehabilitation pursuant to N.J.S.A. 5:12-90h.

2. An inexcusable failure to disclose facts material to qualification pursuant to Section 86b of the Act precludes the establishment of a reputation of good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2).

I CONCLUDE that Mr. Raho is precluded from licensure as a casino employee-floorperson under Section 86b of the Act and that he has not established his reputation for good character, honesty and integrity under Section 89b(2) of the Act.

Therefore, I ORDER that the application of Benito V. Raho for licensure as a casino employee-floorperson be DENIED.

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

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

November 20, 1980
DATE

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

Receipt Acknowledged:

November 26 1980
DATE

[illegible]
CASINO CONTROL COMMISSION

Mailed to Parties:

December 2, 1980
DATE

Ronald L. Parker/ss
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form No. 2 - Benito V. Raho

P-1 Sworn Statement of Danny Price, June 13, 1980

P-2 Sworn Statement of John Uherick, June 13, 1980

P-3 Sworn Statement of Billy Mau, June 16, 1980

P-4 Sworn Statement of Samuel A. Landy, June 14, 1980

P-5 Sworn Statement of Louis Salerno, June 12, 1980

P-6 Sworn Statement of R. G. Pucci, June 5, 1980

P-7 Sworn Statement of Fred W. Gustin, June 13, 1980

P-8 Sworn Statement of Carlos Pujadas, June 12, 1980

P-9 Sworn Statement of Babe Angelo, June 13, 1980

P-10 Letter from The Rev. Edward C. Anderson, C.S.V., June 13, 1980

P-11 Sworn Statement of Eugene O'Brien, June 5, 1980

P-12 Sworn Statement of Fred L. Fisher, June 16, 1980

P-13 Sworn Statement of Benito Raho, September 14, 1980

R-1 State of New York, Division of Criminal Justice Services, Correspondence Inquiry, August 14, 1979, and Summary Case History - Benito V. Raho (2 pages)

CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1087-80
CCC DOCKET NO. 79-24

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Movant, V. WILLIAM A. SORRENTINO AND THOMAS L. BEEBE, Respondents	FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting of May 13, 1981 upon the Initial Decision of the Office of Administrative Law in this matter, objections and exceptions to said Initial Decision having been filed with the Commission by the Division of Gaming Enforcement, a reply to those objections having been filed by Respondent Thomas L. Beebe, no exceptions or reply having been filed by Respondent William A. Sorrentino; and the Commission having carefully considered the entire record in this matter and having resolved to affirm and adopt the said Initial Decision and to dismiss the Complaint against the Respondents,

IT IS on this 28th day of May, 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be AFFIRMED and ADOPTED; and

IT IS FURTHER ORDERED that the Complaint filed against Respondents William A. Sorrentino and Thomas L. Beebe be DISMISSED based upon the reasons set forth in the Initial Decision

which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: May 28, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1087-80

AGENCY DKT. NO. 79-24

IN THE MATTER OF:

STATE OF NEW JERSEY

v.

WILLIAM A. SORRENTINO

AND THOMAS L. BEEBE

Record Closed: February 5, 1981

Received by Agency: 3/17/81

Decided: March 13, 1981

Mailed to Parties: 3/19/81

APPEARANCES:

Mary Jo Flaherty, Esq., Deputy Attorney General, for the Division of Gaming Enforcement (John J. Degnan, Attorney General)

Donald G. Targan, Esq., for Respondent William A. Sorrentino

Michael S. Levine, Esq., for Respondent Thomas L. Beebe, (Hockfield & Levine, Esqs.)

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

The Division of Gaming Enforcement (Division) seeks to revoke the duly issued casino employee licenses of respondents William A. Sorrentino and Thomas L. Beebe. Sorrentino holds license no. 000197-21 and is currently employed as a floor man at the Brighton Hotel-Casino, assigned to the scheduling of the casino staff. Beebe holds license no. 00099-21 and is a floor man at Resorts International Hotel-Casino. The specific basis for the proposed revocation relates to an alleged incident said to have occurred at

Resorts in the early morning of April 19, 1979, on which date Sorrentino was a floor man employed by Resorts and Beebe was a roulette dealer at the same casino.

The Division filed an initial complaint seeking revocation on December 6, 1979. An amended complaint was filed on May 12, 1980. Respondents each denied the allegations of improper conduct contained in both the original and amended complaints. As a result, the Casino Control Commission (Commission) transferred the case to the Office of Administrative Law on February 27, 1980 as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. In the interim, on January 16, 1980, the Commission denied an application made by the Division to temporarily suspend the respondents' licenses. A Motion to Reconsider this decision was made by the Division but again denied by the Commission.

A prehearing conference was held before Honorable Jack Berman, ALJ on May 1, 1980 and a prehearing order was issued on May 8, 1980. A supplemental prehearing order was issued by Judge Berman on August 29, 1980. Following Judge Berman's death the case was transferred to Administrative Law Judge Jeff S. Masin who heard the matter in the Atlantic County Court House on January 27, 28, 29, February 3 and 5, 1981.

THE CHARGES

The basis for the requested revocation of the respondents' licenses is set forth in the Amended Complaint. Essentially the charges are that Mr. Sorrentino directed Mr. Beebe to put four twenty-five dollar checks (variously referred to in the record as checks or chips) into the dealer's toke (tip) box at table four, pit five when the tips had not been given by players and the checks were in fact house checks and therefore represented house money. Beebe is alleged to have actually placed the checks in the toke box. It is alleged that this action constituted either theft, embezzlement, attempted theft or attempted embezzlement and that Sorrentino and Beebe acted in concert. It is further contended by the Division that such action constitutes acts which are inimical to the policies of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and require revocation of the licenses. Since the respondents are already licensed, the parties have agreed that the burden of establishing the truth of the allegations lies with the Division.

THE TESTIMONY

The sole eye witness to the alleged action of Sorrentino and the subsequent alleged action of Beebe was Bruce Lampa, employed by the Division as a project specialist and slot engineer. Mr. Lampa's principle job is the inspection of slot machines in use on the casino floor and those sent by manufacturers for examination pending possible approval by the Commission. Mr. Lampa has worked for the Division since April 4, 1978. Prior to that date he had no connection with the casino industry. Mr. Lampa testified that as of April 18, 1979 he had received no training in table games.

Lampa testified that on April 18, 1979 he worked from 9:00 a.m. to 5:00 p.m. He went home to Mays Landing and after eating dinner and watching some television, retired for the evening. He awoke at 2:40 a.m. and went to Resorts at about 3:10 a.m. for the purpose of performing spot-checks on slot machines. These normally are performed after the casino closes, 4:00 a.m. on weekdays. When Lampa arrived he went onto the casino floor, through the aisles of slot machines and then to the table game areas. He described the casino tables as moderately filled, the slots beginning to clear out. Not all of the tables were operating. He stopped to watch some blackjack and then walked by the roulette pit, Pit 5. He had been on the floor for approximately 25 minutes.

At Table 4 in Pit 5, Lampa observed four to six people playing roulette. People were also standing at the table. Lampa positioned himself at a point near the wheel, marked by him at trial on a floor plan of the casino in April, 1979 (P-1) with a blue X and identified on a photograph of a table (RB-1 in evidence) as where the first chair on the left is shown, the chairs being moved one space down apiece to the right on the morning in question. Lampa testified that he noted that the table was being operated by a dealer, described as five feet six inches or five feet seven inches tall, slightly stocky, with dark brown or blackish hair and mustache and wearing a short black tuxedo jacket. The lighting in the casino was dim, but not so much so that one could not see what was going on. Lampa saw the dealer's face from three to four feet away. He identified respondent Beebe as the dealer. No mucker was working the table.

Lampa testified that he observed the action on the table and saw the dealer mucking the chips for the next play. He observed no checks on the rim of the wheel. He observed one transaction, involving a spin of the wheel and payouts to players. He noticed a supervisor approach Table 4. The supervisor was on the dealer's left as the dealer stood

at the crook of the wheelhead. The supervisor was then heard to say to "put a hundred in". The dealer took four green checks from a stack next to the wheelhead and put them in the toke box, located on the pit side of the table about three feet to the dealer's left (marked on P-1 by a small blue box below the W-4 on Table 4). Lampa described the supervisor as "seeming" to have reddish-brown hair, about five feet, seven inches tall, reddish-brown suit and tie, white shirt. The supervisor was four to five feet away from Lampa. Lampa identified Sorrentino in court as the supervisor.

Lampa continued, saying that he was not certain at the time whether what he had observed was a legal or an illegal action. He left Table 4 and began to look for Detective Sergeant Joseph Calabrese, a New Jersey State Police Detective assigned to the Division and serving as the supervisor at the casino. Lampa did not see Calabrese as he circled the casino and came back toward Pit 5. He noted that the dealer at Table 4 had changed. He finally located Calabrese about 10 minutes after he had observed the incident. When he described what he had seen to Calabrese, the Sergeant told him that the action was improper. They then proceeded from the area where they had met, shown on P-1 as a blue circle to the right of Pit 5, Table 5, to the outside of Pit 5, Table 7, the table directly behind Table 4. At this time Lampa observed Sorrentino in the pit and recognized him as the supervisor he had heard say to "put a hundred in". Sorrentino came up to Calabrese and Lampa and asked what he could do for them. Calabrese and Sorrentino spoke and Lampa could not hear what was being said. Calabrese then asked if anyone had authorized the dealer to put four green checks in the toke box. Sorrentino said he had been in the pit all night and that nobody had authorized such an act. Sorrentino then went over to the box and looked at the toke box in a manner which Lampa could not remember. Sorrentino came back to Calabrese and said that there were only a few red checks, about $15 in the box. When Sorrentino said this, Lampa said "I must be going blind". Calabrese then entered the pit, went to the box, bent down and inspected it. He then walked around the inside of the pit, checking the toke boxes at some of the other roulette tables. Calabrese came out the pit and told Lampa that there were greens in the box. Sorrentino advised that the prior dealer at the table had been Beebe. Calabrese and Lampa went to find him in the dealer's lounge, without success.

When Lampa and Calabrese returned to the area of Pit 5 (at the point marked with a blue X to the left of Pit 5) Sorrentino commented that "those are some pretty heavy accusations that you made". Lampa responded, "That's what I saw". Sorrentino queried Lampa as to why he had not told Sorrentino about the incident and Lampa replied that it was his job to tell the shift leader and let him act.

Sorrentino offered to go look for Beebe and was away for about two minutes. When he returned, he advised that he had been unable to find Beebe.

On cross-examination, Lampa advised that he was walking around the tables to observe and gain knowledge. He stated that he hoped someday to be a casino manager and that such observation would help him achieve this goal.

Lampa again described the lighting as dim and possibly such as to distort colors. The crowd was fairly good and the noise near the table above "normal". People were playing at other tables. He was at Table 4 for the length of one transaction and a little bit beyond, a period which he characterized as about three minutes, describing the complete game as taking two minutes. He looked at the game as a whole, observing the bettors, the play and the dealer's action. He does not remember anything said by any of the other dealers or the people at Table 4. He did not know at the time whether what he saw was legal or illegal. He did not note the number on the dealer's badge. He described his ability to remember faces as average. He observed the supervisor at 3/4 face for about five seconds, this being the period of the specific action in question herein. The dealer's head was slightly down. The dealer said nothing to the supervisor and both looked and acted naturally throughout.

Lampa could not recall whether the table was open or closed when he and Calabrese first came over to it. He did not recall what the dealer who had replaced Beebe at Table 4 looked like and did not recall a dealer being at Table 4 when Calabrese and Sorrentino were talking at Table 7.

Lampa stated that he definitely knew what table the incident had occurred at. Calabrese did not confiscate the checks or box. Lampa did not tell Sorrentino that he had heard Sorrentino tell the dealer to put the money in the box. He had not discussed this with Calabrese. He did not go into the pit or look at the box. Lampa was about 15 feet from the box when he and Calabrese were at Table 7. Calabrese spent about 5 seconds examining the box but Calabrese's back was to Lampa and he could not see what Calabrese was doing. He was sure that the dealer who put the checks in had a jacket on.

Lampa advised that he glanced at Beebe during the play and then looked for five to six seconds when he heard the directive from Sorrentino. He described five seconds as a glance. He never specifically looked at the wheelrim for checks but recalled

seeing none. He did not recall if there was any music playing. He was not listening to the conversations of others next to him or behind him and doesn't know if anyone was talking. The directive was spoken in a little less than a conversational tone.

Lampa stated that when Calabrese entered the pit and after he had checked the toke box on Table 4, he walked past Tables 3, 2 and 1 and back past Tables 10, 9 and 8 to Table 7. He could not recall whether Calabrese had halted at each for a fraction of a second or whether he had stopped at each. Calabrese told Lampa that there were no green checks in any of the other toke boxes.

On the next day, Lampa went to the Division trailers and went through alphabetical cards containing names and photos of the casino employees. He went directly to the "B's" and the "S's", having learned Sorrentino and Beebe's names the day before. Lampa looked at the photos at the direction of Sergeant Andrews who told him to pull out the pictures of Sorrentino and Beebe to make sure they were the people he had seen the night before. He could have identified them without the photos. He assumed that the Division wanted evidence and so had asked him to look at the photos. He advised Andrews that Sorrentino and Beebe, shown on the cards, were the people involved. Lampa advised that he looked at the photos so that he would be able to say at any hearing that he had identified the men by face and said that this was "just the way you see it on television".

The next witness for the Division was Sergeant Joseph Calabrese of the New Jersey State Police, assigned to the Division as supervisor of casinos. Sergeant Calabrese is a veteran of 14 years with the State police and has been with the Division since February 1978. He described the color scheme of the checks used in Resorts in April 1979, thusly:

White - one dollar
Red - five dollars
Brown - ten dollars
Yellow - twenty dollars
Green - twenty-five dollars
Black - one hundred dollars
Purple - five hundred dollars

The officer advised that non-value checks were used for roulette only. These carry a value which is designated by the player when he purchases them. A marker is placed on the top of a stack of non-value checks which denotes the value of each check.

Calabrese testified that a dealer receiving a tip in the form of a value check was, according to house policy, to tap the check on the table and either call the tip out or hold the check up to acknowledge it to the patrons and to the floorperson before depositing it in the toke box. A non-value check given as a tip was to be placed on the rim of the wheel and the floorperson would then authorize conversion of the non-value check (with its designated value) into a value check to be deposited in the toke box. Calabrese testified that in April 1979 Resorts used 750 watt bulbs over the roulette tables which gave off a bright light making the tables more well lit than the other areas.

The officer testified that he met Bruce Lampa at about 3:45 in the morning on April 19, 1979 near the end of Pit 5. Lampa told him of the incident at Table 4, telling him he had observed a pit boss tell a dealer to drop a hundred in. The dealer had then picked up four green checks from the table bank and dropped them into the toke box.

Calabrese went to the area near Table 7 and observed Table 4. Lampa advised that the dealer he had observed was not then in the pit. He identified Sorrentino as the floorperson involved. Calabrese told Sorrentino, who had come up to him, that Lampa had alleged that Sorrentino had told the dealer previously at Table 4 to drop $100 in the toke box and that the dealer had done so. On cross-examination, Calabrese advised that Lampa was not a part of this conversation.

Sorrentino went over to the toke box on Table 4 and returned, advising that there were only a few reds in the box. Calabrese observed Sorrentino to touch the box as he checked it. Calabrese, Sorrentino and Lampa then spoke and Calabrese went into the pit where he went up to Table 4 and asked the dealer present, Richard Tobias, if Tobias had placed any greens in the box. Tobias said he had not, only having converted a white to a red. Calabrese went to the toke box and saw four green checks, four whites and three reds, all scrambled in the box. Calabrese then walked around a small podium, shown on P-1 as a square with a circle within it and an "L" inside the circle. Calabrese drew a semi-circle around the podium on P-1 to show his path. From this vantage point he observed the toke boxes at the other roulette tables in Pit 5, i.e., 1, 2, 3, 10, 9, and 8 from distances of one foot up to twenty five feet. Calabrese testified that from these

observations he could see all the toke boxes on these tables and observed that there were no green checks in any of these. The walk around the podium and the observation of the boxes took five to ten seconds. Each box had some checks in them but Calabrese could not recall the numbers or percentage of fill in each.

On cross-examination, Calabrese agreed that he could not see every check in each box but insisted that he could see all the colors present in the box. Lampa remained outside the pit during this time. Calabrese never seized either the toke box at T-4 or its contents and did not take the checks out from the box and count them. A key, held by the toke committee, was necessary to open the box. Calabrese did not attempt to get a representative of the committee to open the box.

On April 20, 1979, Sorrentino came to the Division trailer at Calabrese's request. Sorrentino was advised of his rights and denied any knowledge or involvement in the alleged incident. Sorrentino believed that the box had about $150 to $200 in it when he last observed it and he could not remember either Beebe or Tobias dropping any greens in the box.

On April 23, Calabrese spoke to Beebe who denied any knowledge of the incident. Beebe said that he had received a green check on the evening of April 18 from a player named John. Beebe advised that he had only two or three players all night. Beebe recalled that when Tobias relieved him there were two to three non-value checks on the rim but recalled dropping no tokes in the last 40 minute shift on the table.

On cross-examination, Detective Calabrese testified that he had never attempted to speak to all the dealers who had worked Table 4 on the shift of April 18-19. He specifically did not recall speaking to a Mr. Messina. Calabrese no longer has the notes he made in his notebook during his inspection of the pit as either he or his secretary destroyed them after the typewritten report (C-4) was prepared.

The witness stated that a floorperson, as a management employee, receives no portion of the monies placed in a dealer's toke box. The average dealer receives 16 cents per $100, based on a split of the tokes between the number of dealers factored to account for the number of hours worked.

Calabrese acknowledged that when Sorrentino told him that there were only reds in the toke box, a dealer was standing about four to five feet from the point of conversation.

Detective Stephano Gelardi, Supervisor of Casino Operations for the Division of Gaming Enforcement since December 1977, testified as the next witness. He confirmed that the general procedures for acknowledgement and conversion of roulette tokes described by Detective Calabrese were accurate. These procedures are prescribed by house rules, not by statute or Commission regulation. He also advised that in April 1979 Resorts used a $20 yellow check for baccarat. This check could be played at a roulette table or given as a toke. Gelardi described generally some of the security measures employed at the casino in April 1979 and further testified as to the color codings of the checks then in use.

Respondent Thomas Beebe was called as a witness by the Division. He stated that he did not recall which tables he had worked at during the April 18-19 shift but knew he had been in Pit 5. He and Sorrentino met in gaming school and Sorrentino occasionally acted as his supervisor. Beebe confirmed the previous witness' testimony as to the token procedures. The witness described himself as being 5'7", about 145-150 lbs., both in April 1979 and at the time of the hearing. Beebe stated that in April 1979 floorpersons wore suits. He did not recall placing tokes in the toke box at T-4 between 2:40 a.m. and 3:40 a.m. on April 19.

William Sorrentino also testified as a Division witness. Sorrentino described himself at the time of the hearing as 5' 7 1/2", 173 lbs. At the time of the alleged incident, Sorrentino weighed about 204 lbs. On April 18-19, he was working in Pit 5 and was responsible for Tables 4, 5, 6 and 7. He was in the pit for about 70% of the shift which ran from 7:00 p.m. to 4:30 a.m. He had no recollection of any tips between 2:40 a.m. and 3:40 a.m. on the 19th. At 3:45 a.m. he spoke to Calabrese for the first time with respect to the incident. At that particular moment Lampa was not a part of the conversation.

The initial witness for the respondents was Richard Tobias, a licensed roulette dealer employed at Resorts on April 18-19, 1979 and assigned to Table 4 during the last 20 minute shift, 3:40 a.m. to 4:00 a.m. Tobias testified that he started work at 7:00 p.m. on the 18th. He was at Table 4 first at about 9:00 or 10:00 p.m. He received at least one

and perhaps two green $25 tokes from a regular player named John Alou, who usually was a $25 check player. Tobias worked Table 4 again at 3:40 a.m., relieving Beebe. The casino closed at 4:00. Sorrentino approached Tobias and asked him if he had dropped any greens in the box. Tobias said that he had. Sorrentino examined the box and asked if the drop had been within the last ten minutes or so. Tobias said that it had not. Calabrese then asked to see the toke box, which was taken off the side of the table and laid by Sorrentino on the table. The box was one-half to two-thirds full with four greens, three yellow baccarat chips and some $5 and $1 checks. The greens were all in or near the bottom of the box. Calabrese then asked Tobias questions and took notes. Calabrese asked about the greens. Tobias recalled Sorrentino saying to Calabrese that there were greens in the box. Tobias mentioned that he had made notes which he had referred to about one week before testifying. He did not have these with him at the hearing. On motion of the Deputy Attorney General, the Administrative Law Judge ordered Tobias to produce these notes prior to the next scheduled hearing date.

On cross-examination, Tobias advised that perhaps 20 to 30 people would have worked in Pit 5 on the shift of the 18-19th. He could not be sure of which specific employees they were. Tobias could not recall if there were any pickups of tokes from the boxes by the toke committee during the evening or early morning hours.

When Tobias arrived at Table 4 at 3:40 a.m., he and Beebe had a general conversation. He then dealt for about 10 minutes before the last spin. The first time he saw Calabrese, whom he did not know before that morning, was when Calabrese and Lampa approached Table 4 from the outside of the pit. Prior to that moment, however, Tobias was aware that Sorrentino, Calabrese and Lampa had been behind Table 4 at Table 7 and he had heard Sorrentino say, "Joe Calabrese." He did not hear all of the conversation going on behind him. Tobias was standing at the wheelhead in his normal side angle position, an angle which offered him a view of his table and the inside of the pit where he could see Sorrentino. During the time that Tobias was aware that Calabrese and Sorrentino were talking, Sorrentino walked over to Table 4 twice. Calabrese and Sorrentino seemed to speak for about 10 minutes. He did not know if Lampa was present. Sorrentino came over and picked up the toke box. Calabrese never entered Pit 5 at all or approached Table 4 from inside the pit. When Calabrese approached Table 4 from outside the pit, he observed the toke box up on the table and saw green checks in it.

Tobias advised that during the 5 to 10 minute conversation which Calabrese and Sorrentino held at Table 7, he heard Sorrentino say, "Yes, look; there are greens in the toke box". Tobias was about five to six feet from Sorrentino when he heard Sorrentino make this statement. Calabrese was about ten to fifteen feet from Tobias. When Calabrese came around to the front of the table and Sorrentino from inside the pit, Tobias was two to three feet from them. Calabrese asked Tobias if the greens had been put in the box. Tobias was not sure if this was before or after he had pointed out the greens near the bottom of the box.

Tobias explained that a few days after the incident, a Mr. Belisle, associated with Intertel, the security agency for Resorts, and a Mr. Gruver, Assistant Shift Manager, asked him to make notes of what he remembered as being in the toke box, the name of the detective involved and anything he heard. Mr. Tobias produced a single, small sheet of notes to the Division on February 4, 1981. They were placed in evidence on the next hearing date, February 5, as RS-13. Tobias was not recalled to testify on the 5th by any party.

Stergios Messina, a Floorperson at the Golden Nugget, who was a dealer in roulette and blackjack at Resorts on April 18-19, 1979, testified that he had been in Pit 5 on the 18-19 shift. He worked Table 4 between 12:00 and 2:00 a.m. Messina was dealing roulette for only about the third or fourth time. He received a $25 toke on a play from a husky, bald man in his early 50's who then played and hit again and gave another $25 toke. Messina did not make notes concerning the events of that evening and could not recall which other tables he had worked at. He recalled Table 4 and the $25 tokes because of his newness to roulette and the $25 tokes, which he was unused to seeing given. Further, he did recall that he worked Table 3 for about 5 minutes but moved to Table 4 because he is a large man and when he was stationed at Table 3 it was difficult for anyone to move past him and the podium nearby that table. Messina recalled no other specific plays or who relieved him. Later, on the evening of the 19th, he did speak to other dealers in the pit about the $25 tokes.

William Sorrentino then testified in his own behalf. He has been a resident of Hammonton for approximately 34 years. He was employed in Las Vegas for about one year in 1969-70. He then served as a sales agent for Colonial Life Insurance and then as an assistant manager for Prudential for three years, recruiting, training and supervising sales agents. In these positions, he was responsible for a good deal of money. He was

licensed as a dealer in May 1978 and promoted to floorperson, February 13, 1979. He was hired by Greate Bay Hotel-Casino, Inc. and has worked for them from January 1980 to the present as a floorperson. His present duties are the scheduling of the casino staff, interviewing the dealers and running dealer auditions.

Sorrentino testified that while acting as a floorperson in Pit 5 on the April 18-19, 1979 shift he never told anyone to steal, never told Beebe to put checks in the toke box improperly. His hair was not then reddish-brown, but black and grey. About 3:20 a.m. Calabrese approached him. Sorrentino was closing out Table 7. Calabrese and Lampa (who he did not know at the time) came up together but Calabrese leaned over and said, "You know the dealer behind you just dropped $100 in the toke box". Sorrentino knew that Table 4 was behind him. Sorrentino turned to Tobias and asked him if he had placed anything in the box. Tobias said, "No". Sorrentino turned to Calabrese and told him Tobias said "no". Sorrentino asked what this was all about. Calabrese asked Lampa if T-4 was the table involved and Lampa said "yes". Sorrentino again asked Tobias and Tobias denied putting anything in the box in the last few minutes. Sorrentino then went over to look in the box. It was one-half full or more, containing several yellow baccarat checks. Sorrentino stated that it was not possible to tell everything which might be in the box without tilting it out and lifting it. He did so and saw green checks nearer to the bottom. He then put the box down and said, "Joe, there are greens in the box on the bottom". Calabrese never entered the pit and never circled the podium, at least while Sorrentino was present. Sorrentino never said there were only three red checks in the box.

According to Sorrentino, Calabrese never advised him that he, Sorrentino, was alleged to be involved. It was Sorrentino who advised Calabrese that Beebe had been the previous dealer on Table 4. The first time Sorrentino became aware of the allegation against him was when he went to the Division trailer on April 20 at the direction of his pit boss who had been requested to send him. At that time the detective began reading him his rights.

Sorrentino received no complaints following the interview and testified that after it he had not felt that he was being advised that he would be charged. The first action against him occurred in late 1979.

340.

On cross-examination, Sorrentino said that he did have a brown suit in April 1979 but did not recall if he had been wearing it that night. He acknowledged that in a deposition given on October 14, 1980 he said that his hair was brown.

Sorrentino described his standard terminology used to authorize a dealer to convert non-value checks into value checks for tokens as "take (a specified amount) down". This is the only term he would use. He learned this phrase during his training from Billy Rogers, an instructor. After Sorrentino learned of the accusation against him and the purported use of the phrasing "drop a hundred" (which was the terminology Calabrese told him had been used), he was "haunted" by the words because they were not the phrase he would have used. The term "put a hundred in" was first used in the initial complaint months thereafter. According to Sorrentino, "drop in" was a term more associated with the drop boxes into which money (cash) was placed.

Finally, Sorrentino acknowledged having testified in a deposition that he had to shake the toke box to assure he saw all tokes therein. He does not recall if the toke box was placed on the table, as Tobias had testified.

Sorrentino recalled that Lampa had made a comment that he had seen what he claimed. But whereas Lampa recalled this having been made while at Table 7, Sorrentino recalled it being made later at the Pacific Avenue end of Pit 5 (away from the end where Table 4 is) after Calabrese and Lampa had gone to look for Beebe and then Sorrentino had gone and returned. At that time he commented that the accusation made by Lampa was "pretty serious".

Thomas Beebe testified in his own behalf, denying any knowledge or involvement in the alleged incident. He stated that he had recalled John, last name recalled by him as being Halow, a very regular and large bettor at that time, as having played the table that night and tipping one or two greens. Beebe was first contacted by the Division on April 23, advised of his rights and told that the investigation was a formality and he should not worry.

On cross-examination Beebe advised that on April 18 and 19 he would have been wearing a dealer's uniform. This did not include any jacket since none was issued at the time. Although he could have worn his own, he did not. He did wear a black vest as part of the uniform.

After talking to Calabrese on the 23rd, Beebe discussed the situation with Sorrentino and Tobias within a few days. He then recalled John Halow hitting for $875 and giving a $25 toke.

Each respondent presented several character witnesses. In general, they spoke of their familiarity with the particular respondent either through professional, social or neighborhood contacts and advised of the respondents' good reputation for character, honesty and integrity.

Testifying on behalf of Sorrentino were: William John Allison, Vice President of Casino Operations, Brighton Hotel-Casino and a New Jersey State Police Officer for 10 years, who has known Sorrentino for 24 to 25 years in the Hammonton area and also knows him professionally from Las Vegas and the Brighton where he hired him and placed him as scheduling supervisor; Edward R. Doran, Manager of Compliance at the Brighton and a 24 year State Police veteran who also has known Sorrentino both before and since their professional association in the casino industry; Edward Gandolfi, the Mayor of Folsom Boro and an employee of the New Jersey State Bureau of Forestry, who knows Sorrentino for seven to nine years on a neighborhood basis; Edward B. Michael, Vice-President for Finance at Greate Bay (Brighton) Hotel-Casino and formerly holder of the same position at Resorts, who has known Sorrentino for 2 1/2 years, first at Resorts and then at the Brighton; Kenneth C. Lefebvre, a Freeholder-at-Large of Atlantic County and a resident of Folsom, who knows Sorrentino from work on the Ford re-election campaign and from Sorrentino's help in Lefebvre's own campaign; William H. Schauman, Director of Compliance at the Brighton and a retired New Jersey State Police Lieutenant who served 25 years with the force and headed the Major Crime Unit; and Charles Palardy, a Pit Boss at the Brighton and the night time scheduling supervisor, who works closely with Sorrentino in this function.

Those testifying on behalf of Mr. Beebe were: Michael A. Northcutt, a Pit Boss at Resorts; William Neville of Philadelphia, Automobile Editor of the Atlantic City Press who has known Beebe and his family for 11 years and is a social acquaintence; Peter Demos, President of Casino Schools, Inc. since October 1980 and formerly a Pit Boss at Resorts and Caesar's; Kenneth E. Arthur, Vice-President and Administrator of Casino Schools, Inc. and a former casino shift manager and assistant casino manager; and Robert Lubowski of Collingswood, a self-employed electronics technician and social acquaintance of Beebe and his family.

DISCUSSION

Preliminarily, it appears appropriate to note that in addition to the above noted testimony presented by the respondents, they sought to present testimony concerning polygraph examinations and results thereof. The Deputy Attorney General opposed this offer and the Court refused to permit such testimony. While the record contains the Court's comments on the issue, it should be noted that here, where there was no stipulation entered into between the Division and either of the respondents prior to any testing, such evidence would clearly not be admissible in court under the present Supreme Court decisions, most notably that of State v. McDavitt, 62 N.J. 36 (1972). Further, there appears to be no reported judicial sanction in this state for the use of unstipulated polygraph evidence in administrative proceedings. While there is no question that the more liberal standards of admissibility applied to evidence in the administrative field allow the receipt of evidential material which would not generally be acceptable to courts operating under the N.J. Rules of Evidence, it does not appear that this broadened acceptability should be extended to this particular type of evidence, at least without judicial authorization. While the Supreme Court has given limited sanction to the use of such evidence and held it to be of sufficient probative value to warrant admission in the limited circumstances where both sides to a controversy have expressed their consent before the testing, the court's decision cannot be read as a blanket endorsement of the admission of such evidence in other non-stipulated cases.

The Casino Control Act, Section 5:12-108a.(6) provides for the admissibility of "any relevant evidence" and for the use of such evidence as the basis of findings if it be the sort of evidence upon which responsible people are accustomed to rely in the conduct of serious affairs, regardless of the existence of common law or statutory rule bars to admissibility over objection in civil matters. Relevance has been defined as evidence having any tendency in reason to prove any material fact. N.J. Rule of Evidence 1(2). While the polygraph testimony may indeed be of some potential relevance, the Supreme Court's limitation on its use in McDavitt may reasonably be read to indicate that the Court was not so convinced of the scientific reliability of the test as to conclude that it should be relied upon by the New Jersey Courts, which must be considered to be acting reasonably in judicial hearings, absent the agreement of the parties. Without such agreement in this case, the polygraph evidence is excluded.

LACHES

Prior to the start of testimony the respondents moved to dismiss the charges on the basis of the equitable doctrine of laches. They claimed that the delay between the incident in April 1979 and the initiation of formal charges on December 6, 1979 was unreasonable, unnecessary and prejudicial to their defense. During the hearing, they indicated that after late April 1979 the Division did not contact them and Detective Calabrese agreed that the last investigatory action taken prior to the filing of the formal complaint in December occurred on May 9. The Division offered no explanation for the delay.

The doctrine of laches is based upon the policy that:

> "requires, for the peace of society, the discouragement of stale demands. ... the adjudicated cases proceed on the assumption that the party to whom laches is imputed has knowledge of his rights and an ample opportunity to establish them in the proper forum; that by reason of his delay the average party has good reason to believe that the alleged rights are worthless or have been abandoned and that, because of the change in condition or relations during this period of delay, it would be an injustice to the latter to permit him to assert them. Flammia v. Maller, 66 N.J. Super 440, 443 (App. Div. 1961), citing Galliher v. Cadwell 145 U.S. 368, 372, 12 S. Ct. 873, 36 L.Ed 378 (1891)."

The doctrine has been applied against the State in certain circumstances, although it is not applied as readily against the sovereign as in private matters. It is clear that each case must be examined on its own facts to determine the applicability of the doctrine.

In the present action, the delay in the institution of formal charges following the effective end of the investigation on May 9 is unexplained. While good reasons for the seven months' lapse have not been offered, the mere passage of time is in and of itself not sufficient to establish a basis for the imposition of the equitable remedy. The parties seeking the benefit of the defense must also show demonstrable prejudice resulting from the inaction of the other party, or show prejudice flowing from actions or representations of the opponent upon which the party reasonably relied to its detriment. I **CONCLUDE** that the respondents herein have failed to establish such detriment sufficient to warrant the imposition of the drastic remedy sought.

The respondents each had notice that the Division was investigating the alleged incident of improper toke activity within one to three days of the alleged event. They had each been told of the Lampa claims and the role they purportedly had in the action and had each been questioned by Calabrese. Calabrese did not tell them what the outcome of the investigation would be. Both Sorrentino and Beebe discussed the incident with each other and apparently spoke to other dealers. They were free to consult counsel if they so chose, and to gather such information as either they personally or their attorney believed valuable. In short, they were not misled by any action of the Division to properly rely on any assumption that the matter was at a close and they were not prevented from seeking to obtain whatever evidence they might need to counter the allegation. This is not a case where, as for instance in undercover agent situations, charges of wrongdoing are first brought to the notice of the alleged perpetrator months or even years after the event. Nor is it a case of reasonable reliance upon assurances or actions of State agents resulting in detriment to the respondents. Laches is not applicable here.

THE MERITS

The events under scrutiny herein either occurred or are alleged to have occurred nearly two years ago. The testimonies of the significant fact witnesses herein, Lampa, Calabrese, Tobias, Messina, Sorrentino and Beebe each differ in some degree on the specifics of the actions of themselves and others during the early morning hours of April 19, 1978. Passage of time may account for some of this, as memories fade. However, some of the differences are severe.

It is first necessary to note that I have no doubt that Mr. Lampa, while standing near Table 4 on April 19, 1979 observing a roulette game, did see Mr. Sorrentino and Mr. Beebe. Further, I believe he heard and saw something which aroused his curiosity and led him to seek out Detective Calabrese. I do not believe Lampa entirely made up an incident. However, for the reasons set forth below, I **CONCLUDE** that the Division has failed to prove by a preponderance of the evidence that the respondents did engage in any attempt to steal money, embezzle money, or in any actions which are in any way inimical to the policies of the Casino Control Act. Therefore, I **CONCLUDE** that the charges against both respondents must be **DISMISSED**.

The only direct eye-witness testimony concerning the floorperson's directive and the dealer's response is that of Lampa. The only evidence of a circumstantial nature

from which some guilt might be inferred is that of Calabrese, relating to Sorrentino's alleged response, after being informed of the charge by Calabrese and looking in the box, that it only contained a few reds, when indeed it did contain some greens; a response which, if given, could well be seen as inferring guilty knowledge and an attempt to bluff, presumably in the hope that Calabrese would not look in the direction of or into the clear box himself, dismiss Lampa's charge and drop the matter immediately. Other than these noted proofs, the Division's case appears barren of support, unless gained through the testimony of the respondents and their witnesses. The only other piece of evidence which the Division might have produced, the actual toke box from Table 4 and its contents, was, of course, not produced, not having been confiscated by Detective Calabrese on the morning in question for reasons of which no satisfactory explanation has been provided. This box, with its contents of checks, could perhaps have revealed some significant clues to the truth, for an examination of the checks, their color, number and position would have quite possibly been valuable. However, this central piece of evidence is not before me.

With respect to the testimony of Detective Calabrese, it is not disputed by anyone that he met Lampa near Pit 5 at about 3:40 to 3:45 a.m. on the morning of the 19th and eventually went up to Table 7 and spoke to Sorrentino. It was at this point and time that Calabrese says he told Sorrentino that Lampa had alleged that Sorrentino and Beebe had engaged in the alleged actions. Sorrentino denies he was told of his purported involvement, not learning thereof until Calabrese questioned him on the 20th. Calabrese then has Sorrentino examining the box and declaring it to contain only a few reds and he, Calabrese, then entering the pit and observing the greens, as well as the other tokes. Sorrentino denies the purported "reds only" comment and the entrance of Calabrese in the pit. Tobias supports Sorrentino in that he says that Sorrentino did say greens were in the box and Calabrese never went into the pit. Lampa supports Calabrese as to the comment and as to the entrance, but Lampa's version of Calabrese's walk around inside the pit is markedly different from Calabrese's. Calabrese's report supports his version, without elaborating on the exact details; while Tobias' notes support the position that Sorrentino did not attempt to mislead Calabrese.

The ultimate conclusion as to the actual facts requires reliance on the hearer's judgment on the credibility of the witnesses. In this regard, as to the confrontation at Table 7 and the events in the vicinity of Pit 5 thereafter, I cannot find that the Division's

proofs establish by a preponderance of the evidence that Sorrentino did say that only a few reds were present or that Calabrese ever entered Pit 5 and looked inside the box.

I should first say that I found the testimony of Mr. Sorrentino to be generally very believable. He impressed me as a responsible, honest man. The numerous character witnesses presented in his behalf were equally impressive, all speaking quite highly of his reputation both in the business world and the social context. Several of these men were former highranking State Police officials, now retired.

In addition to the inherent credibility which I found Mr. Sorrentino's testimony to be deserving of, the testimony of Mr. Tobias was of importance. Tobias was, through no fault of his own, placed near the events in question. While he initially might have believed that he was being investigated, he soon enough knew that he was not under suspicion. His essential credibility was never subject to serious attack. His testimony as to the preparation of notes and the notes which he did in fact produce were not significantly challenged. No particular present or past specific social or business connection to the charged men was ever demonstrated, other than the fact that they had worked together at one time. While the testimony of Sorrentino and Tobias differed on some details, such as whether the box was removed and placed on top of Table 4, they agreed on such essentials as Sorrentino's telling Calabrese of the presence of greens, Calabrese's not entering the pit and the presence of yellow baccarat checks in the box, a color not mentioned at all by Calabrese in either his report or his testimony.

Because on the whole, I **FIND** Sorrentino and Tobias' essential version of the events relating to the happenings after Calabrese and Lampa approached Sorrentino to be more credible and believable, I **FIND** that Detective Calabrese did not tell Sorrentino he was allegedly involved, did not enter the pit, and I **FIND** that Sorrentino did not tell Calabrese that only reds were in the box.

In further support of these conclusions, I found Calabrese's testimony as to his method of examining the other tokes disturbing at best. Calabrese insisted that from distances of one to twenty-five feet he could distinguish every color in the box, even while finally, and not without some hesitancy, admitting that he might not have been able to see every check. I **FIND** his hasty, casual approach and adament stance disturbing. This concern is heightened by his inability to offer any significant reason for not seizing the Table 4 box, particularly where he claimed that Sorrentino had lied about its contents.

Since I have concluded that Detective Calabrese's testimony does not establish any inference of guilt on the part of Sorrentino, the sole remaining evidence upon which the Division's case rests is Lampa's testimony as to his observations of the purported transaction. Again, while I **FIND** that Lampa thought something had occurred, I **FIND** that the clearly illegal action which he thought had occurred did not in fact happen.

The testimony of Mr. Lampa revealed that on the morning in question he was moving through the casino observing play at various tables, watching strategy, rules, the games as a whole. Lampa was not then an expert in the table games, and while it seems that he has significant expertise as a slot machine engineer, in April 1979 he was apparently a novice when it came to roulette. He was unfamiliar with terms, strategy, actions and rules. In addition, Lampa was not, at least from the testimony before me, a trained police officer or investigator, except as related to the slot machine area. With these limitations on his knowledge, experience and expertise, he approached Table 4 that morning and observed a very short period of play, described as a little more than one transaction. The table was active, if not exceptionally so. The dealer and the nearby floorperson acted, according to Lampa, in an apparently normal manner throughout. There was no doubt other action going on nearby and at other tables, and other conversation both at Table 4 and in the surrounding area. Lampa testified that at the time of the purported "drop", he was observing the whole game, dealer, wheel, checks, players, floorperson, etc. with general emphasis on the players and the play. The observation of the incident itself was very short, five seconds at most. Lampa could recall absolutely nothing about the play at the time, the players, other conversation. In addition, Lampa's testimony as to the events thereafter, including the purported complete walk around by Calabrese in the pit, which not even Calabrese testified to, was questionable. On the whole, I **CONCLUDE** that the testimony of Mr. Lampa is not sufficiently convincing so as to serve as the sole basis for determining that the Division has established the truth of the extremely serious charges herein by a preponderance of the evidence.

In addition to the above mentioned defects in the proofs presented by the charging party, one further missing element should be noted. While proof of motive is not generally an essential element for the lawful rendering of a guilty verdict in a criminal case or a finding of guilt in a civil licensing proceeding, the failure to establish the existence of a reasonable motive can emerge as a flaw in the total presentation which, particularly where other proofs are deficient, becomes significant. In this case, a motive

for the respondents to engage in the type of illegal toking activity has not been well established. The testimony of Detective Calabrese, unchallenged by any other evidence, was that an average dealer stood to gain 16 cents from a $100 tip; a floorperson, nothing. The charges lodged against respondents here are limited to one alleged $100 toke. I cannot presume from these charges, or from this evidence, the existence of any other such incidents or any on-going scheme. While this is not to say that such a possibility could not exist, on the basis of what is before me, I must conclude that the motive for the respondents to risk their licenses and careers in this potentially extremely rewarding occupation for such an incredibly insufficient amount of gain, is lacking.

It seems appropriate to indicate, in addition to my comments above, that I also found the testimony of Thomas Beebe to be credible. As with Mr. Sorrentino, I was impressed with Mr. Beebe's demeanor, candor and the general nature of his testimony. His character witnesses also spoke extremely well of him and it appears that both he and Mr. Sorrentino enjoy wide-spread respect within their particular community of acquaintances. This testimony, when coupled with their own credible and believable statements, was of some importance in my determination.

CONCLUSION

In summary, I **CONCLUDE** that the Division has failed to establish the guilt of the respondents by a preponderance of the evidence. Therefore, it is **ORDERED** that all charges be DISMISSED.

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

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

Feb 13, 1981
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

March 17, 1981
DATE

CASINO CONTROL COMMISSION
Sr. Asst. Counsel

Mailed to Parties:

March 19, 1981
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

EXHIBITS IN EVIDENCE

On Behalf of the Division of Gaming Enforcement:

C-1 - Floor Plan of Resorts Casino as of April 1979
C-3 - Empty toke box, same or similar as the box on Table 4 on April 18-19, 1979
C-4 - Report from Sergeant Calabrese to Detective Pitcher, dated April 20, 1979
C-6 - Miranda Rights form for Sorrentino
C-7 - Miranda Rights form for Beebe
C-8 - Sample $25 check in use at Resorts Casino in April 1979
C-9 - Work records of shift of April 18, 1979
C-10 - Work records of shift of April 19, 1979
C-11 - New Jersey State Police Operations Report, dated April 19, 1979 on top, April 20, 1979 at bottom

On Behalf of William Sorrentino:

RS-4 - Original Division of Gaming Enforcement file card for William Sorrentino
RS-5 - Original Division of Gaming Enforcement file card for Thomas Beebe
RS-7 - Affidavit of Bruce Lampa, dated October 19, 1979
RS-10 - Sample white chip in use at Resorts in April 1979
RS-11 - Sample red chip in use at Resorts in April 1979
RS-12 - Sample yellow baccarat chip in use at Resorts in April 1979
RS-13 - Notes prepared by Richard Tobias

On Behalf of Thomas Beebe:

RB-1 - Photograph of roulette table
RB-4 - Deposition of Joseph Calabrese, pages 236 through 239

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3763-80
CCC DOCKET NO. 80-EA-75

IN THE MATTER OF THE APPLICATION OF	:	
PATRICK TADDEO FOR LICENSURE AS A	:	FINAL ORDER
CASINO EMPLOYEE (DEALER)	:	

A hearing having been conducted on October 20, 1980 in the above-captioned matter before Administrative Law Judge Jeff S. Masin of the Office of Administrative Law; and the Commission having considered the entire record of these proceedings and the Initial Decision of the Administrative Law Judge, no exceptions or objections thereto having been filed by either party; and the Commission having resolved at its public meeting on January 7, 1981 to adopt the Initial Decision and to deny the application for licensure,

IT IS on this 21st day of January 1981, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Patrick Taddeo for licensure as a casino employee (dealer) be and hereby is denied for the reasons stated in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

DATED: January 21, 1981 BY: Joseph P. Lordi

JOSEPH P. LORDI, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3763-80

AGENCY DKT. NO. 80-EA-75

IN THE MATTER OF:

PATRICK TADDEO, APPLICANT FOR LICENSURE AS A CASINO EMPLOYEE (DEALER)

Record Closed: October 20, 1980
Received by Agency: 11/24/80

Decided: November 21, 1980
Mailed to Parties: 11/26/80

APPEARANCES:

Patrick Taddeo, Pro Se

Michael Grodjeski, Esq., Deputy Attorney General, for the Division of Gaming Enforcement (John J. Degnan, Esq., Attorney General)

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

Patrick Taddeo has applied to the Casino Control Commission for licensure as a casino employee (dealer). By letter dated March 28, 1980, the Division of Gaming Enforcement notified the Chairman of the Commission that the Division objected to licensure. Mr. Taddeo requested a hearing on June 2, 1980 and the matter was then transferred to the Office of Administrative Law as a contested case pursuant to N.J.S.A 52:14F-1, et seq. A Prehearing Conference was held before Administrative Law Judge Joseph Fidler on August 14, 1980 and a Prehearing Order was issued on August 28, 1980 which incorporated the issues to be considered at the hearing as agreed to by the parties. These were as follows:

A. Whether the Applicant has satisfied the State residency requirement set forth in Section 89b(4) of the Casino Control Act and the durational residency requirement set forth in Section 90c of the Act and N.J.A.C. 19:41-4.3(5).

B. Whether the Applicant possesses the requisite experience and training to be licensed as a casino dealer, within the meaning of Section 89b(3), as incorporated in Section 90b of the Act.

C. Whether the Applicant, with specific reference to question No. 46 of his Personal History Disclosure Form, which requires disclosure of his complete arrest and conviction record, has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of Section 86b of the Casino Control Act.

D. Whether the Applicant has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of Section 89b(2), as incorporated in Section 90b of the Casino Control Act.

The hearing was held on October 20, 1980 before Administrative Law Judge Jeff S. Masin, sitting with the consent of the parties.

The first witness for the Applicant, Andrin Giglio, testified that he is the brother-in-law of the Applicant and has known him for about 24 years. Mr. Giglio owns a Midas muffler shop on Route 1 in Trenton. He employs Taddeo as an outside salesman dealing with wholesale work for car dealers and repair shops. Giglio lives in Englishtown, New Jersey. Taddeo and his family reside in Brooklyn, New York, but Taddeo spends three to five nights a week at Giglio's home because of the extensive travel involved in his job which makes it difficult for Mr. Taddeo to return to Brooklyn every night. Mr. Taddeo receives some mail at Giglio's home. He pays no rent to Mr. Giglio. He sleeps in a separate bedroom.

Mr. Giglio stated that Taddeo has been married to his sister for 21 years and has lived in Brooklyn for "a long time." Taddeo's wife works in Manhattan and his daughter graduated from high school in Brooklyn and now attends a city college.

Marvin Podnos, Esq., an attorney for the New York City Transit Authority, testified as Applicant's second witness. Podnos has known Taddeo for about 10 years. He described the Applicant as a person of good moral character, a good father and husband, conscientious, honest and above reproach. He knew Mr. Taddeo to be in Brooklyn on weekends and in New Jersey during the week. He knows that Taddeo had problems with the Internal Revenue Service (IRS) and also knew of a 1972 arrest for grand larceny. He had only learned of the grand larceny matter recently and had obtained a transcript of the proceedings which attested to the fact that Mr. Taddeo was acquitted on that charge. Podnos also had heard about a 1976 disorderly persons offense but had no personal knowledge about it. Finally, Podnos advised that he was aware of a tax problem which Taddeo had with New York State which was eventually settled with Mr. Taddeo receiving an $800 refund.

On cross-examination, Mr. Podnos stated that he had on occasion advised Taddeo on legal matters, without fee. This was particularly true with respect to tax matter. Podnos said that he was in constant contact with Taddeo and would absolutely recommend him for licensing. Podnos admitted that he had not known of the grand larceny matter until the Friday before the hearing. He had not advised Taddeo on criminal matters.

Patrick Taddeo testified in his own behalf. He admitted that he had no gaming experience although he did know how to deal blackjack. He has not yet applied for admission to a gaming school. He asserted that he had been told that it takes four to six months to get into a gaming school. He admitted that he had failed to disclose various arrests listed on an FBI rap sheet, claiming that he had received incorrect advice from some unnamed parties. He claimed that his IRS problems stemmed from gambling winnings and led to his 1966 arrest which had resulted from a tip given to the IRS. He did not list this arrest on the Personal History Disclosure Form. He paid a $2,000 fine on a charge stemming from his IRS difficulties. The rap sheet discloses three arrests, one in 1967 relating to the then existing wagering tax (later declared unconstitutional) and two in 1971, the latter of these for false statements made to the IRS. Taddeo asserted that they all arose from the same difficulty with the taxing authority.

Taddeo also admitted that he had failed to list an arrest for an assault on a police officer, the arrest having occurred in March 1976. He described this incident as occurring when he became involved in a problem with an off-duty officer who was out with the wife of a friend of Mr. Taddeo's. The officer failed to appear in court and the charges were dismissed.

The Applicant testified that he has been a member of Local 54 of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO in Atlantic City. He transferred his union book from a local in Miami.

On cross-examination, Mr. Taddeo acknowledged that he had lived at his Brooklyn address for most of the past 16 years. He did not put his brother-in-law's address in New Jersey as a residence on the Personal History Disclosure Form, listing only his mother's house and his apartment as residences in response to question 16. He described his failure to list the New Jersey address as "stupid," but then described the form as complicated and said that the failure to list resulted from an oversight. His wife had typed the form and helped him prepare it. He said it was very possible his wife had failed to put the New Jersey address in the form. He did not review the form before he signed it. Had he reviewed it, he would have listed the New Jersey address. He did acknowledge that he had filled out the front page of the form on which he had listed his name, and then his address in Brooklyn.

Mr. Taddeo explained that he had not yet applied to gaming school because he did not want to invest the money necessary until he saw how his hearing went.

The Applicant stated that he did not recall his first adult arrest in 1964 and had not listed it on the Personal History Disclosure Form. However, he believed it had occurred in Miami and involved an argument at a race track. He was required to post $100 bail which he forfeited when he left Florida and did not appear at the court hearing, a circumstance which he described as resulting from an "understanding" with the police that he would "get out" of the state.

In 1972 Taddeo was arrested for grand larceny, possession of stolen property, unauthorized use of a motor vehicle and bribery. He was acquitted after a jury trial.

Taddeo explained that he had been feeling ill with a virus on the morning when the Division's investigator had called him to review the Personal History Disclosure Form which he had submitted. Taddeo did not really feel well enough to talk and also was leary about conversing with a stranger over the telephone. He did not tell the investigator about either the illness or his wariness. He described himself as "evasive" with the investigator and gave him no real information. He could not remember what he told the investigator about the various arrests.

Mr. Taddeo concluded by advising that he pays income tax to New Jersey, not New York.

As additional support for his application, and specifically as a portion of his proof with respect to his good character, honesty and integrity, Mr. Taddeo presented a letter, dated September 25, 1980 from Salvatore T. DeMatteo, a Justice of the Supreme Court of the State of New York. The letter was marked in evidence as P-2.

State Police Detective Richard Avery Vermenter, assigned to the Division of Gaming Enforcement, testified about his involvement in a background check on the Applicant. He contacted Mr. Taddeo at his Brooklyn address on November 1, 1979 after having received rap sheets from the New Jersey State Police, the New York State Division of Criminal Justice and the Federal Bureau of Investigation. Vermenter identified himself as a detective assigned to the case. Taddeo never said that he was ill or that he did not wish to talk. Vermenter read question 46 of the Personal History Disclosure Form which had been previously submitted by Taddeo. He asked the Applicant if he had ever been arrested. Mr. Taddeo responded, "No." Vermenter asked him about the 1964 arrest in Florida and Taddeo admitted it and described the circumstances. He then was asked if he had been arrested any other time. Taddeo responded, "No." When queried about the wagering tax arrest in 1967, Taddeo admitted it, saying it was the result of an IRS audit. He did not say why he had failed to disclose the arrest.

Vermenter asked again whether Taddeo had ever been arrested on any other occasion and the Applicant said, "No other arrests." He was then confronted with the 1971 IRS arrest and admitted it, claiming it had resulted from the same IRS investigation.

The same pattern of question regarding further arrests, denial, confrontation and admission then occurred regarding the 1972 grand larceny matter. Taddeo advised of

his acquittal on this case. He then denied further arrests, saying "No, that's all." After being asked about the 1976 arrest, he denied all knowledge of the same.

Vermenter advised that it was possible that Mr. Taddeo did relate to him that he stayed with his brother-in-law in New Jersey on occasion. Finally, the detective noted that it had appeared to him that Taddeo had attempted to conceal all information regarding the arrests until confronted with Vermenter's knowledge of each.

DISCUSSION

Upon review of the testimony and evidence presented by the parties, I make the following **FINDINGS OF FACT**:

1. Patrick Taddeo is a resident of the State of New York, residing at 2790 Bragg Street, Brooklyn, New York.

2. Mr. Taddeo has been arrested on various occasions including a 1964 arrest in Florida for disorderly conduct, a 1967 arrest for a wagering tax violation, a 1971 arrest for making false statements to the IRS, a 1972 arrest in New York for larceny, bribery and related charges and a 1976 New York arrest for assault.

3. Mr. Taddeo was acquitted of all charges arising from the 1972 arrest, received a $2,000 fine for the 1967 IRS matter and the 1976 assault charge was dismissed.

4. Mr. Taddeo filed a Personal History Disclosure Form with the Casino Control Commission. In answer to question 46 which specifically asked whether he had ever been arrested, he answered, "No." This answer was not accurate.

5. Mr. Taddeo has no experience as a dealer and has not yet applied for admission to a gaming school.

N.J.S.A. 5:12-90b requires that any applicant for a casino employee license must, prior to issuance of a license, produce sufficient proof to meet the criteria for qualification contained in N.J.S.A. 5:12-89b(3) which reads:

> "Each applicant shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence that the applicant has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficency in the particular position involved."

In this case, the Applicant has not presented any evidence of such qualifications. His explanation that he wished to see what happened at the hearing before investing the money in pursuing the gaming school may be reasonable in light of the difficulties of his case, but does nothing to meet the legal requirements necessary for licensure. I CONCLUDE that Mr. Taddeo has failed to establish by clear and convincing evidence that he has the requisite experience and training required by the Act.

Section 89b(4) permits the Casino Control Commission to require that each casino employee licensee be a resident of the State of New Jersey. In N.J.A.C. 19:41-4.3(a)(5) the Commission has established the residential requirement and a durational requirement which mandates that a prospective licensee be a resident of the State for six months immediately proceeding the issuance of a license. While the Applicant herein is permitted by this regulation to apply for licensure prior to the required period of residency, no license may be issued unless he has, at the time of the issuance of the license, fulfilled the six months durational test. Mr. Taddeo is not a resident of New Jersey. Although he works here and pays taxes here, and although he stays in New Jersey overnight on many weekday evenings for the convenience of both his employer and himself, he has not manifested any intent to remove his family and himself from Brooklyn and establish more permanent ties to New Jersey. His New York residence is understandable in terms of his wife's employment and his daughter's college enrollment (and city university tuition status). However understandable as it may be, the regulations require that one who intends to actually receive a casino license must have established residence in this State and maintained the same for six months and Mr. Taddeo has not done anything which would meet the criteria of residence.

I CONCLUDE that Mr. Taddeo has failed to fulfill the residency and durational requirements and cannot now be licensed.

With respect to the failure of Mr. Taddeo to disclose his record of arrests, I CONCLUDE that he did so knowingly. His reasons have not been explained to any satisfactory degree. His further actions, when confronted by Detective Vermenter as to the record, revealed a further intent to attempt to avoid revelation of the record. The excuses presented, those of illness and a reluctance to speak on the phone, are patently insufficient to justify the conduct, particularly where Taddeo did not advise the caller of either reason. The record of arrests constitutes material information which must be disclosed by an applicant. I CONCLUDE that the Petitioner's conduct requires that his license application BE DENIED pursuant to the direction of N.J.S.A. 5:12-86b.

Finally, the statute, N.J.S.A. 5:12-89b(2) and 90b, requires that an applicant establish by clear and convincing evidence his reputation for good character, honesty and integrity. Section 89b(2) specifies that information regarding arrests and convictions shall be produced as a portion of the applicant's burden of proof to meet this requirement. A consideration of the proofs presented by the Applicant, as well as his failure to disclose the arrest and conviction information voluntarily and the subsequent conduct with respect to the interview by Detective Vermenter, mandate a finding that he has failed to meet his burden of establishing his good character, honesty and integrity. Therefore, he cannot be licensed.

CONCLUSION

In view of the above findings and conclusions, I CONCLUDE that the Petitioner's application for licensure as a casino employee (dealer) must BE DENIED.

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

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

November 4 1980
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

November 24 1980
DATE

Thomas N. Auriemma Esq for
CASINO CONTROL COMMISSION

Mailed to Parties:

November 26, 1980
DATE

Ronald J. Parke /bt
OFFICE OF ADMINISTRATIVE LAW

ms

EXHIBITS IN EVIDENCE

Joint Exhibit

J-1 Personal History Disclosure Form

Petitioner's Exhibits

P-1 Criminal Docket Sheet; People of the State of New York v. Patrick Taddeo

P-2 Letter of September 25, 1980 from Salvatore T. DeMatteo

Respondent's Exhibits

R-1 Criminal Record Information from State of New York, Division of Criminal Justice Services; New Jersey State Police; Federal Bureau of Investigation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 5212-79
CCC DOCKET NO. 79-EA-164

IN THE MATTER OF THE APPLICATION :
OF ROBERT J. THOMASON FOR :
LICENSURE AS A CASINO EMPLOYEE :
(CRAPS DEALER) :

FINAL ORDER

This matter having been opened to the Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein dated January 20, 1981; and the Commission having considered the entire record of the proceedings, the said Initial Decision and the exceptions filed by the Applicant Robert J. Thomason; and the Commission having resolved at its public meeting on February 25, 1981 to affirm and adopt the said Initial Decision and to deny the application for licensure.

IT IS on this 9th day of March, 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is ADOPTED by the Commission; and

IT IS FURTHER ORDERED that the license application of Robert J. Thomason be and hereby is DENIED based upon the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

ment within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: March 9, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5212-79

AGENCY DKT. NO. 79-EA-164

IN THE MATTER OF:

ROBERT THOMASON

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: December 4, 1980

Received by Agency: 1/20/81

Decided: January 19, 1981

Mailed to Parties: 1/23/81

APPEARANCES:

Daniel W. Myers, Esq., for the Petitioner, (Myers, Matteo, Rabil and Norcross)

Joseph A. Mussomeli, Deputy Attorney General, for the Respondent (John J. Degnan, Attorney General)

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

This matter concerns the application of Robert J. Thomason to the Casino Control Commission for licensure as a casino employee (dealer) pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement recommended that the application be denied. The petitioner requested a hearing and the matter was transferred 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 of Gaming Enforcement contends that Mr. Thomasin withheld material information from Division investigators in violation of N.J.S.A. 5:12-86b. The Division further contends that Mr. Thomasin lacks the good character, honesty and integrity required by N.J.S.A. 5:12-89b2 as incorporated in N.J.S.A. 5:12-90.

The Division's objections are based on the petitioner's arrest record, about which there is no substantial dispute. Based on stipulations and uncontroverted evidence, I find the following facts :

1. In February 1979 the petitioner filed his Personal History Disclosure Form with the Casino Control Commission. At that time, he was able to truthfully answer question number 46, concerning the applicant's arrest record, in the negative.

2. On June 2, 1979, Mr. Thomasin was stopped for speeding by the Ocean City Police. A search of his vehicle found a small pipe containing remmants of marijuana. Although Mr. Thomasin denies ownership of that pipe, he pled guilty to possession of marijuana under 25 grams, in violation of N.J.S.A. 24:21-20A4, on June 26, 1979. He was conditionally discharged from that offense. The discharge was subsequently revoked, and the guilty plea entered, because he violated the terms of his probation by a subsequent arrest and conviction, on guilty plea, for the possession of qualudes.

3. On June 28, 1979 he pled guilty to reckless driving, the other charge that arose out of the June 2 arrest. The reckless driving consisted of speeding at the rate of 120 miles per hour in order to shop at a liquor store before its closing time of 10 p.m. After his arrest, he boasted to the police officer that not many drivers could have operated at that speed through traffic.

4. On July 19, 1979, the petitioner was arrested for possession of qualudes in violation of N.J.S.A. 24:21-20A-1. He was subsequently indicted and pled guilty to this charge.

The factual dispute centers around telephone interviews between the petitioner and Antoinette Burton, an investigator for the Division of Gaming Enforcement. Miss Burton testified that she called Mr. Thomasin's former home, where his parents still resided on the morning of June 28, 1979 to update his application. She was told that the petitioner no longer lived there, but that he would receive a message to return Miss Burton's call. Later that day, Miss Burton states that petitioner did return her call. There ensued an interview during which she asked him if he had any arrests since the application was filed in February. Mr. Thomasin said that he had not, despite the fact that he was arrested on June 2, 1980 for the possession of marijuana, pled guilty to that offense on June 26, and pled guilty to reckless driving on the very morning of the day on which he now declared that he had no arrests since the filing of his application in February. It is this misrepresentation concerning his arrest that the Division contends constitutes a failure to reveal a fact material to qualification in violation of N.J.S.A. 5:12-86b.

Miss Burton further testified that she learned in the June 28th conversation of Mr. Thomasin's new residence in Ocean City. She then checked with the Ocean City Police Department, according to her usual procedure for any arrest records. On July 5, 1979, she called Mr. Thomasin again to ask him why he failed to advise her of the June 2 arrest that she learned about from the Ocean City Police Department. Mr. Thomasin told her that he was under the impression that the charges were dropped and did not have to inform her of the arrest. However, Mr. Thomasin does not now argue that he failed to understand the legal implications of the conditional discharge. Instead, the petitioner testified that he did not return Miss Burton's call on June 28th but, rather, he returned it sometime in July. He claims that he only had one telephone conversation with Miss Burton during which time she asked him no questions concerning arrests.

Miss Burton appeared to me to be a competent and sincere witness. There was no doubt in her mind concerning the dates and contents of her telephone interviews with Mr. Thomasin. On the other hand, Mr. Thomasin, by his conduct, has exhibited a certain marginal disrespect for the law. Although this may well be attributable to youthful exuberance, it nevertheless weighs against the sincerity of his testimony. He drove his car at 120 miles per hour in order to reach a liquor store before it closed. He bragged about his ability to drive at that speed through traffic to the arresting officer. He knew that he was on the probation as the result of the conditional discharge entered on June 26,

1979. Yet, he knowingly accepted qualudes less than a month later. His demeanor at the hearing was not convincing.

I **FIND** as fact that the petitioner spoke with Antoinette Burton over the telephone on June 28, 1979. At that time, she asked him whether he had had any arrests since filing his application for licensure in February, and he stated that he had not. He knowingly failed to disclose his June 2 arrest to Miss Burton. I **CONCLUDE** that this constitutes a failure to reveal a fact material to qualification in violation of N.J.S.A. 5:12-86b, a conclusion which requires a denial of petitioner's application for licensure.

I **FURTHER FIND** that petitioner's conduct, when viewed cumulatively, renders his proofs concerning his good character, honesty and integrity less than clear and convincing, the standard required by N.J.S.A. 5:12-90. The initial arrest for possession of marijuana; his boast to the arresting officer that few could drive, as he did, at 120 miles per hour in order to reach a liquor store before it closed; his possession of qualudes in violation of the terms of probation, less than a month after the conditional discharge of his marijuana charge; and the failure to disclose the marijuana arrest to Miss Burton all happened fairly recently. Viewed together, these events bespeak a personal nature inconsistent with good character, honesty and integrity. Time and maturity may well remove petitioner's obstacles to licensure. But that time has not yet come.

For all the foregoing reasons **IT IS HEREBY ORDERED** that petitioner's application be **DENIED**.

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

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

1/19/81
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

Jan. 20, 1981
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

January 23, 1981
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

LIST OF EXHIBITS:

R-1 Complaint
R-2 Document
R-3 Letter
R-4 Document
R-5 Final Disposition Report
R-6 Complaint
R-7 Investigation Report
R-8 Judgment of Conviction
R-9 Investigation Report
P-1 Personal History Disclosure
P-2 Letter
P-3 Diploma
R-10 Investigator Burton's notes

LIST OF WITNESSES:

Sabrina Morley
Gordon Payton
John D. Stolar
Robert J. Thomason
Antoinette Burton

370.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE PETITION OF	:	
TRAILWAYS, INC., FOR AN AMENDMENT	:	ORDER ADOPTING
TO THE COMMISSION'S REGULATIONS	:	REPORT AND
REGARDING INTER-CITY BUS	:	RECOMMENDATION
PASSENGER SERVICE BY CASINOS	:	

This matter having been brought before the Commission at its public meeting of March 4, 1981, and the Commission having considered the Report and Recommendation of Commissioner McWhinney dated February 20, 1981, and the arguments of counsel,

IT IS on this 13th day of March 1981, ORDERED that the Report and Recommendation of Commissioner McWhinney be and is hereby adopted by the Commission, and

IT IS FURTHER ORDERED that each participant in the hearing to be conducted in the above matter be and is hereby expected to bear its own expenses attendant thereto, and

IT IS FURTHER ORDERED that the expenses attendant to the Commission's participation in and conduct of the hearing be and are hereby considered as part of the Commission's overall operating expenses and not chargeable to the interested party petitioning for rule-making action pursuant to N.J.S.A.5:12-69(c).

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: March 13, 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE PETITION OF	:	
TRAILWAYS, INC., FOR AN AMENDMENT	:	REPORT
TO THE COMMISSION'S REGULATIONS	:	AND
REGARDING INTER-CITY BUS PASSENGER	:	RECOMMENDATION
SERVICE BY CASINOS.	:	

On November 12, 1980, Trailways, Inc.,petitioned the Casino Control Commission [hereinafter: "Commission"] to adopt a regulation, the essence of which would prohibit a casino licensee or affiliated company from operating an inter-city bus passenger service. At the Commission's January 7, 1981, public meeting, Trailways, Inc.'s petition was considered by the Commission. The Commission determined to delegate to Chairman Lordi the authority to appoint a Commissioner to preside over a hearing on the proposed regulation. Chairman Lordi appointed the undersigned.
This hearing is scheduled to commence on Monday, March 16, 1981, at the Commission's public meeting room, Arcade Building, Tennessee and Boardwalk, Atlantic City, New Jersey at 9:30 a.m.

During discussion at the Commission's January 7, 1981, public meeting, the issue of who shall bear the cost of the hearing on the regulation proposed by Trailways, Inc., was raised. In addition to granting Trailways, Inc.'s request

for a regulation hearing, the Commission determined to have the designated hearing examiner consider the issue of who shall bear the cost of the hearing prior to its commencement. This Report and Recommendation focuses solely upon this issue.

N.J.S.A. 5:12-69(c) provides:

* * * *

> c. Any interested person may file a petition with the commission requesting the adoption, amendment or repeal of a regulation. Such petition shall state clearly and concisely:
>
> (1) The substance and nature of the regulation, amendment or repeal requested;
>
> (2) The reason for the request; and
>
> (3) Reference to the authority of the commission to take the action requested.
>
> Upon receipt of the petition, the commission shall schedule the matter for hearing within 90 days and shall render a decision within 30 days after the completion of said hearing.

* * * *

Review of this subsection reveals a clear legislative intent to provide a forum for interested persons who seek the adoption, amendment or repeal of a Commission regulation. This intent is further suggested by the Legislature's recent override of Governor Byrne's veto of Senate Bill No. 1560 on February 9, 1981, which amends portions of the Administrative Procedure Act. N.J.S.A. 52:14B-1 et seq. The Administrative Procedure Act now provides:

> (f) An interested person may petition an agency to promulgate, amend or repeal any rule. Each agency shall prescribe the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:

> (1) The substance or nature of the rule making which is requested;
>
> (2) The reasons for the request and the petitioner's interest in the request;
>
> (3) References to the authority of the agency to take the requested action.
>
> Within 30 days following receipt of any such petition, the agency shall either deny the petition, giving a written statement of its reasons, or shall proceed to act on the petition, which action may include the initiation of a formal rule-making proceeding. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the division for publication in the Register. N.J.S.A. 52:14B-4(f).

Although different in some particulars, N.J.S.A. 52:14B-4(f) also affords interested persons the opportunity to petition administrative agencies for rule-making action. Neither N.J.S.A. 5:12-69(c) of the Casino Control Act nor N.J.S.A. 52:14B-4(f) of the recently amended Administrative Procedure Act address who shall bear the cost of a hearing resulting therefrom. It is against this backdrop that this issue must be considered.

Initially, it is necessary to define what is meant by the word "cost" in the context of a hearing regulation. In my view, the cost may include, but not be limited to, attorney's fees, expert witness fees, stenographic fees and the expenses attendant to the Commission's participation in and conduct of the regulation hearing.

Those who assert that Trailways, Inc. should bear the cost of the hearing resulting from its proposed

regulation basically contend that the casinos will be put to great expense by reason of their participation in this hearing. Moreover, they contend that the Commission's expenses regarding this hearing will in large measure be borne by the casinos. See N.J.S.A. 5:12-139, 140, 141, 142, 143 and 153. In order to gauge the sincerity of those petitioning for rule-making action and to apportion the cost of the hearing to the person or entity who will most likely benefit from the proposed regulation if adopted, it is argued that Trailways, Inc., and not the casinos should bear the cost in this matter.

For the reasons which follow, I recommend that in this case each participant bear its own direct costs. I further recommend that the costs attendant to the Commission's participation in and conduct of this hearing be considered as part of its overall operating expenses. These expenses are defrayed by license fees deposited in the Casino Control Fund, N.J.S.A. 5:12-143.

I find the arguments raised in support of requiring Trailways, Inc. to bear the cost of the upcoming regulation hearing unpersuasive. The legislative intent recognized above would be frustrated if the cost of a regulation hearing had to be borne by its proponent. The expenses sometimes incident to establishing the need for such agency action may, in and of themselves, disuade action that the Legislature was clearly interested in encouraging. To place the additional burden of bearing the hearing's cost upon such a person or entity is untenable.

Additionally, the principle, that a party to a private adversarial proceeding, is ordinarily expected to bear only his own expenses, is firmly embedded in the jurisprudence of this State. Of course, rule-making is not an adversarial matter in the sense of a contested case or an action at law. Rule-making is designed to affect the requirements imposed on a class or group of persons where the agency deems such requirements to be in the public interest. Thus, unlike a contested case or a court action, a particular party is not obliged to participate at a rule-making hearing in order to avoid the entry of a "default" judgment. Since our courts have long required a party to bear his own expenses even where the party is "forced" to defend against a tenuous legal claim, the same reasoning demands that Trailways, Inc. should not bear the full cost of the hearing regarding its petition for rule-making in the public interest.

Finally, reflection upon the practical problems which will doubtless be encountered were I to recommend otherwise are manifest. Computing and assessing the expenses incurred by participants at the hearing would be fraught with difficulty. Collection problems might result. The administrative burdens inherent in imposing the cost of the hearing on the petitioner could conceivably overshadow the substantive matters at issue. Having each participant bear its own costs, in my view, is the sounder approach.

On the basis of the foregoing, I recommend that the Commission hold that each participant in hearings conducted pursuant to N.J.S.A. 5:12-69(c) be expected to bear their own expenses. Further, I recommend that the Commission hold that the cost of the Commission's conduct of and participation in the hearing on Trailways, Inc.'s proposed regulation be considered as part of the operating expenses necessarily incurred by the Commission in administering the Casino Control Act. I believe such a ruling would be consistent with legislative intent and recognized practice. It is also my view that to rule otherwise would be at best administratively cumbersome and perhaps unworkable.

Respectfully submitted,

BY: Madeline McWhinney
MADELINE McWHINNEY, COMMISSIONER

DATED: February 20, 1981

fh

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1481-79
CCC DOCKET NO. 79-EA-50

IN THE MATTER OF THE APPLICATION :
OF BRADFORD WOODARD FOR LICENSURE : FINAL ORDER
AS A CASINO HOTEL EMPLOYEE :

This matter having been opened to the Casino Control Commission on appeal from the decision of Chairman Lordi which denied licensure to the Applicant by Order dated April 18, 1980; and the Commission having considered the entire record of the proceedings, the Initial Decision of the Administrative Law Judge, the exceptions thereto filed by both parties, and the briefs submitted on this appeal by the Applicant and the Division of Gaming Enforcement; and the Commission having found, pursuant to N.J.S.A. 5:12-91(e), that the waiver of the Applicant's disqualification would be consistent with the public policy of the Casino Control Act and appropriate in the interests of justice; and the Commission having heard the arguments of counsel for the parties and having resolved at its public meeting on January 7, 1981 to waive the Applicant's disqualification and to grant his application for licensure;

IT IS on this 14th day of January 1981, ORDERED that the application of Bradford Woodard for licensure as a casino hotel employee be and hereby is granted; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: January 14, 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 1481-79
CCC DOCKET NO. 79-EA-50

IN THE MATTER OF THE APPLICATION :
OF BRADFORD WOODARD, JR., FOR : ORDER
LICENSURE AS A CASINO HOTEL :
EMPLOYEE (KITCHEN HELPER) :

A hearing having been conducted in the above-captioned matter on August 28, 1979 before Administrative Law Judge Joseph F. Fidler of the Office of Administrative Law; and the Chairman having considered the record of that hearing, and the Initial Decision of the Administrative Law Judge, and the written exceptions filed by the parties thereto; and the Chairman having determined to adopt the Initial Decision of the Administrative Law Judge and deny the application for licensure,

It is on this 18th day of April, 1980, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is adopted by the Chairman, and

It is further ORDERED that the application of Bradford Woodard, Jr. for licensure as a casino hotel employee be and hereby is denied based on the findings of fact and conclusions

of law stated in the Initial Decision, which is incorporated herein by reference and made a part hereof;

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

JOSEPH P. LORDI, CHAIRMAN
CASINO CONTROL COMMISSION

DATED: April 18, 1980

IN THE MATTER OF)
THE APPLICATION OF BRADFORD WOODARD)
FOR LICENSURE AS A CASINO)
HOTEL EMPLOYEE)

INITIAL DECISION

OAL DKT. NO. CCC 1481-79
Agency Dkt. No. 79-EA-50

APPEARANCES:

Jack E. Granzow, Esq.
American Civil Liberties Union
for the Applicant, Bradford Woodard

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

R. Benjamin Cohen, General Counsel
By: Denise A. Cobham, Asst. Counsel
for the Casino Control Commission

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

This matter concerns the application of Bradford Woodard to the Casino Control Commission for licensure to work as a casino hotel employee. His application, including his initial Personal History Disclosure Form, was filed with the Commission on August 10, 1978. Applicant was advised by letter from the Casino Control Commission, dated May 4, 1979, that based upon the information received by letter from the Division of Gaming Enforcement dated March 9, 1979, there was a "substantial possibility" that the Commission would deny his application, and that he had the right to a hearing.

Applicant requested a hearing on his application and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A pre-hearing conference was held on July 18, 1979, and the hearing was held on August 28, 1979, at the Mercer County Court House, Trenton, New Jersey. Supplemental documentation was offered subsequent to the hearing in this matter and the final briefs of the parties were received on December 13, 1979, which is deemed to be the concluding date of the hearing.

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

1. Whether applicant for licensure as a casino hotel employee has established by clear and convincing evidence his reputation for good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89 b(2) as incorporated in N.J.S.A. 5:12-91b.

2. Whether applicant has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria in his response to Question No. 8 of the Personal History Disclosure Form within the meaning of N.J.S.A. 5:12-86b.

3. Whether applicant has been convicted of any offense which is an enumerated statutory disqualifier within the meaning of N.J.S.A. 5:12-86c, as incorporated in N.J.S.A.5:12-91b.

4. Whether applicant has been convicted of a pattern of offenses not enumerated in subsection 86c which would indicate under subsection 86c, as incorporated in subsection 91b, that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations.

5. Whether, notwithstanding a conviction of any offense enumerated in the act as disqualification criteria, applicant has demonstrated under subsection 91d his rehabilitation, or that the offense for which the applicant has been convicted is not reasonably related to the duties for which the applicant will be employed in the casino hotel.

6. Whether any disqualification criterion affecting applicant may be waived under subsection 91e consistent with the public policy of the Casino Control Act and upon a finding that the interests of justice so require.

At the commencement of the hearing, a stipulation was entered into by and between counsel for the Applicant and the Division of Gaming Enforcement as to the totality of the Applicant's criminal conviction record. That stipulation was as follows:

DATE	OFFENSE	DISPOSITION
3/24/62	Assault & Battery	Bordentown Reformatory
6/8/62	Breaking & Entering & Larceny	Bordentown Reformatory
5/13/65	Assault & Battery	$100 fine
6/10/67	(Miami Fla.) Vagrancy	30 days
4/18/68	Shoplifting	$200 fine
10/22/69	Poss. of Narcotics	State Prison, 1-5 yrs.
4/11/70	Breaking & Entering & Larceny	State Prison, 2-5 yrs. (to run concurrent with the narcotics conviction above)
7/31/72	Unlawful taking of Auto.	$200 fine

Applicant filed two Personal History Disclosure Forms with the Casino Control Commission. The first disclosure form was received by the Commission on August 10, 1978. The second disclosure form was prepared by the Applicant in November 1978, and was received by the Commission on March 16, 1979. Applicant testified concerning his answers to question #6 on the second disclosure form, which requires disclosure of the circumstances of an applicant's last three places of employment. According to the Applicant, he has been an employee of the Boardwalk Regency Hotel and its predecessor, Howard Johnsons, since 1972. Applicant stated that he is a banquet worker at the Boardwalk Regency Hotel, assigned the tasks of care, setup and inventory of silverware, glasses, table cloths and linen. The Applicant's disclosure form also revealed employment at Resorts International Hotel and the Madison House. For both places of employment, the disclosure form revealed the Applicant's reason for leaving to be a layoff. However, at the hearing, Applicant testified that his answers on the disclosure form concerning his reasons for leaving were not true. According to the Applicant's testimony, he actually had been fired from Resorts International Hotel for having gone home to sleep during his shift, and had been fired from the Madison House because his supervisor had objected to the way the Applicant dressed.

N.J.S.A. 5:12-86b provides that the Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying information which is false or misleading as to a material fact pertaining to the qualification criteria. The aforementioned untrue responses of Applicant to the request of the Commission for disclosure of his employment history gives rise to the possibility of the Applicant's disqualification pursuant to section 86b.

The possibility of disqualification from licensure pursuant to the disclosure criteria of section 86b also arises from the Applicant's responses to question #8 on his two disclosure forms, which requires disclosure of an applicant's criminal and disorderly persons conviction record. Applicant acknowledged that the aforementioned stipulation concerning his record of convictions was a true and complete accounting. Applicant disclosed none of his convictions on his first disclosure form and disclosed only his conviction for possession of narcotics on his second disclosure form. Applicant explained that his cousin Francine Rose assisted him in the preparation of the first disclosure form by reading the questions to him and writing his answers. Applicant stated that he did not think he told his cousin to write the answer "No" in response to the question of whether Applicant had ever been convicted of a crime or disorderly persons offense. Applicant acknowledged that he initialed the bottom of the page after it was prepared by his cousin. Referring to his second disclosure form, Applicant stated that his cousin Robert Rose assisted him in its preparation. According to the Applicant, he told his cousin to list the Applicant's 1969 narcotics conviction in response to the request for disclosure of his conviction record.

N.J.S.A. 5:12-86c, as amended by P.L. 1979, c. 282, provides that the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained purusant to certain enumerated statutes. The Applicant herein has twice been convicted of larceny, in violation of N.J.S.A. 2A:119-2. Pursuant to section 86c(2), a conviction for larceny

under N.J.S.A. 2A:119-2 is an automatic disqualifier for licensure, unless, pursuant to section 86c(4), the conviction did not occur within the ten year period immediately preceding application for licensure, and the Applicant can demonstrate by clear and convincing evidence that automatic disqualification is not justified. Applicant's two convictions for larceny were entered in 1962 and 1970.

Purusant to section 91d of the Act, as amended, Applicant shall not be denied a casino license on the basis of his larceny convictions, provided that he has affirmatively demonstrated his rehabilitation. In determining whether the Applicant has affirmatively deomonstrated his rehabilitation, the following factors should be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the Applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

Applicant is an educationally disadvantaged 35 year old minority resident of Atlantic City who has held employment as a banquet worker for the greater part of the last eight years. It has been nearly eight years since the Applicant's last conviction, which was for unlawful taking of an auto. Applicant's first conviction, for assault and battery, occurred in 1962. His last conviction for a specifically enumerated disqualifier, larceny, occurred nearly ten years ago. Applicant testified that he became a narcotics addict in 1964, but was able to end his addiction in 1970, while he was in prison.

Applicant's employment record is not unblemished, as established both by the Applicant's testimony concerning his firings from various positions, and the records of Applicant's employment at the Madison House, Resorts International Hotel and the Boardwalk Regency Hotel which were submitted by the Division of Gaming Enforcement (Exhibits D-3 through D-5). However, Applicant did submit a letter from his former parole officer, which stated that the officer had no knowledge indicating that the Applicant's employment would be "incompatible with the welfare of society."

The candor and credibility of the Applicant within the context of his application for licensure and the hearing process must also be examined in order to determine whether he has sustained his burden of demonstrating his rehabilitation. The Applicant admitted at the hearing that he had not disclosed the true reasons for his termination from the Madison House and from Resorts International Hotel. In addition, the Applicant admitted that when he was fired from the Madison House, he falsely stated that he had been laid off so that he would be eligible for unemployment compensation benefits. The Applicant's explanation that it was his relatives who first failed to reveal that Applicant had any convictions, and then revealed only one of his convictions, while assisting him in the preparation of his two personal history disclosure forms, is improbable and an explanation which strains credulity. Applicant's full disclosure at the hearing of his conviction record and of his employment history, after objection has been raised to the Applicant's licensure based, inter alia, on his non-disclosure of such information, cannot cure his intentional omission from his disclosure form of facts material to his qualifications for licensure. In addition to reflecting adversely upon the Applicant's demonstration of his rehabilitation, his failure to reveal facts material to his qualification is itself a cause for disqualification from licensure, pursuant to section 86b of the Act.

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

1. Applicant has applied for a license to permit him to work as a casino hotel employee.

2. Applicant has been employed as a banquet worker, or other related position, at the Boardwalk Regency Hotel and its predecessor, Howard Johnsons, for the greater part of the last eight years.

3. Applicant failed to disclose on his personal history disclosure form received by the Casino Control Commission on August 10, 1978, any information concerning his record of convictions of crimes and disorderly persons offenses.

4. Applicant failed to disclose on his personal history disclosure form received by the Commission on March 16, 1979, any information concerning his record of convictions for crimes and disorderly persons offenses, except for his conviction in 1969 of possession of narcotics.

5. Applicant failed to disclose on both of his personal history disclosure forms the true reasons for his terminations from various employments.

6. The conviction information and the employment information which Applicant failed to disclose on his personal history disclosure forms was information material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

7. Applicant's failure to adequately disclose the material information concerning his conviction record and his employment history was intentional, rather than inadvertent, and it reflects adversely upon the Applicant's good character, honesty and integrity.

8. Applicant was convicted in 1962 and 1970 of larceny, in violation of N.J.S.A. 2A:119-2.

9. N.J.S.A. 2A:119-2 is a specifically enumerated automatic disqualifier for licensure under section 86c(2) of the Casino Control Act.

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

11. Applicant has failed to overcome his disqualification from licensure on the basis of his convictions of an offense enumerated under section 86c(2) of the Act by demonstrating his rehabilitation pursuant to section 91d of the Act by clear and convincing evidence.

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this Act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that Applicant has failed to demonstrate by clear and convincing evidence his rehabilitation, and is therefore disqualified from receiving a casino hotel employee license based upon his conviction of an offense which is an enumerated disqualifier for licensure pursuant to N.J.S.A. 5:12-86c(2). It is, therefore, ORDERED that the application of Bradford Woodard for licensure as a casino hotel employee be denied.

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

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

January 25, 1980
DATE

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

Receipt Acknowledged:

January 29, 1980
DATE

AGENCY HEAD
BY: ROBERT HAMIN COMEX
GENERAL COUNSEL

Mailed to Parties:

Feb. 4, 1980
DATE

Elizabeth J. Langan, Esq.
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the Applicant:

A-1	Personal History Disclosure Form received by the Commission on August 10, 1978.
A-2	Personal History Disclosure Form received by the Commission on March 16, 1979.
A-3	Letter of Patrol Officer Yancy, dated September 20, 1979.

For the Division of Gaming Enforcement:

D-1	Not in Evidence
D-2	Not in Evidence
D-3	Madison House Employment Records
D-4	Resorts International Hotel Employment Records
D-5	Boardwalk Regency Hotel Employment Records

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NAME OF CASE	DOCKET NO.	DATE OF ORDER	PAGE
1. In the Matter of the Application of Bally's Park Place, Inc., Bally Manufacturing Corporation, Wilms Distributing Company, N.V. (a Belgian Corporation), and Wilms Export Company, N.V. (a Belgian Corporation), for an Order that Bally Manufacturing Corporation may Continue to do Business with Wilms Distributing Company and Wilms Export Company until October 31, 1982, Pursuant to the Terms of a Certain Agreement, Effective November 1, 1978.	Agency Docket Nos. 80-CL-2(W) 80-CSI-13(W)	7/22/81	1
2. In the Matter of the Application of Betty Jane Beck for Licensure as a Casino Employee (Dealer).	OAL Docket No. CCC 6732-80 Agency 80-EA-159	10/13/81	34
3. State of New Jersey v. Joseph E. Becker.	OAL Docket No. CCC 6207-80 Agency 80-15	10/13/81	43
4. In the Matter of the Application of Cheryl Bizzell for Licensure as a Casino Employee (Casino Teller).	OAL Docket No. CCC 6136-80 Agency 80-EA-141	8/26/81	49
5. State of New Jersey v. Boardwalk Regency Corporation.	OAL Docket No. CCC 6312-80 Agency 80-13	6/23/81	59
6. State of New Jersey v. Boardwalk Regency Corporation, Lincoln Ebert, Maxwell Goldberg, Jess Lenz, Bernard Resnick, Ralph Delligatti, Howard Bacharach, Mark Geller, and Larry Bertsch.	OAL Docket No. CCC 3916-80 Agency 80-10	7/17/81	65

NAME OF CASE	DOCKET NO.	DATE OF ORDER	PAGE
7. In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company For Renewal of Casino Licenses.	Agency 81-CLR-2 81-CLR-3	10/28/81	73
8. In the Matter of the Application of Duaane B. Carrington For Licensure as a Casino Employee (Teller).	OAL Docket No. CCC 6840-80 Agency 80-EA-144	11/10/81	115
9. In the Matter of the Application of John E. Catlow For Licensure as a Casino Employee (Blackjack Dealer).	OAL Docket No. CCC 6137-80 Agency 80-EA-146	12/15/81	124
10. In the Matter of the Application of Larry J. DeWitt For Licensure as a Casino Employee (Countroom Employee).	OAL Docket No. CCC 3546-80 Agency 80-EA-67	8/18/81	136
11. In the Matter of the Application of James R. Gindhart, Jr., For Licensure as a Casino Employee (Bartender).	OAL Docket No. CCC 1833-80 Agency 80-EA-40	8/31/81	147
12. In the Matter of the Application of GNAC, Corp. For a Casino License.	Agency 81-CL-1	10/13/81	156
13. In the Matter of the Application of Paul J. Godish for Licensure as a Casino Hotel Employee (Food & Beverage Cashier).	OAL Docket No. CCC 7853-80 Agency 80-EA-239	12/16/81	224
14. In the Matter of the Application of Rodney E. Hill For Licensure as a Casino Employee (Security Officer).	OAL Docket No. CCC 1737-81 Agency 81-EA-37	12/24/81	234

NAME OF CASE	DOCKET NO.	DATE OF ORDER	PAGE
15. In the Matter of the Application of Ronald A. Ingenito For Licensure as a Casino Employee (Dealer).	OAL Docket No. CCC 6838-80 Agency 80-EA-179	9/25/81	249
16. In the Matter of the Application of Elmer L. Jones For Licensure as a Casino Employee (Surveillance Employee).	OAL Docket No. CCC 6731-80 Agency 80-EA-154	12/31/81	258
17. In the Matter of the Application of Freddie L. Jones For Licensure as a Casino Hotel Employee (Steward Assistant).	OAL Docket No. CCC 2027-81 Agency 81-EA-49	12/24/81	273
18. In the Matter of the Application of Shelly Keitz For Licensure as a Gaming School Instructor.	OAL Docket No. CCC 566-81 Agency 80-EA-121	9/24/81	287
19. In the Matter of the Applications of Peter Koliastasis For Licensure as a Casino Key Employee (Pit Boss) and Casino Employee (Floorperson).	OAL Docket No. CCC 7610-80 Agency 80-EA-246	11/19/81	300
20. In the Matter of the Application of Barbara Licht For Licensure as a Casino Employee (Floorperson).	OAL Docket No. CCC 7461-80 Agency 80-EA-233	9/11/81	347
21. In the Matter of the Application of Marina Associates For a Casino License.	Agency 81-CL-2	12/7/81	357
22. In the Matter of the Application of Hector Rivera Melendez For Licensure as a Casino Employee (Floorperson).	OAL Docket No. CCC 5843-80 Agency 80-EA-125	7/2/81	439

NAME OF CASE	DOCKET NO.	DATE OF ORDER	PAGE
23. In the Matter of the Application of George Mollineaux For Licensure as a Casino Key Employee (Slot Shift Manager).	OAL Docket No. CCC 1305-81 Agency 81-EA-20	8/26/81	453
24. In the Matter of the Application of Anthony T. Paglucci, Jr. For Licensure as a Casino Key Employee (Security Supervisor).	OAL Docket No. CCC 3335-81 Agency 81-EA-211	10/20/81	458
25. In the Matter of the Application of Pepsi Cola Bottling Company of Atlantic City For Licensure as a Casino Service Industry.	OAL Docket No. CCC 909-81 Agency 80-CSI-12	12/3/81	468
26. In the Matter of the Application of Felix A. Rivera For Licensure as a Casino Hotel Employee (Plumber).	OAL Docket No. CCC 705-81 Agency 80-EA-235	11/16/81	476
27. State of New Jersey v. Gregory L. Smith.	OAL Docket No. CCC 2294-80 Agency 79-13	7/16/81	485
28. State of New Jersey v. Salvatore Frank Sparacio.	OAL Docket No. CCC 3519-80 Agency 80-EL-5	9/17/81	496
29. In the Matter of the Application of John C. Stallings For Licensure as a Casino Key Employee (Slot Shift Manager).	OAL Docket No. CCC 4424-81 Agency 81-EA-341	12/31/81	505
30. In the Matter of the Application of Bernard Strickland For Licensure as a Casino Employee (Security Officer).	OAL Docket No. CCC 5830-80 Agency 80-EA-49	12/31/81	515

NAME OF CASE	DOCKET NO.	DATE OF ORDER	PAGE
31. In the Matter of the Petition of Trailways, Inc. For an Amendment to the Commission's Regulations Regarding Inter-City Bus Passenger Service by Casinos.		9/11/81	525
32. In the Matter of the Application of Richard Zelenak For Licensure as a Casino Employee (Craps Dealer).	OAL Docket No. CCC 4716-80 Agency 80-EA-100	9/29/81	546

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 80-CL-2(W)
80-CSI-13(W)

IN THE MATTER OF THE APPLICATION OF BALLY'S PARK PLACE, INC., BALLY MANUFACTURING CORPORATION, WILMS DISTRIBUTING COMPANY, N.V. (a Belgian corporation), and WILMS EXPORT COMPANY, N.V. (a Belgian corporation), FOR AN ORDER THAT BALLY MANUFACTURING CORPORATION MAY CONTINUE TO DO BUSINESS WITH WILMS DISTRIBUTING COMPANY AND WILMS EXPORT COMPANY UNTIL OCTOBER 31, 1982, PURSUANT TO THE TERMS OF A CERTAIN AGREEMENT, EFFECTIVE NOVEMBER 1, 1978.

ORDER

This matter having been opened to the Casino Control Commission at its public meeting of June 24, 1981; and the Commission having adopted the Report and Recommendation prepared by Martin B. Danziger, Vice-Chairman, and the factual conclusions reached therein; and the Commission having resolved to approve the present business arrangements between Bally Manufacturing Corporation and both Wilms Distributing Company and Wilms Export Company until the promised termination of the agreement as of October 31, 1982,

IT IS on this 22d day of July 1981, ORDERED that Bally Manufacturing Corporation may continue to do business with Wilms Distributing Company and Wilms Export Company until October 31, 1982; and

IT IS FURTHER ORDERED that copies of this Order be served upon the parties in this matter within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
MARTIN B. DANZIGER,
Acting Chairman

DATED: July 22, 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 80-CL-2(W)
80-CSI-13(W)

IN THE MATTER OF THE APPLICATION OF BALLY'S PARK PLACE, INC., BALLY MANUFACTURING CORPORATION, WILMS DISTRIBUTING COMPANY, N.V. (a Belgian corporation); and WILMS EXPORT COMPANY, N.V. (a Belgian corporation), FOR AN ORDER THAT BALLY MANUFACTURING CORPORATION MAY CONTINUE TO DO BUSINESS WITH WILMS DISTRIBUTING COMPANY and WILMS EXPORT COMPANY UNTIL OCTOBER 31, 1982, PURSUANT TO THE TERMS OF A CERTAIN AGREEMENT, EFFECTIVE NOVEMBER 1, 1978.	ORDER

This matter having been opened to the Casino Control Commission at its public meeting of June 24, 1981; and the Commission having carefully considered the Report and Recommendation prepared by Martin B. Danziger, Vice-Chairman, as Hearing Examiner and dated May 29, 1981, concerning the above-captioned matter; and the Commission having found that the factual conclusions reached in said Report and Recommendation are well supported by the credible evidence in the record; and the Commission having reviewed the exceptions thereto filed by the Division of Gaming Enforcement; and the Commission having resolved to adopt and approve the Report and Recommendation,

IT IS on this 22nd day of July 1981, ORDERED that the Report and Recommendation, which is incorporated herein by reference and made a part hereof, hereby is adopted and approved by the Commission; and

IT IS FURTHER ORDERED that copies of this Order be served upon the parties in this matter within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Martin B. Danziger
MARTIN B. DANZIGER, ACTING CHAIRMAN

DATED: July 22, 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Nos. 80-CL-2(W)
80-CSI-13(W)

IN THE MATTER OF THE APPLICATION OF BALLY'S PARK PLACE, INC., BALLY MANUFACTURING CORPORATION, WILMS DISTRIBUTING COMPANY, N.V. (a Belgian corporation), and WILMS EXPORT COMPANY, N.V. (a Belgian corporation), FOR AN ORDER THAT BALLY MANUFACTURING CORPORATION MAY CONTINUE TO DO BUSINESS WITH WILMS DISTRIBUTING COMPANY and WILMS EXPORT COMPANY UNTIL NOVEMBER 1, 1982, PURSUANT TO THE TERMS OF A CERTAIN AGREEMENT, EFFECTIVE NOVEMBER 1, 1978.	REPORT AND RECOMMENDATION

APPEARANCES:

For Bally's Park Place, Inc., and Bally Manufacturing Corporation:

Robert A. Baime, Esq.
Sills, Beck, Cummis, Radin & Tischman, Esqs.,
Newark, New Jersey

For Wilms Distributing Company, N.V., and Wilms Export Company, N.V.:

Matthew P. Boylan, Esq.
Peter H. Ehrenberg, Esq.
Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, P.C., Roseland, New Jersey

For the Division of Gaming Enforcement:

James F. Flanagan, 3d, Deputy Attorney General
Stephen C. Becker, Deputy Attorney General

For the Casino Control Commission:

Robert J. Genatt, Senior Assistant Counsel

On December 29, 1980, the Casino Control Commission ("Commission") granted the application of Bally Manufacturing Corporation ("Bally") for a gaming related casino service industry license and the application of Bally's Park Place, Inc., ("Park Place") for a casino license. In granting these applications, the Commission imposed several conditions which must be strictly honored for the continuing validity of the licenses. See In the Matters of the Application of Bally's Park Place, Inc., for a Casino License and the Application of Bally Manufacturing Corporation for a Casino Service Industry License, (March 16, 1981) Opinion at 104-05 (hereinafter "Bally Opinion").

Several of the license conditions are intended to assure that Alexander A. R. Wilms ("Alex Wilms") will exercise no influence or control over the policies, business or activities of Bally or Park Place. Id. The assurance thus provided by the licensure conditions and by certain representations of Bally's counsel allowed the Commission: (1) to concur with the Director of the Division of Gaming Enforcement (the "Division") in waiving any requirement for Alex Wilms to qualify as part of the Park Place casino license application (N.J.S.A. 5:12-85(d)); and (2) to determine separately that Alex Wilms need not qualify as part of the Bally casino service industry license application

(N.J.S.A. 5:12-92(a) and (b)). See Bally Opinion at 67-69, 104.

Of particular concern in this proceeding is the condition which prohibits Bally or its subsidiaries from having any direct or indirect business transactions with Alex Wilms, his wife Elise Wilms, his sons Alfred and Lucien Wilms or any business controlled by them or in which they have a 5% or greater ownership of voting securities unless notice of such business is first given to the Division and prior approval is obtained from the Commission. See Bally Opinion at 70-71. Such a business relationship currently exists with Alfred and Lucien Wilms under a distribution agreement among Bally, Bally Continental Ltd., N.V., ("Bally Continental") and Wilms Distributing Company, N.V. ("Wilms Distributing"). This agreement was entered into before the license hearing and it extends until October 31, 1982, at which time it may be cancelled by either Bally or Wilms Distributing. At the hearing, Bally's counsel formally represented that the agreement would be cancelled at that time even if allowed to continue by the Commission. Thus, the Commission faces the limited question of whether to permit the distribution agreement to remain in effect until the specified termination date.

In order to afford the parties a fair opportunity to be heard and to enable the Commission to determine the question on the basis of a more complete record, the effective date of the condition was delayed until a hearing on the relevant factual

matters could be conducted and until the findings of the hearin examiner could be reported to the Commission. In due course, the undersigned was designated as hearing examiner and two prehearing conferences were held. The prehearing conference order dated March 3, 1981, (a copy of which is attached hereto) provided that this hearing would not address any ultimate legal issues but would rather focus upon three related areas:

1. the legal enforceability of the distribution agreement and the probable consequences of a premature termination by Bally;

2. the relationship between Bally and the Wilms companies, including whether the agreement resulted from arms length negotiations and whether the Wilms companies can exert influence or control over Bally through the distribution arrangement;

3. the involvement, if any, of Alex Wilms in his sons' companies and the exercise by Alex Wilms of any influence or control over the management of those companies.

Bally and the Wilms applicants contend that the distribution agreement is a valid and binding contract, that it represents a reasonable economic bargain struck by two parties negotiating at arms length, that the Wilms companies cannot meaningfully control or influence Bally and that presently Alex Wilms has no involvement or financial interest in the operation or management of the Wilms companies. The Division asserts that Alex Wilms has influenced his sons' businesses in the past,

that the close familial and financial relations between Alex Wilms and his sons makes the sons susceptible to influence by Alex Wilms, that Alex Wilms dealt directly with Bally after the 1975 Nevada order demanding his severence from Bally's activities and that the dealings between Bally and the Wilms companies has not been at arms length. Naturally, Bally and Wilms urge the approval of further business under the current agreement while the Division claims that an immediate termination of the contract would best serve the policies of the Casino Control Act. A review and analysis of the evidence presented at the hearing is thus necessary. To facilitate this process, the three areas delineated in the prehearing conference will be separately considered.

I.

ENFORCEABILITY OF THE DISTRIBUTION AGREEMENT

The original distribution agreement between Bally, Bally Continental and Wilms Distributing was executed on December 14, 1976. (WA-1).[1] Under the terms of that agreement, the Wilms companies were appointed as a nonexclusive distributor of bingo machines in the Benelux countries (Belgium, the Netherlands and Luxembourg), Germany and Italy. Additionally, the Wilms companies were appointed as a nonexclusive distributor of all Bally brand products in Yugoslavia, Poland, Hungary, Belgium, Romania, Czechoslovakia and Russia. Further, the Wilms

1. "WA" refers to exhibits introduced by the Wilms applicants. Division exhibits will be referenced by a "D."

companies were permitted to sell flipper-type pinball games in the Benelux area but only to operating routes which were at least 25% owned by Alfred or Lucien Wilms (the "related routes").

Aside from promising to devote their best efforts to the promotion and sale of Bally equipment within the limits of the agreement, the Wilms companies were required to undertake several other obligations. On any sale of bingo equipment to any customer other than one of the related routes, the Wilms companies were obliged to pay 50% of the gross profit to Bally Continental. Further, the Wilms companies were required to purchase at cost Bally Continental's inventory of spare parts, including certain Spanish-made bowler games and parts which were virtually worthless. Moreover, the Wilms companies were obliged to assume all debts owed from the related routes to Bally Continental (approximately $700,000) and to issue interest bearing promissory notes for this amount guaranteed personally by Alfred and Lucien Wilms and secured by a sufficient amount of their Bally stock. All debts then accrued or later owed by the Wilms companies were to be collateralized under a pledge agreement (WA-2) by Bally stock worth at least 150% of the debt as calculated every quarter.

The original agrement (WA-1) was for a one year term beginning on November 1, 1976, and was automatically renewed for a period of one additional year. Thereafter, a second written agreement (WA-3) was executed on March 15, 1979, for the two

year term beginning on November 1, 1978. In this agreement, the Wilms companies were appointed the exclusive distributor of Bally bingo machines in the Benelux countries, Germany and Italy. They were also given exclusive rights to the Communist countries of Eastern Europe for any Bally brand products. The obligation to pay a 50% commission on the gross profits from bingo sales to anyone other than a related route was formally eased to cover only those sales where the profit exceeded 10,000 Belgium francs per machine. However, other requirements remained intact. A second stock pledge (WA-4) was demanded for at least 150% of all outstanding debt and the Wilms companies were still required to carry an active parts department in Belgium.

The second distribution agreement (WA-3) was to run for a two year period until October 31, 1980, and was to be automatically renewed for another two year period if neither party requested cancellation in writing at least three months but not more than six months before the termination date. Since no such cancellation request was made, the agreement now runs until October 31, 1982.[2]

As to the enforceability of the agreement and the consequences of a premature termination, the agreement itself designates Belgian law as controlling any disputes and

2. Certain terms of the agreement have been modified by agreement between the parties, although not formally reduced to writing as required by the agreement. These modifications will be discussed below. They do not seem to bear on the question of enforceability or damages.

recognizes jurisdiction in the Antwerp courts. The applicants introduced into evidence a letter written by a Belgian lawyer (WA-54) who expresses the opinion that the agreement is "perfectly valid and enforceable" and that a breach by Bally would render it liable for damages to be determined by a Belgian court. In addition, both Bally and the Wilms companies have treated the agreement as binding and continue to do so. On this record, I must conclude that the contract is valid and that its early cancellation by Bally would be cause for legal action.

As to the damages which would flow from a breach, the purpose of the instant inquiry is not to quantify the amount of the possible compensation but to generally evaluate the nature and import of such a claim. Harry Koevoets, the accountant and financial advisor for the Wilms companies and the Wilms family, prepared an exhibit (WA-29) in which he classified various types of damages and assigned values to each type. In total, Mr. Koevoets estimated the damages at $3.7M.

Even assuming that this figure is highly favorable to the Wilms applicants, certain aspects of Mr. Koevoets' calculations are informative. In particular, he testified that the Wilms companies' books reveal a heavy dependence on the sale of bingo equipment under the agreement. Specifically, in the years 1977 thru 1979, 79% of the total sales of Wilms Distributing were bingos and those sales contributed 82% of the profits. Using a purely historical analysis, Mr. Koevoets projected a loss of $586,000 in profits if the agreement were

cancelled on May 1, 1981. While Bally could absorb such a damage claim, the figure is not insubstantial. Moreover, the disruption which a severance of the agreement would cause to the Wilms businesses is apparent, even if some substitution of competitors' products could be achieved. (See T253-17 to 254-19). Thus, I conclude that premature termination of the existing agreement would have significant ramifications and could result in substantial claims for damages.

II.

RELATIONSHIP OF BALLY TO THE WILMS COMPANIES

Alex Wilms founded Bally Continental some 20 years before it was purchased by Bally in 1969. After the purchase, which was accomplished primarily through a stock transfer bringing a large block of Bally stock to Alex Wilms, he continued as the managing director of the company until the end of 1975 when he was forced by a Nevada Gaming Commission order to sever business relationships with Bally and its subsidiaries. In addition to managing Bally Continental, Alex Wilms had become involved in approximately 10 route operations which purchased Bally equipment and offered them for use by the public at various locations in Belgium. To comply with the Nevada order, Alex Wilms also divested himself of his interest in the route operations in 1976. The divestiture was accomplished by selling part of his interest in each of the active route operations to George DeRidder, then a salesman for Bally Continental, and by giving the remainder of his interest to Lucien Wilms, his younger son.

Both Alfred and Lucien Wilms had commenced employment with Bally Continental in the early 1970s. When their father left the company, Alfred was the sales manager for all areas except the Benelux countries which were handled by George DeRidder. Lucien Wilms was then in charge of shipping and spare parts while his manufacturing responsibilities were being curtailed due to the liquidation of the manufacturing plants in 1975.

With Alex Wilms' departure, Robert Mullane became the managing director of Bally Continental. Mr. Mullane had been sent to Belgium in early 1975 to evaluate the profitability of the company, especially the manufacturing operations. Alfred Wilms became anxious about his future with the company. Although in March 1976 he procured an employment contract guaranteeing h. five years of compensation if he were dismissed from Bally Continental (WA-57), Alfred and Lucien began to explore other possibilities. (See T128-22 to 132-6). In mid-1976, Alfred Wilms inquired of Mr. Mullane whether Bally would consider selling Bally Continental to the Wilms brothers. Mr. Mullane briefly considered the proposal but rejected it because Bally would lose the tax benefits of a $4M loss from the defunct manufacturing operations. (T34-15 to 35-6; T36-1 to 21).

In approximately September 1976, Alfred Wilms submitted a second proposal to Mr. Mullane. It was Mr. Wilms' intention to establish a new distributorship which would take over all of Bally Continental's business but would leave Bally Continental

under Bally's ownership for purposes of the tax loss benefits. (T138-2 to 139-25). Negotiations began and extended over the next few months. Mr. Mullane and Alfred Wilms were the principal negotiators, although there was some uncertainty as to the role of Harry Koevoets. (See T82-8 to 83-9; T191-5 to 192-25). As noted in Part I, above, Alfred and Lucien Wilms ultimately settled for much less than their original demands. Instead of a five or 10 year agreement covering all Bally and Midway (arcade and video games) products on an exclusive basis, Wilms Distributing obtained a one year appointment as a nonexclusive distributor of bingo equipment in the Benelux countries and a nonexclusive distributor of Bally products in Eastern Europe, a market which was then considered marginal at best. (T141-24 to 142-18; T54-10 to 23).

Aside from the restrictive nature of the original distribution agreement (WA-1), the Wilms brothers were forced to accept several burdens. These included: assumption of all outstanding debts of the related routes, assumption of the debt accruing to Bally Continental by a Spanish company (Bally Iberica) established by Alex Wilms, purchase of unwanted inventory from Bally Continental, a pledge of their personal Bally stock in an amount of 150% of outstanding debt from Wilms Distributing (WA-2), and issuance of interest bearing promissory notes by the brothers to Bally Continental for the debts owed by the related routes. Additionally, any sale by Wilms Distributing of bingo equipment to a non-related route or distributor in the

Benelux countries entailed payment of a commission equal to 50 of the gross profit on the sale. See Part I. Mr. Mullane characterized the agreement as very favorable and profitable to Bally (T46-5 to 19; T61-11 to 62-2), whereas Alfred Wilms found certain aspects, especially the 50% commission, to be "terrible" (T176-8 to 178-9) and Alex Wilms testified in his deposition that, "I never would have signed something like that." (WA 58 at 61-5 to 9).

As noted in Part I, the initial agreement and stock pledge were renewed for one additional year and were replaced by a two year distribution agreement (WA-3) and stock pledge (WA-4). The terms of this distribution agreement, which is the one now in effect, were somewhat more favorable to the Wilms companies, but most of the restrictions and obligations continued.

From the foregoing, it appears that the Wilms brothers were hardly in a position to control Bally and that Bally was not disposed to capitulate to the Wilms' requests. The question arises why Bally did not simply reject any proposal from the Wilms brothers and distribute its equipment through Bally Continental. The answer seems to lie in the purchasing and marketing power of the related routes. According to the testimony, these routes are the most important ones in Belgium which is the major market for bingos. By allowing these routes to continue a close relationship with a Bally distributor, Wilms Distributing, Bally was assured that its bingo products would be well received and that new models would be promptly purchased and displayed.

This, in turn, would place pressure on other route operators to obtain the latest Bally games. (T119-22 to 121-7; T150-16 to 151-13). Further, by virtue of the collateral pledged by Wilms Distributing, Bally was certain that its receivables on bingos sold through Wilms Distributing would be paid. Although he believed that Bally Continental could distribute its bingo products directly if it chose, Harry Koevoets joined Mr. Mullane in asserting that the agreement was beneficial to both parties. (T381-7 to 383-12; T384-1 to 385-7).

Despite this persuasive evidence that the present agreement resulted from hard bargaining between parties who each had something to give and to gain, the Division contends that other events indicate the relationship to be less than arms length. The Division observes that modifications have been made to the agreement and that these modifications were not reduced to writing notwithstanding the clause in the agreement which prohibits verbal alterations. Specifically, the Division points to the fact that sometime in 1979 the parties agreed to stop enforcing the 50% commission on sales of bingos to unrelated customers and the reporting requirements designed to monitor such sales. Mr. Mullane testified that he frequently waived all or part of the 50% commission to induce Wilms Distributing to purchase additional machines and to press for more sales. (T55-20 to 57-14). Following a payment of approximately $60,000 for the commissions due in April 1979, Bally agreed to drop the requirement completely. (T179-9 to 180-25).

Additionally, the Division observes that Wilms Distributing has been allowed to sell pinball games to unrelated customers and to distribute slot machines on an occasional basis. At the hearing, it was explained that the pinball sales were increasingly permitted because Bally's chief distributor in Belgium, Leon Van Emden , had experienced financial difficulties subsequent to 1976 and was effectively bankrupt. However, each pinball order from Wilms Distributing was separately submitted for acceptance by Bally and Wilms Distributing did not have an exclusive authorization for pinball sales in Belgium (T238-1 to 239-5; WA 6). As to slot machines, Mr. Mullane related Bally's policy of allowing any distributor to obtain a commission on a slot machine order if the Bally factory would not have otherwise obtained the order and if the order were not too large (T52-24 to 54-9). As to both slot and pinball sales, the evidence contains correspondence from both Bally and Wilms Distributing regarding activities in these areas. (See WA-7, WA-22, WA-23, WA-24).

On balance, these modifications and variations do not rebut the strong showing of an arms-length relationship between Bally, Bally Continental and the Wilms companies. The explanations provided by the witnesses are reasonable and reveal, if anything, an ongoing business relationship wherein the parties seek accomodations to achieve mutually beneficial ends. Although some of the changes were not formally reduced to writing, there does not appear to be any reason other than a businessman's

desire for expeditious results. Moreover, Bally continues to resist the entreaties of the Wilms brothers for expanded distributor authorization, for example, to sell Midway products (primarily video games) which, according to Alfred Wilms, are the "biggest item[s] in the coin-operated industry and it's bigger than anything else ever has been before." (T141-7 to 10). However, any further modifications during the remainder of the agreement's term should be immediately brought to the attention of the Division so that it may continuously evaluate the relationship of the parties. See Bally Opinion at 68,71.

III.

INVOLVEMENT OF ALEX WILMS IN HIS SONS' BUSINESSES

The purpose of this inquiry is to determine whether Alex Wilms presently exerts any influence or control over the management of the businesses owned and operated by Alfred and Lucien Wilms and George DeRidder. It is necessary, though, to begin the inquiry by examining the genesis of the businesses and the preexisting relationship of Alex Wilms and his sons.

As previously noted, Alex Wilms spent approximately 30 years in the coin machine industry. He founded Bally Continental and guided it through its acquisition by Bally in 1969 until his departure at the end of 1975. In addition, he formed companies to operate equipment at various locations in Belgium. In the early 1970s, both Alfred and Lucien Wilms began employment for their father at Bally Continental. This was apparently their first exposure to the commercial world. Although the sons

gained valuable experience prior to the formation of the Wilms companies in late 1976, neither could be expected to match their father's knowledge of the business at that time. Further, in 1972, Alex Wilms gave a substantial portion of his Bally stock to members of his family. Alfred and Lucien received equal amounts which Alfred estimated roughly as being worth $25M today. (T249-6 to 250-1).

It is clear that Alex Wilms participated in the establishment of the sons' companies in late 1976. The corporate entities which were to become Wilms Distributing, Wilms Export and European Automatic Sales were provided by Alex Wilms. These three entities were dormant at the time but did contain certain assets. Nevertheless, both Alex and Alfred Wilms testified that this transfer was not a gift. The assets of the three companie were balanced by the assumption of the so-called Spanish debt (approximately $850,000) and the outstanding obligations of the related routes (approximately $700,000) by Wilms Distributing. (See WA 58 at 58-11 to 61-4; T185-3 to 13). Since Alex Wilms remained liable as a guarantor on these debts, he received a direct benefit from this assumption.

Alex Wilms also assisted his sons in obtaining a loan of $2M from the Continental Bank in Chicago in 1976 for initial capitalization of the companies. Alex Wilms testified that without his participation and personal guarantee "they [his sons] would not have been able to get it on their own." (WA 58 at 88-3 to 24). Alfred Wilms acknowledged his father's involvement in acquiring

the loan but emphasized that repayment was secured by a pledge of Bally stock from Alfred, Lucien and Alex Wilms. According to Alfred, the sons wanted Alex to pledge enough stock to cover the Spanish debt in the event that the new ventures failed. In this way, Alex would ultimately have paid the debt if the companies could not. (T243-3 to 253-5). This was confirmed by Harry Koevoets who prepared the documents for the stock pledge to the bank. (T322-1 to 324-14).

As might be expected, Alfred and Lucien Wilms consulted their father with some frequency during the first year or so of their new operations. Those consultations primarily concerned the credit worthiness and value of customers who were known to Alex Wilms and who were seeking to establish purchase and credit terms with the sons' companies. (T200-19 to 201-23). Thus, in the early years of the sons' ventures, Alex Wilms not only provided business information to the new companies but had a real financial stake in their success. If the companies succeeded, they would pay the outstanding debts to Bally out of their profits and would thus discharge Alex Wilms from his liability as guarantor. Under the circumstances existing in 1977, a finding of probable involvement by Alex Wilms in the sons' businesses would have been justified. However, the circumstances have changed significantly since that time.

In the ensuing years, Alfred Wilms has grown into his position as head of Wilms Distributing. Further, both the company and the market it serves have undergone substantial change. Under Alfred's leadership, Wilms Distributing has

developed a market for spare parts and used equipment which not only produces income but also stimulates the replacement and sale of new equipment. (T169-15 to 173-11). Because of technological advances, the type of equipment demanded by customers and supplied by the Wilms companies has become much more sophisticated than the products with which Alex Wilms was familiar. (T186-23 to 187-12). Exhibits and testimony at the hearing also support the applicants' claim that Alfred Wilms is in command of the day-to-day operations of the companies. (See T173-20 to 174-25). Consultations with Alex Wilms as to the quality of prospective customers have diminished and Alfred Wilms testified he could not recall such a discussion subsequent to the signing of the current distribution agreement in March 1979. (T200-19 to 201-23). In observing Alfred Wilms and listening t his testimony, I received the impression that he was thoroughly familiar with his business and that he was determined to operate with his partners independent of his father's influence.

Of equal importance to the present inquiry is the fact that the previously existing financial interests of Alex Wilms in his sons' businesses have been extinguished. The evidence is uncontradicted that the so-called Spanish debt was paid to Bally with the proceeds of the $2M bank loan and that the bank loan itself has been repaid in full. (T325-19 to 327-10; T186-5 to 12). Similarly, the outstanding indebtedness from the related routes, which Wilms Distributing also assumed as part of the distribution agreement, have been satisfied. (T385-8 to 25).

Since Alex Wilms holds no shares in his sons' companies and does not participate in its proceeds, there appears to be no remaining economic interplay between those companies and Alex Wilms. (See 257-13 to 19).

Certain events were brought out during the hearing which, according to the Division, reveal the current involvement of Alex Wilms in the operation of his sons' companies. These events, which occurred over the course of the life of the companies, are the following: a telex (D-1) dated March 1977 from Alex Wilms to William T. O'Donnell complaining of Bally's failure to send test equipment to Wilms Distributing; the payment of insurance proceeds to the related routes in 1978 through a trust account in the name of Alex Wilms (see T25-16 to 37-3; T329-1 to 341-15); a telex (D-18) from Alex Wilms to Mr. Mullane complaining of "bootlegging" of equipment into Belgium by one Ralph Mandell; a series of telexes in December 1978 (D-4, 5, 7, 8) between one Marty Bromley and Ross B. Scheer of Bally indicating that Mr. Bromley had spoken to Alex Wilms about the purchase of 10 machines; a telex (D-19) dated December 4, 1978, from Lucien Wilms to Mr. Mullane inquiring as to the whereabouts of Ross B. Scheer so that Alex Wilms could contact him; a trip to London in January 1979 for a trade show as to which the expenses of the Wilms brothers and their spouses and Alex Wilms and his wife Elise were paid by Wilms Distributing (See D-13, 14 and 15; WA at 89-1 to 91-14); a statement made by Alfred Wilms to the effect that he had not earned the Bally stock received from his father

and would give it to his mother if she needed financial assistance (see T236-1 to 237-9).

After careful review of these matters in the context of the entire record, I am satisfied that they do not create cause to question the independence of the Wilms companies from Alex Wilms at this time. As to the test set telex and the bootlegging telex, Alfred Wilms credibly explained that his father was merely exhibiting a parental response to perceived injustices being inflicted on his sons' business. Neither Alfred nor Lucien Wilms invited their father's intervention and, indeed, were quite powerless to prevent it. In any event, these interventions hardly constitute exercise of control or influence over the companies. The telex requesting Ross Scheer's whereabouts is enigmatic at best. Alex Wilms may have had any number of reasc to contact Mr. Scheer. (See T75-15 to 76-3). The telexes between Marty Bromley and Ross Scheer do recite that Mr. Bromley spoke to Alex Wilms about purchasing machines. It is plausible that Mr. Bromley was not aware of Alex Wilms' retirement from the business and did contact him. However, it is significant that Ross Scheer actually ordered the machines for Mr. Bromley from Alfred Wilms. (See D-7; WA 58 at 13-15 to 17-22). With regard to the disbursement of certain insurance proceeds to the related routes through a trust account in the name of Alex Wilms, the testimony established that the lawyer and insurance broker who handled the claim were under the impression that Alex Wilms still owned the routes. However, it is undisputed that the funds were paid to

the various routes in accordance with calculations made by George DeRidder who was then a part owner of the affected routes. Finally, the comment of Alfred Wilms that he would give his Bally stock to his mother if she were in need of it reflects nothing more than a sense of filial responsibility.

In sum, the record in this matter demonstrates that, despite their initial financial and advisory entanglement with Alex Wilms, the sons' companies have grown separate and apart from him. At present, they appear to be independent businesses. There is no reason to believe that Alex Wilms does exert meaningful influence or control on the management or operation of these enterprises.

CONCLUSION

Based on the foregoing, including the representation by Bally that their contractual relationship with Wilms would be terminated by October 31, 1982, I find:

1. The distribution agreement between Bally and the Wilms companies is a binding and valid contract and substantial damages would probably flow from its breach.

2. The Wilms companies have dealt with Bally at arms length. They cannot significantly affect the management or policies of Bally through this relationship, especially in light of the promised termination of the agreement on October 31, 1982.

3. Alexander A. R. Wilms is not involved in the management or operations of his sons' businesses.

These conclusions are based on the evidence in the present record. In the event of any significant change in the underlying facts, the findings stated herein should be reexamined.

Respectfully submitted,

Martin B. Danziger
Vice-Chairman
Hearing Examiner

Dated: May 29, 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE APPLICATION OF BALLY'S PARK PLACE, INC., BALLY MANUFACTURING CORPORATION, WILMS DISTRIBUTING COMPANY, N.V. (a Belgian corporation), and WILMS EXPORT COMPANY, N.V. (a Belgian corporation), FOR AN ORDER THAT BALLY MANUFACTURING CORPORATION MAY CONTINUE TO DO BUSINESS WITH WILMS DISTRIBUTING COMPANY and WILMS EXPORT COMPANY UNTIL NOVEMBER 1982 PURSUANT TO THE TERMS OF A CERTAIN DISTRIBUTION AGREEMENT, EFFECTIVE NOVEMBER 1, 1978.	:	PREHEARING CONFERENCE ORDER

A Prehearing Conference having been held on this matter before Hearing Examiner Martin B. Danziger, Vice-Chairman of the Casino Control Commission (Commission), on February 27, 1981, at noon in the Commission offices at 1 South Montgomery Street, Trenton, New Jersey, and the following persons having attended:

For Wilms Distributing Company, N.V., and Wilms Export Company, N.V.:

Peter H. Ehrenberg, Esq.
Gerald Krovatin, Esq.

For Bally's Park Place, Inc., and Bally Manufacturing Corporation:

Robert A. Baime, Esq.

For the Division of Gaming Enforcement (Division):

Robert B. Sturges, Assistant Attorney General
Stephen C. Becker, Deputy Attorney General

For the Commission:

Robert J. Genatt, Senior Assistant Counsel
David C. Missimer, Assistant Counsel

The following was decided:

A. SCOPE AND PURPOSE

This matter arises from a condition attached by the Commission to the casino license of Bally's Park Place, Inc., and the casino service industry license of Bally Manufacturing Corporation, both of which licenses were issued and effective on December 29, 1980. Several conditions were imposed to assure that Alexander R. A. Wilms would exercise no influence or control over the activities of Bally Manufacturing Corporation or its subsidiaries. This assurance permitted the Commission and the Director of the Division to agree on a waiver of any possible qualification requirement for Alexander R. A. Wilms and certain other members of the Wilms family, pursuant to N.J.S.A. 5:12-85(d)(1), without deciding whether such qualification would otherwise be necessary.

The particular condition involved here generally provides that Bally Manufacturing Corporation and its subsidiaries shall not have any direct or indirect business transactions with Alexander R. A. Wilms, Elise Wilms, Alfred Wilms or Lucien Wilms or any entity controlled by them or any of them or in which they or any of them own beneficially a 5% or greater interest in any class of voting securities, without notice to the Division and prior approval of the Commission. The effective date of this condition was deferred to allow the present applicants to seek Commission approval of an existing agreement allegedly due to expire on November 1, 1982.

The hearing to be conducted by the undersigned on this application will address only the factual issues relevant to the approval request. The approval itself and any legal questions raised thereby will be decided after the report and recommendation on the factual issues has been adopted, rejected or modified by the Commission. It is understood that, by participating in this hearing, the applicants have not relinquished their claim that the Wilms family members are not required to qualify under the Casino Control Act even absent a waiver by the Commission and the Division. It is further understood that, by its participation, the Division is not altering its previously stated position regarding possible withdrawal of its waiver.

B. FACTUAL QUESTIONS

To enable the Commission to properly decide whether approval of continuing business under the existing agreement should be granted, this hearing shall examine the relationship between Bally Manufacturing Corporation, the Wilms companies and the Wilms family, especially Alexander R. A. Wilms. More particularly, this inquiry should include, but not be limited to, the following areas:

1. Can the existing agreement between Bally Manufacturing Corporation and the Wilms companies be legally terminated prior to its expiration date and, if not, what are the probable consequences of a breach by Bally under controlling law?

2. Is the existing agreement a fair and reasonable contract resulting from arms length negotiations? How does it compare with other arrangements between Bally and its distributors? Can Wilms Distributing Company or Wilms Export Company influence or control decisions or actions of Bally Manufacturing Corporation through the contractual arrangement?

3. Is Alexander R. A. Wilms in any way involved in the activities of the Wilms Distributing Company or Wilms Export Company? Does he exert any influence or control over the management of these companies?

C. DISCOVERY

1. By no later than March 9, 1981, the applicants and the Division shall exchange:

a) the names and addresses of all witnesses to be called at the hearing, designating any witness to be called as an expert;

b) all documents and materials to be introduced at the hearing, including reports of any experts;

c) any relevant statements of, and transcripts or other documentation of interviews given by, witnesses who will be called at the hearing.

2. During the week of March 9, 1981, the applicants and the Division shall make available for depositions any witness to be called at the hearing. Any deposition shall be conducted at a time and place mutually acceptable to the parties.

3. Discovery shall be completed by March 16, 1981, provided that the parties shall be under a continuing duty to disclose any discoverable information.

D. STIPULATIONS AND EXHIBITS

1. The applicants and the Division shall agree, to the extent possible, on any relevant facts. Such stipulations shall be completed and submitted to the undersigned by no later than March 23, 1981.

2. All known exhibits, whether stipulated as evidence or not, shall be pre-marked for identification at the hearing. Any exhibits which are to be introduced without objection shall be so identified and shall be submitted to the undersigned by no later than March 23, 1981.

E. MOTIONS

Any party may move for additional discovery or other action by written application setting forth the requested action and the legal and factual contention in support thereof. Moving papers shall be filed no later than March 16, 1981, and responding papers, if any, shall be filed no later than seven (7) days thereafter.

F. HEARING:

1. Since the pertinent license condition prohibits further business dealings between Bally Manufacturing Corporation and the Wilms family members without the approval of the Commission, the applicants bear the burden of demonstrating facts to support their request for approval of the existing business relationship.

2. The parties shall be afforded an opportunity to present opening statements. If openings are given, the applicants shall open first, then the Division.

3. The applicants shall present their proofs first and shall complete their case-in-chief before the Division presents its proofs. After the Division has completed its presentation, the applicants shall be afforded an opportunity for rebuttal. If appropriate, surrebuttal shall be permitted.

4. The order of summation, if given, shall be the Division first, then the applicants.

5. The hearing is scheduled to commence at 9 a.m. on Monday, March 30, 1981. If necessary, the hearing will continue on Tuesday, March 31, and on Thursday, April 2.

6. The hearing will be held in Trenton, New Jersey, at a location to be determined by the undersigned based upon the availability of a suitable facility.

It is hereby on this 32 day of March, 1981, ORDERED that this Prehearing Conference Order be served upon counsel for the applicants and the Division within three days of its entry.

MARTIN B. DANZIGER,
VICE-CHAIRMAN

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-159
OAL DOCKET NO. CCC 6732-80
APP. NO. 13282-21

IN THE MATTER OF THE APPLICATION
OF BETTY JANE BECK FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed September 1, 1981, recommending that the application be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed by either party; and the Commission having resolved at its public meeting on October 13, 1981, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 13th day of October 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Betty Jane Beck be and hereby is GRANTED based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 13, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6732-80

AGENCY DKT. NO. 80-EA-159

IN THE MATTER OF:

BETTY JANE BECK,
Applicant

v.

DIVISION OF GAMING ENFORCEMENT,
Respondent.

Record Closed: July 16, 1981
Received by Agency: 9-1-81

Decided: August 31, 1981
Mailed to Parties: 9-3-81

APPEARANCES:

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

Stephen D. Schrier, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for Respondent

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

STATEMENT OF THE CASE

This matter concerns the application of Betty Jane Beck to the Casino Control Commission for licensure to work in a casino as a blackjack dealer. The Division of Gaming Enforcement has objected to licensure of the applicant. At issue is whether the applicant has demonstrated her rehabilitation, thereby overcoming the disqualification from licensure which otherwise would result from her 1976 conviction for fraudulently

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obtaining welfare benefits while employed. Also at issue is whether the applicant has sustained her affirmative burden of establishing by clear and convincing evidence her financial stability, integrity and responsibility, and her reputation for good character, honesty and integrity.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the applicant by letter report to the Casino Control Commission, dated August 14, 1980. The applicant was advised by letter from the Casino Control Commission, dated September 24, 1980, that there was a "substantial possibility" that the Commission would deny her application. The applicant requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The applicant is a 31-year-old resident of Pleasantville, New Jersey, and the mother of four children ranging in age from 10 to 14 years. The applicant was married at the age of 16. She separated from her husband in 1972 and was divorced in 1979. From 1972 until 1978, the applicant and her children lived with the applicant's mother in Pleasantville. The applicant has been a tenant of the Housing Authority of Pleasantville since July 1978 (Exhibit P-6).

The applicant testified with candor and sincerity concerning her receipt of welfare benefits while she was gainfully employed as an operator for New Jersey Bell Telephone Company. According to the applicant, she did not reveal her employment with the telephone company to the Atlantic County Welfare Board while receiving welfare benefits because her income from the telephone company was not sufficient to support herself and her four children. The applicant also found it necessary to go to court at least six times to seek support payments from her husband.

In January 1975, the applicant admitted during an interview with an investigator from the Atlantic County Welfare Board that she has been employed by the telephone company since June 1973. The applicant entered a plea of guilty on one count of an indictment for welfare fraud on July 15, 1976. Upon her conviction of welfare

fraud, contrary to the provisions of N.J.S.A. 2A:111-2, the applicant was sentenced to the county jail for a term of 30 days, which sentence was suspended. In addition, the applicant was placed on probation for a term of three years and was ordered to make restitution of fraudulently received financial assistance in the amount of $2,000.00. Senior Probation Officer Rosemarie Pisano, of the Atlantic County Probation Office, testified that the applicant's probation was extended for an additional two years in order to permit her to complete her payment of restitution. The applicant's final payment was made on July 1, 1981. According to Ms. Pisano, she never had any problems concerning the applicant, whom she described as always having been honest in their relationship. Ms. Pisano felt the applicant has a good attitude concerning work and she believed the applicant to be a person of good character, honesty and integrity.

The applicant remained with the telephone company until 1977. After relatively short periods of employment at a collection agency, the Prudential Insurance Company and the Atlantic City Medical Center, the applicant enrolled at the Casino Career Institute, where she successfully completed a course in blackjack dealing in October 1979 (Exhibits P-1 through P-3). Following her completion of the casino course, the applicant was employed by Bally's Park Place Casino. She was laid off from this employment in March 1980. After receiving unemployment compensation for approxiately three months, the applicant was employed as a teller by Collective Federal Savings and Loan Association. Although she was terminated from this employment in February 1981 as a result of shortages and overages in accounts, it was subsequently determined that another employee was responsible for the discrepancies. Letters of recommendation from the applicant's branch manager and personnel director at Collective Federal Savings and Loan Association were admitted into evidence as Exhibits P-7 and P-8.

The applicant is presently receiving unemployment compensation and is entitled to food stamps. She acknowledged owing Sears approximately $200.00 for credit purchases of children's clothing in 1976. She also acknowledged a debt of approximately $1,200.00, incurred in 1976 in order to pay her lawyer's fees arising from her welfare fraud charge. The applicant explained that she had not been able to pay these debts because of her low income, but she intends to pay them now that she has made her final restitution payment to complete her probation.

Atlantic County Extension Services employee Vivian Henry testified that she has known the applicant for many years. Noting that the applicant has worked on a

number of occasions as a 4-H volunteer, Ms. Henry stated that she knows of nothing in addition to the applicant's conviction for welfare fraud which would reflect negatively on her character. She described the applicant as a beautiful parent who always wants to better herself and her children. Also testifying on behalf of the applicant was Pleasantville Police Officer Russell W. Jones, who stated that he has known the applicant's family since 1972. Officer Jones testified that he patrols the housing authority project in which the applicant lives, and he is aware of nothing which would reflect negatively on the applicant. It is undisputed that, aside from her conviction on one count of welfare fraud, the applicant has no other arrests, charges or convictions.

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

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the Act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c(2) of the Casino Control Act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for welfare fraud under N.J.S.A. 2A:111-2 is such an automatic disqualifier.

Nevertheless, pursuant to section 90h of the Act, the applicant shall not be denied a casino employee license on the basis of her welfare fraud conviction, provided that she has affirmatively demonstrated her rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the events occurred;

4. The date of the offense;

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

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

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

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

The applicant has no record of criminal involvement aside from her conviction for welfare fraud. She testified frankly and openly concerning the difficult family circumstances facing her and her four children which led her to receive welfare benefits while failing to disclose to the welfare agency that she was employed. By making restitution, the applicant has satisfied the terms of her probation. In the five years which have passed since her conviction, the applicant has successfully performed in a number of employments as she seeks to overcome her economic hardship. The witnesses who testified on behalf of the applicant have clearly demonstrated her reputation for good character, honesty and integrity.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the applicant has overcome her disqualification from licensure on the basis of her conviction of an offense enumerated under section 86c(2) of the Casino Control Act by demonstrating her rehabilitation, within the meaning of section 90h of the Casino Control Act, by clear and convincing evidence. I further **CONCLUDE** that the applicant has sustained her affirmative burden of establishing by clear and convincing evidence her financial stability, integrity and responsibility, and her good character, honesty and integrity, within the meaning of section 89 and 90 of the Casino Control Act.

It is, therefore, **ORDERED** that the application of Betty Jane Beck for a casino employee license, permitting her to work in a casino as a teller, be **GRANTED.**

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

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

August 31, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

September 1, 1981
DATE

Vincent D. Siuda
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Sept 3, 1981
DATE

Ronald I. Parker
OFFICE OF ADMINISTRATIVE LAW

plb

INVENTORY OF EXHIBITS

FOR THE APPLICANT:

P-1 Casino Career Institute Certificate

P-2 Final Grade Report

P-3 Letter from Casino Career Institute

P-4 Personal History Disclosure Form

P-5 Receipt for restitution

P-6 Letter from Housing Authority of Pleasantville

P-7 Letter from Collective Federal Savings and Loan Association

P-8 Letter from Collective Federal Savings and Loan Association

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Welfare Board Activity Report

R-2 Welfare Board Complaint

R-3 Motion and Order

R-4 Welfare Board Questionnaire

R-5 New Jersey State Police Report

WITNESSES

FOR THE APPLICANT:

Betty Jane Beck

Rosemarie Pisano

Vivian Henry

Russell Jones

FOR THE DIVISION OF GAMING ENFORCEMENT:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-15
OAL DOCKET NO. CCC 6207-80

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Plaintiff,	:	FINAL ORDER
v.	:	
JOSEPH E. BECKER,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law which was filed with the Commission on July 29, 1981, in which it is found that Respondent had abandoned his right to a hearing on the within Complaint; said Complaint having alleged that the Respondent was detained by United States Customs officials in Puerto Rico on February 23, 1980 following a search which revealed approximately four (4) grams of a controlled dangerous substance (cocaine) in the possession of Respondent; and, the Commission having considered the entire record of the proceedings, the Initial Decision of the Office of Administrative Law, the oral arguments advanced by the Respondent and the Division of Gaming Enforcement, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting of October 6, 1981 to affirm and adopt the findings of the said Initial Decision;

and the Commission having further found that, pursuant to N.J.S.A. 5:12-108(b), Respondent has admitted the factual allegations contained in said Complaint,

IT IS on this 13th day of October, 1981 ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is AFFIRMED AND ADOPTED and incorporated by reference herein; and

IT IS FURTHER ORDERED that the Respondent's casino employee license be suspended for a period of (1) year; and

IT IS FURTHER ORDERED that the aforestated one (1) year suspension be made retroactive to September 5, 1980; and

IT IS FURTHER ORDERED that a letter of censure be issued to the Respondent advising that any further conduct of a similar nature may result in the permanent revocation of his license, said letter to be made a permanent part of the Respondent's file; and

IT IS FURTHER ORDERED that the Commission's Order dated September 5, 1980, which suspended Respondent's casino employee license pending final resolution of the Complaint, be and hereby is VACATED; and

IT IS FURTHER ORDERED that the relief sought by the Division of Gaming Enforcment, i.e., revocation of Respondent's casino employee license, be and hereby is DENIED; and

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

NEW JERSEY CASINO CONTROL COMMISSION

MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 13, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6207-80

AGENCY DKT. NO. 80-15

IN THE MATTER OF:

DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

JOSEPH E. BECKER,

Respondent.

Record Closed: June 27, 1981

Received by Agency:

Decided: July 28, 1981

Mailed to Parties:

APPEARANCES:

Robert J. Melillo, Deputy Attorney General, (James R. Zazzeli, Attorney General of New Jersey) for Petitioner

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

The Division of Gaming Enforcement seeks an order revoking the respondent's casino employee license no. 01951-21. A hearing was requested and the matter transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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The matter was scheduled for a plenary hearing on April 13, 1981. At that time, the respondent failed to appear. The deputy attorney general appeared with two witnesses ready to proceed. On June 4, 1981, a letter was sent by the Director of Judicial Management of the Office of Administrative Law to the respondent, requesting an explanation in writing within ten days for his failure to appear. No response was received to that letter.

I FIND that the respondent has abandoned his right to a hearing in this matter. It is hereby ORDERED that this matter be referred to the Casino Control Commission for appropriate action, in accordance with the Casino Control Act and regulations adopted thereunder.

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

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

7/28/81
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

7/29/81
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

July 31, 1981
DATE

Ronald I. Parker TA2
OFFICE OF ADMINISTRATIVE LAW

bm

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-EA-141
OAL DOCKET NO. CCC 6136-80

IN THE MATTER OF THE APPLICATION OF CHERYL BIZZELL FOR LICENSURE AS A CASINO EMPLOYEE (CASINO TELLER)

FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting on August 19, 1981; and the Commission having considered the entire record of this matter and the Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties; and the Commission having resolved to adopt the Initial Decision of the Administrative Law Judge and to grant Cheryl Bizzell's application for licensure,

IT IS on this 26th day of August 1981, ORDERED that the Initial Decision of the Administrative Law Judge be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Cheryl Bizzell be and hereby is granted for the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

DON M. THOMAS, ACTING CHAIRMAN

BY: _____
Robert J. Genatt
General Counsel

DATED: August 20, 1987

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6136-80

AGENCY DKT. NO. 80-EA-141

IN THE MATTER OF:

CHERYL BIZZELL,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: May 22, 1981

Received by Agency: July 7, 1981

Decided: July 6, 1981

Mailed to Parties: July 9, 1981

APPEARANCES:

David M. Lipshutz, Esq., (Joseph R. Menna, Attorney), for Applicant

Jane G. Lafferty, Deputy Attorney General (James R. Zazzali, Attorney General of New Jersey), for Respondent

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Cheryl Bizzell to the Casino Control Commission for licensure to work in a casino as a teller. The Division of Gaming Enforcement has objected to licensure of the applicant. At issue is whether the applicant should be disqualified from licensure on the grounds that she has failed to reveal facts material to her qualifications for licensure, or that she has supplied information which is

untrue or misleading as to a material fact. If not so disqualified, the remaining issue to be determined is whether the applicant has sustained her affirmative burden of establishing by clear and convincing evidence her reputation for good character, honesty and integrity.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the applicant by letter report to the Casino Control Commission, dated July 8, 1980. The applicant was advised by letter from the Casino Control Commission, dated September 18, 1980, that there was a "substantial possibility" that the Commission would deny her application. The applicant requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The applicant is a 23-year-old high school graduate, who lives with her parents in Cherry Hill, New Jersey. She has been employed as a teller with the First Peoples Bank of New Jersey since October 1980. A letter of recommendation from the bank's Assistant Vice President, Thomas Quackenbush, was admitted into evidence as Exhibit P-1. The Division of Gaming Enforcement has raised no objection concerning the applicant's ability to perform adequately as a casino teller.

In connection with her application for licensure, the applicant filed a Personal History Disclosure Form with the Casino Control Commission on July 25, 1979 (Exhibit J-1). In response to question No. 31 on her disclosure form, which requires disclosure of the applicant's employment history, the applicant revealed that she was employed as a cashier and salesgirl by the Ladybug department store in Philadelphia, Pennsylvania, from November 1978 until February 1979. The reason for leaving this position, as set forth by the applicant on her Personal History Disclosure Form, was "hired for Christmas help." In response to question No. 33 of her disclosure form, which inquires as to whether the applicant was ever discharged or asked to resign from employment, the applicant answered "No."

52.

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

The factual dispute in this matter concerns whether the applicant knew she was discharged for cause from the Ladybug department store, and whether she failed to disclose this information on her personal history disclosure form. The applicant testified that she had been employed by Pennyback's in the Cherry Hill Mall prior to November 1978. When she heard that the Ladybug store needed Christmas help, she applied and was hired. She did well selling shoes, and was then moved to selling dresses.

The applicant testified that she was issued an employee discount card by the Ladybug store, which she used to buy her Christmas gifts. According to the applicant, she was questioned by store security concerning the purchases she made with her employee discount card. After working approximately two more weeks after she was questioned, the applicant was called to the assistant manager's office and told that her services were no longer needed. No mention was made of any misuse of the applicant's employee discount card. The applicant acknowledged that she did not ask the assistant manager why her services were no longer needed. She also did not recall asking the manager for a recommendation for future employment.

The applicant testified that she had left her employment at Pennyback's to go to the Ladybug department store because of higher pay and the possibility of receiving commissions. Although she could not remember whether she had hoped that it would be a long-term position at the time she applied for the job, the applicant acknowledged that it had been her intention to stay at Ladybug as long as possible. The applicant explained that she didn't feel that being told her services were no longer needed meant that she had been discharged, and that is why she answered "No" to the question on her Personal History Disclosure Form, which required her to set forth whether she had ever been discharged or asked to resign from employment. Quite simply, the applicant did not think that she had been fired. Her testimony concerning the termination of her services with the Ladybug department store was straightforward and sincere.

Testifying on behalf of the Division of Gaming Enforcement, Investigator Leonard C. Wittig, Jr. stated that he went to the Ladybug department store, pursuant to his investigation of the applicant, and spoke with store Manager Sandy Spirithes. According to the investigator, he asked why the applicant left her employment, and was

informed that she had been fired due to misuse of her employee discount card and due to constant tardiness. However, the investigator also testified that he did not uncover any evidence that the applicant had been told by someone at the Ladybug department store why she was being terminated from employment. A report concerning the applicant's termination, which was obtained from the Ladybug department store by another Division of Gaming Enforcement investigatory, was admitted into evidence as Exhibit R-1. There is no evidence in the record which would indicate that this report was ever brought to the applicant's attention.

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

1. The applicant did not reveal on her Personal History Disclosure Form that she had been discharged for cause from her employment with the Ladybug department store in Philadelphia, Pennsylvania.

2. The information concerning her discharge from employment was significant and material to the evaluation of her qualifications for licensure.

3. The applicant did not know that she had been terminated for cause from her employment with the Ladybug department store, and her failure to disclose this discharge on her Personal History Disclosure Form resulted from her ignorance of a material fact, rather than from a conscious disregard of the request for information concerning her discharge from employment.

4. The applicant's inadvertent failure to disclose material information does not impact adversely upon her demonstration, by clear and convincing evidence, that she possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the Act also incorporates the disqualification criteria of section 86. N.J.S.A. 5:12-86b provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. The credible proofs in the entire record clearly establish that the applicant's failure to disclose a material fact on her personal history disclosure form was due to her ignorance of that material fact. Disqualification from licensure due to an ignorant failure to disclose a material fact would not be warranted.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the applicant is not disqualified from receiving a casino employee license to work as a teller, as a result of her unintentional failure to disclose facts material to her qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b. I further CONCLUDE that the applicant has established by clear and convincing evidence that she possesses the degree of character, honesty and integrity requisite for licensure as a casino employee, and is, therefore, not disqualified from licensure, within the meaning of N.J.S.A. 5:12-86a.

ORDER OF DISPOSITION

It is, therefore, ORDERED that the application of Cheryl Bizzell for a casino employee license, permitting her to work in a casino as a teller, be granted.

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

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

July 6, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

July 7, 1981
DATE

Nancy O. Fickel
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 10, 1981
DATE

Elizabeth G. Keegan Gs
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

JOINT EXHIBIT:

J-1 Personal History Disclosure Form

FOR THE APPLICANT:

P-1 Letter of recommendation, dated March 5, 1981

P-2 Not in evidence

P-3 1980 Unemployment Form

P-4 Interrogatories

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Termination report

WITNESSES

FOR THE APPLICANT:

Cheryl Bizzell

Ida Mae Bizzell

FOR THE DIVISION OF GAMING ENFORCEMENT:

Leonard C. Wittig

STATE OF NEW JERSEY
OAL DOCKET NO. CCC 6312-80
CCC DOCKET NO. 80-13

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENCOFCEMENT,
CHARGING PARTY,
v.
BOARDWALK REGENCY CORPORATION,
RESPONDENT.

FINAL ORDER

This matter having been opened to the Casino Control Commission upon the Complaint of the Division of Gaming Enforcement; and an Initial Decision of the Office of Administrative Law having been filed with the Commission on May 21, 1981 recommending adoption of the settlement reached between the parties; and the Commission having considered the entire record of the proceedings, Initial Decision of the Office of Administrative Law which incorporates the settlement stipulation embodying the terms and conditions consented to by the parties; and the Commission having resolved at its public meeting of June 17, 1981 to affirm and adopt the Initial Decision and to dismiss the Complaint with prejudice,

IT IS on this 23rd day of June 1981, ORDERED that the Initial Decision in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the Complaint in this matter be and hereby is DISMISSED with prejudice for the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

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

DATED: June 23, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
ORDER OF SETTLEMENT
OAL DKT. NO. CCC 6312-80
AGENCY DKT. NO. 80-13

IN THE MATTER OF:

STATE
v.
BOARDWALK REGENCY
CORPORATION,
Respondent

Record Closed: May 9, 1981
Received by Agency: May 21, 1981

Decided: May 19, 1981
Mailed to Parties: May 22, 1981

APPEARANCES:

Brian J. Molloy, Esq., for Boardwalk Regency Corporation
(Wilentz, Goldman & Spitzer, attorneys)

Patricia J. Arons, Deputy Attorney General, for the
Division of Gaming Enforcement (James R. Zazzali,
Attorney General of the State of New Jersey, attorney)

BEFORE R. JACKSON DWYER, ALJ:

The State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, brought a violation proceeding against Boardwalk Regency Corporation and charged in its complaint that it violated N.J.S.A. 5:12-103f(2), Class VII Storage License, because 16 bottles of wine were discovered after an inspection in a food storage area. The Division of Gaming Enforcement, in its complaint, requested the Commission to permanently enjoin respondent from engaging in the practice of storing alcoholic beverages in unlicensed casino premises, imposing an appropriate fine for said violation, and exacting any other relief that the Commission deemed appropriate.

A prehearing conference was held on February 6, 1981. The matter was set down for a hearing on April 28, 1981 at the Office of Administrative Law, Trenton, New Jersey.

On May 6, 1981, the parties submitted a properly executed Order of Settlement, which is attached hereto and made a part hereof.

Having reviewed the Order of Settlement submitted, I FIND:

1. The terms of the settlement are incorporated into an Order of Settlement, which is attached to this Initial Decision and is incorporated herein as if set forth at length.

2. The parties have agreed to the Order of Settlement in form and substance, as evidenced by their having signed said Order.

3. The settlement as reflected by the Order of Settlement is a fair one and fully disposes of all the issues in controversy.

Therefore, it is ORDERED that the parties comply with the terms of the settlement as set forth in the attached Order of Settlement, and it is FURTHER ORDERED that the proceedings in this matter be and are hereby DISMISSED WITH PREJUDICE.

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

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

May 19, 1981
DATE

R. JACKSON DWYER, ALJ

Receipt Acknowledged:

May 21, 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

May 22, 1981
DATE

OFFICE OF ADMINISTRATIVE LAW

db

JAMES R. ZAZZALI
Attorney General of New Jersey
Attorney for State of New Jersey
Independence Mall
CN-047
Trenton, New Jersey 08625

By: PATRICIA J. ARONS
Deputy Attorney General
(609) 292-8099

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO. CCC 6312-80
AGENCY DOCKET NO. 80-13

STATE V. BOARDWALK REGENCY CORP.

SETTLEMENT STIPULATION

1. On March 23, 1980, an inspection of Boardwalk Regency Casino Hotel's (hereafter BRC) alcoholic beverage licensed premises was conducted by Division of Gaming Enforcement and Casino Control Commission personnel.

2. During the course of this inspection, it was discovered that a refrigeration unit housed in a food storage area contained 16 unauthorized bottles of wine. This storage area was not a duly licensed alcoholic beverage premise pursuant to N.J.S.A. 5:12-103f(2) Class VII storage license.

3. BRC has agreed to pay a fine of $500 to the Casino Control Commission for the aforesaid violation as described in paragraph 2.

I agree to the terms of the settlement as outlined above.

DATED: May 6, 1981

Brian J. Molloy
Brian Malloy
Attorney, BRC

I agree to the terms of the settlement as outlined above.

DATED: May 4, 1981

Patricia J. Arons
Patricia J. Arons
DAG, Division of Gaming Enforcement

STATE OF NEW JERSEY
OAL DOCKET NO. CCC 3916-80
CCC DOCKET NO. 80-10

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, CHARGING PARTY, v. BOARDWALK REGENCY CORPORATION, LINCOLN EBERT, MAXWELL GOLDBERG, JESS LENZ, BERNARD RESNICK, RALPH DELLIGATTI, HOWARD BACHARACH, MARK GELLER, AND LARRY BERTSCH, RESPONDENTS.	FINAL ORDER

This matter having been opened to the Casino Control Commission upon the Complaint of the Division of Gaming Enforcement; and an Initial Decision of the Office of Administrative Law having been filed with the Commission on May 18, 1981 recommending adoption of the settlement reached between the parties; and the Commission having considered the entire record of the proceedings, including the Initial Decision of the Office of Administrative Law which incorporates the Stipulation of Settlement embodying the terms and conditions consented to by the parties; and the Commission having resolved at its public meeting of July 8, 1981 to affirm and adopt the Initial Decision and, upon receipt of payment, by Respondent Boardwalk Regency Corporation of a fine of $45,000 to dismiss the Complaint with prejudice,

IT IS on this 17th day of July 1981, ORDERED that the Initial Decision in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that Respondent, Boardwalk Regency Corporation, pay a fine in the sum of forty-five thousand dollars ($45,000); and

IT IS FURTHER ORDERED that, upon payment of the above fine, the Complaint in this matter is DISMISSED with prejudice for the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

MARTIN B. DANZIGER,
ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY,
SENIOR ASSISTANT COUNSEL

DATED: 7/17/81

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION - SETTLEMENT

OAL DKT. NO. CCC 3916-80

AGENCY DKT. NO. 80-10

IN THE MATTER OF:

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

Charging Party,

v.

BOARDWALK REGENCY CORPORATION, LINCOLN EBERT, MAXWELL GOLDBERG, JESS LENZ, BERNARD RESNICK , RALPH DELLIGATTI, HOWARD BACHARACH, MARK GELLER AND LARRY BERTSCH,

Respondents.

Record Closed: May 18, 1981

Received by Agency: 5/19/81

Decided: 5/18/81

Mailed to Parties: 5/21/81

APPEARANCES:

Robert J. Melillo, Deputy Attorney General, for the Charging Party
(James R. Zazzali, Attorney General of the State of New Jersey, attorney)

James L. Cooper, Esq., for Respondents
(Cooper, Perskie, Katzman, April, Niedelman and Wagenheim, attorneys)

An Equal Opportunity Employer

BEFORE HOWARD H. KESTIN, CALJ:

The complaint in this matter, embodying a number of alleged violations of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.24, was filed with the Casino Control Commission on May 13, 1980. An amended complaint was filed on June 3, 1980. Issue was joined and the matter was transmitted by the Commission to the Office of Administrative Law on June 20, 1980 for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

Several prehearing conferences were held, the parties engaged in discovery, and a number of motions were made and decided. The matter was set down for trial several times.

During the course of the proceedings, the attorneys for the parties, with my encouragement and cooperation, engaged in continuing discussions with a view to reaching a settlement of the matter. The parties, through their attorneys, have now submitted a Stipulation of Settlement, which I have reviewed. The Stipulation is attached to this initial decision as an appendix.

I FIND the terms of the Settlement to constitute a fair resolution of the issues in dispute and to be fully dispositive of the entire controversy.

I, therefore, CONCLUDE that the Settlement should be approved and that this matter should be disposed of according to the terms of the Stipulation.

Accordingly, it is ORDERED that the respondent, Boardwalk Regency Corporation, pay a $45,000 fine to the Casino Control Commission and, it is further ORDERED that, upon payment of said fine, this matter be DISMISSED WITH PREJUDICE as to all respondents.

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

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

May 15, 1981
DATE

HOWARD H. KESTIN, CALJ

Receipt Acknowledged:

May 19 1981
DATE

Martha Dean
CASINO CONTROL COMMISSION

Mailed to Parties:

May 21, 1981
DATE

Ronald L. Parker/bt
OFFICE OF ADMINISTRATIVE LAW

ywg

OFFICE OF
ATTORNEY GENERAL
MAY 1 3 54 PM '81

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for the State of New Jersey
2465 South Broad Street
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Trenton, New Jersey 08625

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 3916-80

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, -vs- BOARDWALK REGENCY CORPORATION, LINCOLN EBERT, MAXWELL GOLDBERG, JESS LENZ, BERNARD RESNICK, RALPH DELLIGATTI, HOWARD BACHARACH, MARK GELLER, and LARRY BERTSCH, Respondents.	STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, John J. Degnan, Attorney General of New Jersey, Attorney for Charging Party, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement. by Robert J. Melillo, Deputy Attorney General, and James L. Cooper, of Cooper, Perskie, Katzman, April, Niedelman and Wagenheim, Attorneys for Respondents, Boardwalk Regency Corporation, Lincoln Ebert,

Maxwell Goldberg, Jess Lenz, Bernard Resnick, Ralph Delligatti, Howard Bacharach, Mark Geller and Larry Bertsch, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1) WHEREAS, of a total of some five -hundred and ninety-seven (597) personal checks cashed during the period of time between June 26,1979 and September 1, 1979 at the hotel front desk of the Boardwalk Regency Hotel-Casino, numerous violations of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.24 were alleged; and

2) WHEREAS it is admitted that some of the aforementioned transactions were performed by Boardwalk Regency Corporation employees in violation of the aforementioned provisions; and

3) WHEREAS there was no intent on the part of the Boardwalk Regency Corporation to engage in the aforementioned violations; and

4) WHEREAS the parties recognize the need to comply with the Casino Control Commission Regulations and Boardwalk Regency Corporation has agreed to comply with the aforementioned statutory and regulatory provisions in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by the parties hereto that:

1. The Division of Gaming Enforcement and Boardwalk Regency Corporation shall jointly move the Casino Control Commission to approve the following terms of settlement of this matter all of which terms are joint and not severable and which are:

a) Boardwalk Regency Corporation shall pay to the Casino Control Commission a $45,000.00 fine in recognition of the settlement of this matter; and

b) The complaint in this matter shall, upon approval by the Casino Control Commission of this settlement and payment of said fine, be dismissed with prejudice against Boardwalk Regency Corporation, Lincoln Ebert, Maxwell Goldberg, Jess Lenz, Bernard Resnick, Ralph Delligatti, Howard Bacharach, Mark Geller, and Larry Bertsch.

The undersigned consent to the form and entry of the above Stipulation of Settlement.

Robert J. Melillo
Deputy Attorney General
Attorney for Charging Party

James L. Cooper
Cooper, Perskie, Katzman, April, Niedelman
and Wagenheim
Attorney for Respondent

1981, and a statement of issues in which the Division asserted that BRC, its parent company Caesars World, Inc., ("CWI") and a number of persons required to qualify under the Act had failed to provide in a timely manner information required by the Act or requested by the Division. Subsequently, this Commission held two days of hearings to review the continuing suitability of these applicants.

Aside from the matters raised by the Division, the Commission staff and the Division represented that the applicants have complied with the licensing criteria of the Act and that, subject to certain conditions, positive findings would be warranted. These other licensing criteria include: the suitability of the casino hotel facilities (see N.J.S.A. 5:12-1(b)(11), -27, -83 and -98)), the environmental impact of the casino project (see N.J.S.A. 5:12-84(e)), the financial stability and efficiency of the casino operation (see N.J.S.A. 5:12-84(a) and (d)), the qualifications of the persons and entities associated with the applicants (N.J.S.A. 5:12-85(c), (d) and (e)), and the efforts of BRC to provide an equal employment opportunity and to implement an acceptable affirmative action program (see N.J.S.A. 5:12-134 and -135).

While all of these licensing standards are important, there is no need to discuss them at length in this opinion. Rather, these uncontested areas are addressed in the resolutions which have been prepared by the staff and which contain the conditions necessary and appropriate for achievement of the statutory objectives. Subject to the right of the Commission

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 81-CLR-2
81-CLR-3

IN THE MATTER OF THE APPLICATIONS OF BOARDWALK REGENCY CORPORATION AND THE JEMM COMPANY FOR RENEWAL OF CASINO LICENSES.

OPINION

For Boardwalk Regency Corporation:

Morris Brown, Esq.
Brian Molloy, Esq.
Wilentz, Goldman & Spitzer

For the Division of Gaming Enforcement:

Guy S. Michael, Assistant Attorney General
Richard T. Morrissey, Deputy Attorney General

For the Jemm Company:

Michael Ashner. Esq.
Cooper, Perskie, Katzman, April, Niedelman & Wagenheim

For the Casino Control Commission:

Robert J. Genatt, General Counsel
David Arrajj, Special Counsel for Licensing
Scott N Silver, Assistant Counsel

Under the Casino Control Act (the "Act"), casino licenses must be renewed annually. Licensees are obligated to make proper application and to satisfy the Commission that the licensee continues to meet all the requirements for the privilege of casino licensure. See N.J.S.A. 5:12-1(b)(8) and -88. Accordingly, Boardwalk Regency Corporation ("BRC") and the Jemm Company ("Jemm") applied for a renewal of the casino licenses which were issued by this Commission on October 26, 1980.

Following such applications, the Division of Gaming Enforcement ("Division") filed a letter-report dated October 1,

to make technical language adjustments as needed, the Commission has approved the proposed resolution for Jemm. Thus, Jemm will receive a renewal of its casino license. As to BRC, the Commission will approve the proposed resolution only upon a finding that the matters raised by the Division do not reflect so adversely on the character and suitability of BRC as to require denial of the application for failure of BRC to prove its continuing fitness by clear and convincing evidence. See N.J.S.A. 5:12-84 and -89.

The matters raised by the Division relate to the quality of BRC's compliance with regulatory and statutory demands for information and assistance. There can be no gainsaying the importance of such compliance to the achievement of the essential regulatory goals of the Act. The statute expressly and repeatedly states the necessity for unstinting cooperation by applicants and licensees. See N.J.S.A. 5:12-1(b)(8), -78, -80(b), -80(d) and -86(b). Moreover, this Commission is keenly aware of the fact that effective regulation and control of casino operations, especially those conducted by subsidiaries of large publicly-held corporations, can never be attained without the full support of the licensee.

Improper resistance to reasonable requests by the Division frustrates essential enforcement and monitoring functions, dissipates limited government resources and undermines public trust and confidence in the regulatory system. Plainly, these allegations of non-cooperation are viewed most seriously and, to succeed in its application, BRC must convincingly

establish that any failure to respond promptly, either by providing the demanded information or by stating any good faith objection to the demand, is not indicative of a defiant attitude or a light regard for the regulatory process. Confidence and trust cannot be reposed in a casino licensee which ignores the lawful requests of the Division. A true commitment to full cooperation must be given and kept.

In the instant case, BRC and CWI declared, through their highest corporate officials, that they were dedicated to cooperating with all regulatory agencies and, in particular, the Division and the Commission. (See A-1). At the request of the Division, BRC produced at the hearing all but one of the individuals who were the subject of the alleged instances of non-compliance. Additionally, BRC urged the Commission to consider the fact that only eight instances of unsatisfactory responses were alleged whereas innumerable requests by both the Division and the Commission for a great quantity of information have been met in a timely and acceptable manner during the term of the current license.

While these factors are certainly entitled to careful consideration, it must be understood that such conduct will not alone overcome a claim of non-cooperation. Renewed pledges of cooperation, no matter how sincere, will not excuse culpable past behavior. So too, compliance with the majority of agency requests cannot negate a purposeful and unjustified withholding of information with respect to a particular area of concern to the licensee. The cooperation demanded by the Act must be complete and constant. Supplying information or producing

individuals once a year, in the face of a challenge to license renewal, will not suffice.

With regard to the actual episodes of non-compliance cited by the Division, the first to be considered is the Division's attempt to interview William H. McElnea, Jr., the former president of CWI and a former member of its board of directors. To understand this issue, some factual background is necessary.

When the existing casino license was issued to BRC on October 26, 1980, it was conditioned upon the separation of Clifford and Stuart Perlman from any position of possible influence regarding New Jersey casino operations. To accomplish this separation, the Commission ordered CWI to decide whether it would sever all relationships to the Perlmans, whom the Commission had found to be unsuitable, or, in the alternative, whether CWI would withdraw from gaming activities in New Jersey. During the pendency of state court appeals from the licensing decision, the New Jersey Supreme Court entered a stay against requiring the company to report its decision or to submit a plan of implementation. This stay continues in effect. Because of the removal of the Perlmans, Mr. McElnea was projected into a position of paramount importance with the company.

On March 25, 1981, the Commission and the Division were advised that Mr. McElnea was resigning his positions with the company and was selling all his stock in the company to the Perlmans. The Commission requested a meeting with representatives of the company to explain the details and

circumstances of these events. Such a meeting was held on March 27, 1981, and was attended by, among others, Commissioner Danziger, David Bernstein, Esq., of the law firm of Rogers & Wells, outside counsel to CWI, and members of the Division and Commission staff. At the conclusion of the meeting, Commissioner Danziger suggested that CWI submit a written report on the McElnea resignation and stock sale.

On March 29, 1981, the Division telephoned James Needham, an outside director of CWI, and inquired about these matters. After answering several questions, Mr. Needham requested an opportunity to consult with counsel. On the following day, March 30, 1981, Mr. Needham and Mr. Bernstein appeared at the Division's offices where Mr. Needham submitted to a sworn, recorded interview (A-2) in the presence of Mr. Bernstein who argued that the right to counsel had attached by reason of the ongoing appeals and that his participation was necessary to prevent a violation of the stay issued by the Supreme Court. Mr. Bernstein restated his position regarding the right to counsel in a letter dated March 31, 1981, to Commissioner Danziger. (A-3).

On April 1, 1981, in anticipation that the Division would seek to interview other officials of CWI regarding the McElnea transactions, Mr. Bernstein met with the CWI board of directors and certain key officers, including Mr. McElnea and J. Terrence Lanni, the newly appointed Acting Chief Executive Officer. Mr. Bernstein advised that any inquiries in this area should be referred to Rogers & Wells in order that they might determine

whether the inquiry was permissible and whether counsel should be present at any interview. Shortly thereafter, on April 7, 1981, the Attorney General and the Commission moved in the Appellate Courts for modification of the stay or rescission of the stock transaction.

It was against this background that Mr. McElnea declined to speak to a Division investigator and referred the investigator to the Rogers & Wells firm. In early May, the Division contacted the law firm and asked to speak to William R. Glendon, Esq. Since Mr. Glendon was out of the country, the call was not completed and, according to Mr. Glendon's affidavit, the message never reached him. (A-19, -20). Prior to this call, Mr. McElnea had telephoned David Bernstein of Rogers & Wells in order to alert Mr. Glendon that the Division might contact him.

Approximately one month later Mr. McElnea again spoke to Mr. Bernstein who indicated that no call had yet been received from the Division. When Mr. McElnea inquired whether Mr. Glendon should contact the Division, Mr. Glendon replied that he would not do so unless he was contacted by the Division. Thereafter, by letter dated July 14, 1981, the Division requested that Mr. Glendon arrange an interview with Mr. McElnea. (D-1). Mr. Glendon was on vacation when this letter was received by his office. On his return in late July, Mr. Glendon had his secretary attempt to reach Richard Morrissey, the Deputy Attorney General who had written the July 14th letter. Two calls were placed to the Division's offices in Trenton and Atlantic City on July 30, 1981, but Mr. Morrissey was not available. Mr. Glendon's

secretary "left word" to have Mr. Morrissey call. (A-19). When these calls were not returned, Mr. Glendon made no further effort to respond to the July 14, 1981 letter. Mr. McElnea testified that he was not made aware of the existence of this letter.

From this factual recitation, it appears that Mr. McElnea relied on the advice of counsel when he referred the Division investigator to Rogers & Wells. It must be clearly understood that reliance on counsel does not relieve the obligation to cooperate fully with the Commission and the Division. Indeed, Mr. McElnea properly suggested that Mr. Glendon communicate with the Division. Moreover, the decision by Mr. Glendon to ignore the Division's written request simply because two telephone messages placed on the same day were not returned cannot be condoned. In the future, this applicant must take steps to assure that its agents, including its attorneys, fully understand their obligation to respond promptly to the regulatory authorities. Although not so egregious as to require a negative determination in this case, a failure by counsel to comply with such requests is attributable to the client who must be held ultimately accountable. The policies and duties established by the Act cannot be flaunted by resort to the simple expedient of delegation to counsel.

The Division has also asserted that a request for the minutes of meetings of the CWI board of directors and the CWI audit committee was not fully honored. In a letter dated March

11, 1981, the Division wrote to Richard Sheehan, Jr., Vice President - Law and Secretary of CWI, to request such minutes for all meetings which occurred after July 1980 and for all future meetings. The minutes of the prior meetings were promptly provided but the minutes of subsequent meetings were not filed until October 9, 1981. BRC points out that Mr. Sheehan left the company in mid-March and that his replacement, K. Eugene Shutler, Esq., was not appointed until July 1, 1981. Mr. Lanni characterized the failure to provide the minutes of subsequent meetings as a simple mistake resulting from the confusion and workload in the corporate counsel's office after Mr. Sheehan's resignation. It should also be noted that Mr. Shutler ordered the minutes to be supplied immediately upon first learning of the delinquency in October 1981.

The Commission finds that this particular instance of non-compliance has been adequately explained and corrected. Nevertheless, it is incumbent upon a casino licensee to maintain regulatory relationships despite personnel changes. As similar situations occur in the future, the licensee must take extra precautions to assure against failure of compliance, inadvertent or otherwise.

Another unsatisfactory response involved Mr. Robert Halloran, corporate director of sports for CWI. In July 1981, the Division contacted Mr. Halloran by telephone and made an inquiry concerning his activities in promoting sports events for BRC. The call was aimed primarily at determing whether Mr.

Halloran's duties made him appropriate for qualification. Mr. Halloran testified that, after answering a few questions, he became concerned that he might be divulging valuable financial information to a competitor. He explained that he was not sure that the caller was in fact a state official. Therefore, Mr. Halloran requested an opportunity to consult with counsel. He immediately called Robert E. Reilert, Esq., CWI's corporate counsel assigned to BRC, and advised him of the call. Based upon an exchange of letters between the Division and Mr. Reilert (D-14 and -15), and upon Mr. Reilert's testimony, it appears that Mr. Reilert was under the impression that the Division wished to investigate BRC's sports contracts rather than to pursue the possible licensing of Mr. Halloran. In any event, Mr. Reilert's responses in this matter do not appear to be obstructionist.

Eventually, the Division contacted Mr. Halloran in an effort to schedule an interview. Mr. Halloran told the Division that he travelled extensively on business and that he was about to depart for the Lake Tahoe, Nevada, area where he would be working for two months. Although he then knew that he was speaking with a Division investigator, Mr. Halloran made no attempt to accommodate the Division's request for an interview. When this matter was finally brought by Mr. Halloran to the attention of Mr. Lanni in October of this year, Mr. Lanni ordered Mr. Halloran to make himself immediately available to the Division.

The Commission finds that Mr. Halloran's behavior hardly comports with a sincere commitment to cooperate with and to assist the regulatory agencies. The real problem revealed by this episode is that, despite the efforts of Mr. Lanni, there has been a failure to adequately communicate the statutory obligation and the CWI policy of cooperation to all significant CWI personnel.

Further evidence of this deficiency may be found in the delay by Mr. Peter Echeverria in filing a Personal History Disclosure Form #1. Although he assumed his position as a CWI director on May 12, 1981, he did not file the form until October 16, 1981. To be sure, Mr. Echeverria was involved in massive and time-consuming litigation as part of his private law practice during this period. Additionally, Mr. Echeverria encountered extraordinary difficulties in gathering the personal information required by the form. However, Mr. Echeverria admitted that he was not aware of any urgency to file the form until the company pressed him to complete the filing within the last few weeks. Thus, a more systematic program of employee education and compliance monitoring would appear appropriate for CWI.

In the Spring of 1981, the Division requested a copy of an internal audit report prepared by BRC. In conversations with Division attorneys, Mr. Reilert stated BRC's concern that such disclosure might hamper the audit function if the Division used the audit report as a basis to file formal complaints for

internal control violations. The Division subsequently wrote to Peter Boynton, Executive Vice-President and Chief Operating Officer of BRC, on August 24, 1981, (A-4) and, while acknowledging BRC's concerns, pressed the request for the audit report. However, the report was not forthcoming. BRC and other industry members decided to seek the opinion of counsel to the Casino Hotel Association and to formulate a unified industry position. Ultimately on October 7, 1981, the Association decided that the filing of the report was required by the Act (see A-5). It was then filed by BRC. (See A-5). As with the McElnea situation, the difficulty here lies not with the decision to seek the advice of counsel but with the unilateral manner in which it was determined to simply withhold filing the report until a legal conclusion was reached. An appropriate response would have been to advance promptly the legal argument in writing to the Division and, if necessary, to bring the issue before the Commission. A casino licensee may not simply invoke its right to seek counsel as a substitute for providing a prompt response.

The remaining items noted by the Division pertain to the delay by several individuals in filing their personal history disclosure forms No. 1. The case of Mr. Echeverria has already been described. The other individuals consist of a CWI director (now resigned) and two CWI officers. Upon review of the evidence, the Commission is convinced that these matters reinforce the need for increased employee awareness of regulatory responsibilities.

We find that there were several instances where compliance with legitimate Division requests were either untimely or inadequate. However, after reviewing all the facts and circumstances, we find that these instances would not warrant denial of the application for renewal.

With regard to the Division's recommendation for a condition of licensure mandating that a response to any agency request be made within a certain period of time, we agree with the motivation and the purpose behind such a condition but we do not discern a need for it. What we have said today and what the Act explicitly demands are more than sufficient. We would further observe that non-compliance issues may be brought before this Commission without waiting until the time for license renewal. The Division has the right to present any such matter by way of a complaint against the licensee. See N.J.S.A. 5:12-108. We believe that the availability of such a procedure combined with our expressions on this subject should be more than enough to impress upon this applicant the importance of full and continuous cooperation. Thus, BRC's casino license will be renewed and the proposed resolution will be adopted subject to any technical adjustments which the Commission may deem necessary.

NEW JERSEY CASINO CONTROL COMMISSION

Martin B. Danziger, Acting Chairman

Don M. Thomas, Commissioner

Carl Zeitz, Commissioner

Madeline H. McWhinney, Commissioner

Dated: October 28, 1981

New Jersey Casino Control Commission

Resolution

No. 81-767

RESOLUTION OF THE NEW JERSEY CASINO CONTROL COMMISSION CONCERNING THE RENEWAL APPLICATION OF BOARDWALK REGENCY CORPORATION AND CONTAINING FINDINGS AND CONDITIONS

WHEREAS, Boardwalk Regency Corporation, t/a Caesars Boardwalk Regency Hotel/Casino (hereinafter, the "Licensee"), is a New Jersey corporation which holds a conditional license issued on October 26, 1980 for a term of one year; and

WHEREAS, the Licensee had made proper application for the renewal of its casino license, as required by N.J.S.A. 5:12-88(a); and

WHEREAS, on October 15, 1981, the Acting Chairman conducted a prehearing conference attended by representatives of the Licensee, the Division of Gaming Enforcement and Commission Staff; and

WHEREAS, the Commission on October 20, 21, and October 26, 1981 conducted a hearing, considered the evidence, received all information and took final action on said application for a renewal of the casino license; and

WHEREAS, the Commission has found by the affirmative vote of four (4) of its members that, except as otherwise noted, the Licensee has complied with all requirements of the Casino Control Act for a renewal of its Casino License,

NOW, THEREFORE, BE IT RESOLVED by the New Jersey Casino Control Commission that:

Boardwalk Regency Corporation, a New Jersey Corporation t/a Caesars Boardwalk Regency Hotel/Casino is hereby issued a renewal of its casino license for the approved hotel located between the Boardwalk and Pacific Avenue at Arkansas Avenue in Atlantic City; based upon the

findings contained in the record of the aforesaid hearings and in this Resolution and for the reasons set forth in the Commission's Opinion dated October 28, 1981, which is attached hereto and incorporated herein as part of this Resolution and subject to the conditions and effective date contained in this Resolution.

FINDINGS

Based upon consideration of the entire record of the proceedings and all the evidence presented at the hearing concerning this Casino License renewal application, the Commission finds:

APPLICATION FOR RENEWAL

1. That the Licensee has made a proper application for renewal of its casino license, as required by N.J.S.A. 5:12-88(b); and

2. That the Licensee's application for renewal was filed with the Commission on August 11, 1981; and

3. That the Licensee has paid to the Commission all license fees and taxes as required by law on or before the expiration date of its current license, as required by N.J.S.A. 5:12-88(b); and

FILING REQUIREMENTS

4. That the Licensee has filed an updated Business Entity Disclosure Form containing current information pertaining to the organization, businesses, personnel and security holders of it and its holding companies, as required by N.J.S.A. 5:12-85(a)(1) through (9); and

HOLDING COMPANIES

5. That the Licensee is a New Jersey corporation which is wholly-owned by holding company, Caesars New Jersey, Inc. (hereinafter "CNJ"), a New Jersey corporation; and

6. That CNJ, publicly traded corporation, has issued the following securities, (as of July 15, 1981):

16,016,291 shares of common stock;

1,015,291 warrants to purchase one share of common at $5 per share, expiring October 31, 1981; and

7. That 13,700,000 shares (85.5%) of CNJ are owned by Caesars World, Inc. (hereinafter "CWI"), a Florida corporation with principal offices in California and qualified to do business in New Jersey and that no person other than CWI owns or beneficially holds five (5%) percent or more of the securities of CNJ; and

8. That CWI, a publicly traded corporation, has issued (as of January 19, 1981) 26,452,816 shares of common stock and that only the two persons listed below own or beneficially hold five (5%) percent or more of said common stock:

NAME	PERCENTAGE
(a) Clifford Perlman	9.8%
(b) Stuart Perlman	6.8%

9. That CWI has issued (as of April 30, 1981) the following publicly traded debt securities:

$15 million principal amount 12% senior subordinated sinking fund debentures due 1994;

$25 million principal amount 11.25% senior sinking fund debentures due 1997;

$115,000 principal amount 8% convertible senior subordinated debentures due 1989 (convertible into CWI common at rate of one share for each $3.39 of principal);

$20,997,000 principal amount 12.5% subordinated sinking fund debentures due 1990;

$1,000,000 principal amount 10% convertible subordinated note due 2000 (convertible into Ontel Corporation common stock at rate of .285 shares per $1,000 of principal);

$25,000,000 principal amount 12.5% senior subordinated sinking fund debentures due 2000; and

10. That in addition to the Licensee, CWI has, directly or through intermediaries, eight (8) other subsidiaries, none of which are holding companies as to the Licensee; and

11. That the Licensee itself has one subsidiary, Boardwalk Productions, Inc.; and

12. That CNJ and CWI are the only holding companies of the Licensee required to register with the Commission and have done so by providing in required form current information pertaining to their organizations, businesses, personnel, securities and security holders. (See N.J.S.A. 5:12-85(b)(2) and 85(a)(1) through (3)); and

OWNERSHIP, MANAGEMENT & CONTROL

13. That the Licensee leases the approved hotel building and the land thereunder from the Jemm Company, a New Jersey partnership, and is thus eligible to hold a casino license (See N.J.S.A. 5:12-82(b)); and

14. That the Licensee manages its own casino (See N.J.S.A. 5:12-82(b)(3) and (c)); and

CONTINUED ELIGIBILITY

15. That the Licensee satisfies the incorporation on-site office, state corporate law compliance, ownership ledger, operating bank account and corporate purpose requirements of N.J.S.A. 5:12-82(d)(1) through (6); and

TRANSFERS OF INTERESTS IN THE LICENSEE AND HOLDING COMPANIES

16. That the Licensee has filed with the Commission adopted bylaw provisions which establish the right of the Commission to approve transfers, as defined by N.J.S.A. 5:12-47.2, of securities, shares, and other interests in the corporate licensee and its subsidiary as required by N.J.S.A. 5:12-82(d)(7); and

17. That the Licensee has established to the satisfaction of the Commission that appropriate bylaw provisions create the absolute right of the Licensee to repurchase, at the lesser of market or purchase price, any security, share, or other interest in the corporation, the transfer of which has been disapproved by the Commission, as required by N.J.S.A. 5:12-82(d)(8); and

18. That the Licensee's securities bear a legend stating the restrictions imposed by N.J.S.A. 5:12-105, as required by N.J.S.A. 5:12-105(b); and

19. That CNJ and CWI have provided in their bylaws that their securities are held subject to the condition that if a holder thereof is found to be disqualified by the Commission, such holder shall dispose of his interests in the respective corporation, as required by N.J.S.A. 5:12-82(d)(7); and

LIMIT OF THREE CASINO LICENSES

20. That except for the casino license which is the subject of this Resolution, no casino license has been issued to or is held by the Licensee, in accordance with N.J.S.A. 5:12-82(e);

QUALIFIERS (NATURAL PERSONS)

21. That the 30 natural persons listed below are casino license qualifiers as defined by N.J.S.A. 5:12-85(c) and (d)(1);

CAESARS QUALIFIERS

KEY: BRC: Boardwalk Regency, Corp.; CNJ: Caesars New Jersey, Inc.; CWI: Caesar's World, Inc.

NAME	ID	DOB	RS	POSITION(S)
Ackerman, Stephen H.	003B-22	11-22-35	CA	CWI-V.P., Treasurer CNJ-V.P., Treasurer

	NAME	ID	DOB	RS	POSITION(S)
	Aguilera, Bruce A.	003B-21	10-18-48	CA	CWI-Corporate Secretary CNJ-Corporate Secretary
1	Bacharach, Howard B.	167-11 0030-09	10-06-39	NJ	BRC-V.P., Administration
1	Berkowitz, Harold B.	003A-04	02-19-15	CA	CWI-Director CNJ-Director
1	Bertsch, Larry L.	0030-06	01-04-38	NJ	BRC-V.P., Treasurer
1	Bertsch, Patricia M.	168-11	12-18-40	NJ	BRC-Asst. V.P., Administration
1	Boynton, Peter G.	003B-16	05-02-43	NJ	BRC-Executive V.P., Chief Operating Officer, Director
1	Cade, Alfred J.	0030-08	02-04-31	NJ	BRC-Sr. Vice President, Director
1	Campbell, Jr., Harold	003B-11	09-19-19	NV	CWI-V.P., Security
1	Connors, John H.	0030-07	06-12-24	NJ	CWI-Asst. V.P., Secretary
	Echeverria, Peter		06-29-18	NV	CWI-Director CNJ-Director
	Getz, Edwin L.	003A-15	03-30-45	CA	CWI-V.P., Taxes
1	Goldberg, Maxwell J.	003L-05 149-11	07-12-26	NJ	BRC-Office of President, Director
1	Haines, William E.	003B-18	09-11-22	CA	CWI-Sr. V.P., Finance CNJ-Sr. V.P., Finance
1	Hanlon, David P.	003B-12	11-23-44	CA	CWI-Executive V.P. CNJ-Executive V.P. BRC-Director
	Hart, Nathan	003B-25	02-25-16	NV	CWI-Vice President
1	Lanni, J. Terrence	0030-12	04-14-43	CA	CWI-President, and Acting Chief Executive CNJ-Officer BRC-Director

	NAME	ID	DOB	RS	POSITION(S)
	Leeper, Jr., Robert J.	003B-20	09-16-46	CA	CWI-V.P., Corporate Controller CNJ-Corporate Controller
[1]	Leshaw, Jay E.	003A-05	03-26-25	FL	CWI-Sr. V.P., Director CNJ-Sr. V.P., Director
	Lindkrantz, K. Christer	220-11	07-23-51	NJ	BRC-Asst. V.P., Food and Beverage
[1]	McKoy, C. Patrick	962-11	07-23-51	NJ	BRC-Corporate Controller
[1]	Needham, James J.	003A-08	08-19-26	NY	CWI-Director CNJ-Director
[1]	Neustadter, Milton	003L-02 150-11	01-12-25	NJ	BRC-Office of the President, Director
	Perlman, Clifford S. (Leave of Absence)	003A-02	03-30-26	FL	CWI-Chairman of Board CNJ-Chairman of Board BRC-Director
	Perlman, Stuart Z. (Leave of Absence)	003A-02	09-26-27	FL	CWI-Vice Chairman of Board CNJ-Vice Chairman of Board BRC-Director
[1]	Schweitzer, M. Peter	003A-06	07-29-10	NY	CWI-Director CNJ-Director
	Shutler, K. Eugene	003B-23	03-27-38	CA	CWI-V.P., Corporate Counsel CNJ-V.P., Corporate Counsel
	Snyder, Rick S.	0030-13 1489-11	05-02-43	NJ	BRC-V.P., Hotel Operations
[1]	Woolf, Larry J.	200-11	06-07-44	NJ	BRC-V.P., Casino Operations, Director
[1]	Yellen, Manuel	003A-07	01-22-13	CA	CWI-Director CNJ-Director

[1] Qualified October, 1980

22. That the job responsibilities of the following individuals are presently being reviewed to determine whether they are casino license qualifiers as defined by N.J.S.A. 5:12-84(c) or (d)(1):

Halloran, Robert	04-19-38	NV	CWI-Dir. of Sports
McElnea, William H., Jr.	03-09-22	CA	CWI-Dir. of Special Projects

23. That the Commission and the Director of the Division of Gaming Enforcement are satisfied that, except for those individuals named in Paragraphs 8 and 21, no security holder of CNJ or CWI presently has the ability to control, or elect one or more of the directors of, either holding company; and

24. That based upon this finding and with the concurrance of the Director of the Division of Gaming Enforcement, the requirement of N.J.S.A. 5:12-85(d)(1) that the holders of the publicly traded securities of CNJ and CWI be individually qualified, is hereby presently waived except as to those individuals identified as qualifiers in Paragraphs 8 and 21 of the Resolution; and

25. That no other officers, principal employees, security holders, or other persons associated with the Licensee or its holding companies are presently considered appropriate for qualification; and

26. That except for Clifford and Stuart Perlman, all individuals listed in Paragraphs 8 and 21 of this Resolution are individually qualified for approval as casino key employees, but for residence as required by N.J.S.A. 5:12-85(c) and 85(d)(1); and

CLIFFORD AND STUART PERLMAN

27. That Clifford and Stuart Perlman were found not qualified to be officers, directors, or security holders of the Licensee or its holding companies, CNJ or CWI, and that before the Licensee was issued its conditional casino license it was required that:

(a) With regard to the Licensee, CNJ and CWI, Clifford Perlman and Stuart Perlman be placed on an unpaid leave of absence from any position as:

(a) officer;

(b) director;

(c) employee.

(b) With regard to the Licensee, CNJ and CWI, Clifford and Stuart Perlman may receive no renumeration in any form for services rendered or otherwise. Nor may Clifford or Stuart Perlman offer to perform any services, directly or indirect, to the Licensee, CNJ or CWI or exert any influence or control, direct or indirect, with regard to the Licensee, CNJ or CWI.

(c) With regard to any securities of the Licensee, CNJ or CWI held or beneficially owned by Clifford or Stuart Perlman:

(1) neither Clifford nor Stuart Perlman shall be permitted to exercise, directly or through any trustee or nominee, any right conferred by such securities; and

(2) neither Clifford nor Stuart Perlman shall be permitted to receive any dividends or interest upon any such

securities; and

28. That the Licensee was given until November 26, 1980 to either:

(a) notify the Commission that CWI would seek to continue to operate licensed casino hotels in this jurisdiction, in which event CWI was to require the Perlmans to dispose of any interest whatsoever held by them in CWI, CNJ or in any and all subsidiaries of CWI in this or any other jurisdiction; and further, that the Perlmans were to be removed from any positions as officers, directors or employees of the Licensee, CNJ, CWI and any and all subsidiaries of CWI in this or any other jurisdiction; and further, that the Perlmans were not to receive any renumeration in any form, whether for services rendered or otherwise, from CWI, CNJ, the Licensee or any other subsidiary of CWI, in this or in any other jurisdiction; and further, that CWI was to submit for Commission review and approval a detailed plan and timetable for accomplishing the Perlmans' divestiture of all such securities and removal from all such positions; or

(b) notify the Commission that CWI would seek to withdraw from the operation of licensed casino hotels in this jursidiction, in which event CWI was to submit for Commission review and approval a detailed plan and timetable for the accomplishment of that objective; and

29. That on November 20, 1980, the Supreme Court of New Jersey suspended until disposition of appeals from the determination by the Commission, the conditions set forth in Paragraph 28 hereinabove; and

30. That on July 21, 1981, the Appellate Division of the Superior Court of New Jersey affirmed the determinations of the Commission except as to the requirement that Clifford and Stuart Perlman separate themselves from

non-gaming subsidiaries of CWI located outside New Jersey. In the matter of the application of Boardwalk Regency Corporation for a Casino License, 180 N.J.S. 324, ____ A. 2d ____, (1981). The Appellate Division, however, continued the above described stay pending further appeals; and

REPUTATION FOR HONESTY AND INTEGRITY

31. That subject to Paragraphs 27 and 28 of this Resolution, the applicant has established by clear and convincing evidence its continued reputation for honesty and integrity as required by N.J.S.A. 5:12-84(c); and

FINANCIAL SOURCES

32. That the Licensee has identified its present financial sources related to its casino hotel as follows:

(a) Midlantic National Bank: $15.5 million mortgage note with a present balance of approximately $10.0 million;

(b) Chemical Bank: $8.0 million note;

(c) Continental Illinois Bank and Trust of Chicago: $5.0 million note, and a separate $6.0 million note with a present balance of approximately $3.0 million;

(d) Crocker National Bank: $2.0 million note;

(e) First National State Bank of New Jersey: $2.0 million note;

(f) United California Bank: $2.0 million note;

(g) ITT Industrial Credit Company: $.55 million note for computer purchase with a current balance of approximately $.47 million;

(h) Atlantic Sales, Inc.: $2.0 million (approximate) second mortgage

note on portion of approved hotel site;

(i) Joseph and Delores Tamton of Longport, N.J.: $.6 (approximate) million mortgage note;

(j) Reba Company of Margate, N.J.: $.4 million mortgage note for 1546-48 Atlantic Avenue, with a present balance of $.4 million (approximate);

(k) Shirley Sheffer of State College, PA.: $.85 million mortgage note for 2125-27 Boardwalk, with a present balance of $.2 million (approximate);

(l) Filomena Sebastiano of Philadelphia, PA.: $.5 million mortgage note for 121-121½ Missouri Avenue with a present balance of $.3 million (approximate);

(m) Abraham Grunwald of Bell Harbor, N.Y.: $1.0 million mortgage note for 11 South Missouri Avenue with a present balance of $.5 million (approximate);

(n) SSR Realty Associates of Los Angeles, CA.: $1.5 (approximate) million assumed mortgage note for 15-21 South Missouri Avenue and Lots 7 and 40 of Block 40;

(o) Perry Fogel of Ventor, N.J.: $.15 million (approximate) assumed second mortgage note on 15-21 South MIssouri Avenue;

(p) Vincent and Delores Del Raso of Wayne, PA.: $.3 million (approximate) assumed second mortgage note on Lots 7 and 40 of Block 40;

(q) ARK Amusement Center II of Philadelphia, PA.: three mortgage notes totaling $3.8 million on ARK Amusement Center and adjoining

Boardwalk strip properties with a present balance of $2.6 million (approximate); and

33. That the Licensee has established by clear and convincing evidence the integrity and reputation of the above named financial sources, as required by N.J.S.A. 5:12-84(b); and

34. That the Licensee has established by clear and convincing evidence the continuing adequacy of its financial resources to complete the casino proposal and to operate the casino, as required by N.J.S.A. 5:12-84(b); and

FINANCIAL STABILITY, INTEGRITY AND RESPONSIBILITY

35. That the Licensee has established by clear and convincing evidence its continuing financial stability, integrity and responsibility as required by N.J.S.A. 5:12-84(a); and

BUSINESS ABILITY AND CASINO EXPERIENCE

36. That the Licensee has established by clear and convincing evidence that it has sufficient business ability and casino experience to make likely the continued maintenance of a successful, efficient casino operation as required by N.J.S.A. 5:12-84(d); and

NEVADA GAMING

37. That through wholly owned subsidiaries, holding company CWI conducts licensed gaming activities in the State of Nevada; and that by order of the Nevada Gaming Commission, upon recommendation of the Nevada Gaming Control Board and pursuant to Nevada Revised Statute 463.700 through 463.720

and the Regulations of the Nevada Gaming Commission and Gaming Control Board concerning foreign gaming, approval has been granted to CWI to continue its gaming operations in Nevada while participating in casino gaming in the State of New Jersey through the operation of Caesars Boardwalk Regency Hotel/Casino in Atlantic City; and

THE CASINO HOTEL FACILITY

38. That the facility, including the attached parking garage, is situated on a total of 5.11 acres on Arkansas Avenue between the Boardwalk and Pacific Avenue in Atlantic City, and is a renovation and reconstruction of the former Howard Johnson Regency, together with elements of new construction; and

THE IMPACT

39. That as required by N.J.S.A. 5:12-84(e), the Licensee has established to the satisfaction of the Commission that, subject to Paragraphs 40 through 43 of this Resolution and certain conditions identified in Paragraphs 63 through 65 and Paragraphs 67 through 69 of this Resolution, the casino and its related facilities and its location are suitable and neither the Atlantic City patron market nor the overall environment nor its economic, social, demographic, competitive or natural resource conditions are adversely affected thereby; and

IMPACT ON REGIONAL HOUSING STOCK

40. That the Licensee is required by N.J.S.A. 5:12-84(e) to establish to the satisfaction of the Commission that its proposal will not adversely

affect overall environmental conditions in the Atlantic City region including its economic, social and demographic conditions; and

41. That by virtue of the fact that the Licensee employs at the approved hotel facility approximately 3,750 persons, its proposal will affect the overall environment in the Atlantic City region, including its economic, social and demographic conditions and will, as a practical matter, particularly affect the limited residential housing stock available in the Atlantic City region; and

42. That to mitigate the impact of its approved hotel facility on residential housing stock, the Licensee, in conjunction with its Temporary Casino Permit and Conditional Casino License committed to cooperate with the Commission in finding solutions to alleviate housing shortages in the Atlantic City region; and said commitments were incorporated as conditions on both the Temporary Casino Permit and Conditional License; and

43. That on October 5, 1981 the Licensee, through its Chief Executive Officer, Peter G. Boynton, reaffirmed this commitment (See, the condition contained in Paragraph 68 of this Resolution); and

QUALIFYING SPACE

44. That the approved hotel, as of September 1, 1981 contains a total of 130,266 square feet of qualifying space including 77,333 square feet of qualifying dining, entertainment, and sports space; 25,881 square feet of qualifying meeting and exhibition space; and 27,052 square feet of qualifying kitchen support facilities, and thereby exceeds the minimum qualifying space

requirements set forth in N.J.S.A. 5:12-83(b), (c) and (g), as well as the spatial "mix" requirement prescribed by N.J.S.A. 5:12-83(e); and

QUALIFYING SLEEPING UNITS

45. That as of September 1, 1981, the approved hotel contains 509 qualifying sleeping units, and no non-qualifying sleeping units, and thereby exceeds the minimum qualifying sleeping unit requirements set forth in N.J.S.A. 5:12-27 and 83(a); and

CASINO ROOM

46. That the approved hotel contains a single casino room of 48,045 square feet, which does not exceed the maximum square foot limitations set forth in N.J.S.A. 5:12-83(d), (f), and (g); and

CASINO DOMINANCE

47. That the casino room as situated does not impermissibly dominate the Licensee's casino hotel facility; and

APPROVED HOTEL

48. That based on the findings contained in Paragraphs 38 and 44 through 47 and subject to Paragraph 49, the Licensee's facility is found to be an "approved hotel" as defined by N.J.S.A. 5:12-83; and

CONDITIONS PERTAINING TO THE FACILITY

49. That certain of the conditions contained in the Licensee's Temporary Casino Permit (Numbers 2, 3, 5, 6, 7, 12 and 13) pertaining to its approved hotel facility, which were subsequently incorporated into its Conditional Plenary Casino License, shall continue as conditions of this Casino License Renewal (See, the conditions contained in Paragraphs 61 through 65, 67 and 68 of this Resolution); and

50. That condition Numbers 4, 8, 9, 10 and 11 contained in the Licensee's Temporary Casino Permit, which were subsequently incorporated into its Conditional Plenary Casino License have been fulfilled; and

EQUAL EMPLOYMENT OPPORTUNITY - OPERATIONS

51. That the Licensee has filed written guarantees that it will afford equal employment opportunities to all prospective and actual employees and has filed an affirmative action program designed to afford equal employment opportunities to persons qualified for licensure in all employment categories; and that the Licensee has filed documents in support of its contention that it has made good faith efforts to afford equal employment opportunities to all prospective and actual employees and has abided by its affirmative action program; and

52. That the Licensee in February, 1981 restructured its EEO/AA office such that Ms. Patricia Bertsch, Assistant Vice President of Administration was designated as AAO, along with her other responsibilities as the individual within the company responsible for personnel, training, and

labor and employee relations; and that at the same time the Licensee designated Ms. Zorina Merlino as the full-time Affirmative Action Staff Officer, responsible for data generation and analysis and preparation of reporting materials; and

53. That the Commission defers decision as to whether the Licensee's EEO/AA office is presently structured and organized in a manner to insure independence, integrity and effectiveness in fulfilling its statutory and regulatory responsiblities, subject to an evaluation and assessment by Commission staff; and

54. That the Licensee as of August 30, 1981 employs approximately 3,750 people; and

55. That the Licensee meets the percentage employment goals of twenty percent minorities and forty-three percent females as set forth in N.J.A.C. 19:53-1.5(e) with respect to its present overall casino-hotel workforce, which consists of 31% minority and 44% female individuals, but presently fails to meet these goals in the indicated categories as required by N.J.A.C. 19:53-1.5(a)(2):

Job Category	Total Positions	Female Employees	% Female	Minority Employees	% Minority
*Executives	11	1	(9%)	2	(18%)
*Directors	24	7	(29%)	3	(13%)
*Managers III	342	77	(23%)	45	(13%)
*Managers II	232	81	(35%)	26	(11%)
Managers I	145	82	(57%)	61	(42%)
*Professionals	636	258	(41%)	112	(18%)
*Technicians	40	6	(15%)	5	(13%)

Job Category	Total Positions	Female Employees	% Females	Minority Employees	% Minority
Sales	18	12	(67%)	6	(33%)
Office & Clerical	564	430	(76%)	137	(24%)
*Craftworker	289	36	(12%)	91	(32%)
Operatives	106	57	(54%)	36	(34%)
Serviceworkers	1,334	601	(45%)	638	(48%)
TOTAL	3,741	1,648	(44%)	1,162	(31%)

56. That the conditions contained in Paragraphs 41, 42 and 44 of the Licensee's Operation Certificate (No. 116-OC) pertaining to interim goals and upward mobility training program are hereby removed and superseded by the conditions contained in this Resolution; and

57. That subject to the conditions contained in Paragraphs 84 through 87 of this Resolution, the Licensee has made good faith efforts to achieve the percentage employment goals in all levels of its workforce; and

EQUAL EMPLOYMENT OPPORTUNITY - CONSTRUCTION

58. That the condition contained in Paragraph 43 of the Licensee's Operation Certificate (No. 116-OC), requiring it to make a financial contribution or the equivalent thereof in support of a minority construction program for Atlantic City is removed; and

CONDITIONS

Based upon the entire record of the renewal proceedings, and the findings contained herein, the Conditional Plenary Casino License of Boardwalk

Regency Corporation is renewed subject specifically to the following conditions:

FIRST CLASS QUALITY

59. That the Licensee shall maintain and operate its approved hotel complex as a facility of superior, exceptional, first-class, five-star and deluxe quality in accordance with N.J.A.C. 19:41-2.7; and

ALTERATION OF QUALIFYING SPACE

60. That, in the context of N.J.S.A. 5:12-27 and 83, the Licensee shall not alter in any way or limit the use of any qualifying space or sleeping units within the approved hotel without the prior express and written approval of the Commission; and

EXPANSION OF THE APPROVED HOTEL

61. That the Licensee shall comply with the commitments contained in the letter dated April 26, 1979 to the Casino Control Commission from J. Terrence Lanni which concerns a parcel of property on the west side of Arkansas Avenue, marked C-1 into evidence at the hearing of May 30, 1979. Said commitment shall not be made a lesser priority for holding company CWI than the development of the future hotel-casino facility proposed for the "Traymore" site. (Formerly, Condition No. 2 of Licensee's Temporary Casino Permit); and

62. That the Licensee shall comply with the commitments contained in a letter dated May 24, 1979 to the Casino Control Commission from J. Terrence

Lanni which concerns its intentions regarding a proposed addition to the existing facility of a twenty story tower and proposed 1,425 seat theatre, marked A-3 in evidence at the hearing of May 30, 1979. Said commitments shall not be made a lesser priority for holding company CWI than the development of the future hotel-casino facility proposed for the "Traymore" site. (Formerly, Condition No. 3 of Licensee's Temporary Casino Permit); and

GUIDEWAY TRANSIT AND SKYWAY CONNECTION SYSTEMS

63. That the Licensee cooperate with and contribute toward the development of a municipal guideway transit system and skyway linkage system as envisioned by the Atlantic City Master Plan. (Formerly, Condition No. 5 of Licensee's Temporary Casino Permit); and

INTERCEPT PARKING

64. That the Licensee continue to cooperate with and participate in the development of appropriate employee and patron intercept parking facilities and make every reasonable effort to develop an efficient employee transporation system in cooperation and consultation with the Atlantic City Planning Department and the New Jersey Department of Environmental Protection and to the satisfaction of the Commission. (Formerly Conditions No. 6 and, in part, 7, of Licensee's Temporary Casino Permit); and

TRAFFIC

65. That the Licensee shall make every effort to monitor and maintain an efficient flow of traffic within the general ingress and egress routes of the hotel-casino facility in cooperation and consultation with the Atlantic City Department of Public Safety, Department of Planning and Development, New Jersey Department of Environmental Protection and to the satisfaction of the Casino Control Commission. (Formerly, Condition No. 6, in part, of the Licensee's Temporary Casino Permit); and

CERTIFICATE OF OCCUPANCY

66. That, pursuant to N.J.S.A. 5:12-84e and N.J.S.A. 52:27D-119 et. seq., the Licensee shall obtain from the Local Construction Official of Atlantic City appropriate Certificates of Occupancy with respect to all qualifying indoor public spaces and/or additional qualifying sleeping units as may be added to the facility during the term of this renewed Conditional Plenary Casino License, and shall maintain at all times such valid Certificates of Occupancy; and

SITE IMPROVEMENTS

67. That the Licensee shall perform all construction and exterior site improvements outlined in the letters of A. A. Marnell to the Casino Control Commission dated May 25, 1979 and marked A-8 into evidence at the hearing of May 30, 1979. (Formerly, Condition No. 12 of the Licensee's Temporary Casino Permit); and

HOUSING CONSTRUCTION

68. That in consideration of Paragraphs 40 through 43 of this Resolution, the Licensee shall cooperate with the Commission toward finding solutions to alleviate housing shortages in the Atlantic City area, and if so required, further participate in providing a reasonable share of the housing construction requirements for the Atlantic City area, with the specific extent of such participation to be determined by the Commission at a later date. Such participation may, at the discretion of the Commission, include fulfillment of the Licensee's commitment outlined in a letter dated May 24, 1979 by J. Terrence Lanni to the Commission, marked A-4 into evidence at the hearing of May 30, 1979. (Formerly, in part, Condition No. 13 of the Licensee's Temporary Casino Permit); and

OTHER AGENCY APPROVALS

69. That the Licensee comply with all conditions appended to the facilities approvals received from the Atlantic City Planning Board, the New Jersey Department of Environmental Protection, and all other agencies of government; and

CONTINUING COMPLIANCE AND MODIFICATIONS

70. That in the context of N.J.S.A. 5:12-80(a) and (d), the Licensee prepare and submit to the Facilities Review Section, information as to qualifying square footage and related facility data, which submission shall be made on forms developed and provided to the Licensee by the Facilities Review

Section, and which submission shall be made on a bi-monthly schedule, or on such other periodic schedule as may be determined; and

QUALIFYING SQUARE FOOTAGE

71. That the area comprising 2,461 square feet, located on the second public level of the facility, formerly constituting a portion of the "Rolling Chair Lounge" and presently utilized as a rest/lounge area, continued to be carried as qualifying square footage under N.J.S.A. 5:12-83(c) until July 31, 1982, at which date the qualification of such space will be redetermined; and

BURDEN OF ESTABLISHING COMPLIANCE

72. That the Licensee has the continuing affirmative burden of establishing to the satisfaction of the Commission its compliance with all conditions of this renewed Conditional Plenary Casino License and its Certificate of Operation as amended, all provisions of the Casino Control Act, the regulations promulgated thereunder and Commission directives or good cause for its failure or inability to so comply; and

SECURITY HOLDERS

73. That CNJ and CWI make available upon request of the Commission or Division a listing of all record holders of any and all of their publicly-traded securities; and

74. That the Licensee immediately notify the Commission and Division if any security holder of it or its holding companies, CWI or CNJ, obtains the

ability to control the Licensee, CNJ, CWI, or elect one or more directors thereof; and

75. That the Licensee not issue or transfer any additional securities without the express, prior written approval of the Commission, which approval shall expressly consider the provisions of N.J.S.A. 5:12-82(d)(7) and (8), 85(c), 105, 39 and 44; and

SEC FILINGS

76. That pursuant to N.J.A.C. 19:41-7.14 and 19:41-8.5 and Items 44 and 45 of the Business Entity Disclosure Form, the Licensee and its holding companies, CNJ and CWI, are required to submit to the Commission copies of all Proxy or Information Statements filed pursuant to Section 14 of the Securities Exchange Act of 1934 and all Registration Statements filed pursuant to the Securities Act of 1933; and

77. That the Licensee and its holding companies, CNJ and CWI, shall comply with such requirements by filing with the Commission five (5) copies of all future Proxy, Information and Registration Statements simultaneously with their filing with the Securities and Exchange Commission; and

78. That the Licensee and its holding companies, CNJ and CWI, shall include in all such future Proxy, Information and Registration Statements a statement that they are required to simultaneously file copies thereof with the New Jersey Casino Control Commission; and

ADDITIONAL QUALIFIERS

79. That the Commission reserves the right to require at any future time the qualification of any person or entity that it may deem appropriate for qualification; and

HOLDING COMPANY COOPERATION

80. That holding companies CNJ and CWI adhere to all conditions imposed upon the Licensee by both this renewed Conditional Plenary Casino License and the Licensee's Certificate of Operation and take all action necessary and appropriate to enable the Licensee to comply with such conditions and all provisions of the Casino Control Act, the regulations promulgated thereunder and Commission directives; and

REPLACEMENT OF DIRECTORS
AND CORPORATE OFFICERS

81. That the Licensee and its holding companies CNJ and CWI report promptly in writing to the Commission and the Division the election of any new member of their respective Boards of Directors or the appointment of any new Corporate Officer; and that any new Director or Corporate Officer of CWI or CNJ shall submit to individual qualifications as required by N.J.S.A. 5:12-85(c) and (d)(1) by filing any required application forms prior to the assumption of any and all duties and responsibilities relating to such position; and

82. That any new Director or Corporate Officer of the Licensee not perform any duties or excerise any powers relating to such position until qualified by the Commission in accordance with N.J.S.A. 5:12-105(g); and

CLIFFORD AND STUART PERLMAN

83. That the conditions pertaining to Clifford and Stuart Perlman attached to the Licensee's 1980-81 Conditional Plenary Casino License and outlined in Paragraphs 27 and 28 of this Resolution shall be continued as a condition of this renewal and until further order of the Commission, subject to Paragraph 29 of this Resolution; and

EQUAL EMPLOYMENT OPPORTUNITY - OPERATIONS

84. That the Licensee periodically submit data relating to its compliance with Affirmative Action laws and policies in the form, manner and time period prescribed by Commission staff; and

85. That the Licensee continue to make good faith efforts to improve minority and female representation in those areas where the goals have not been met, and to maintain and where possible improve the compliance levels in all other areas where goals have been met; and

86. That the Licensee implement within 90 days an Upward Mobility Program specifically designed to address deficiencies in the job categories where it has failed to achieve its goals, and that it participate with the Commission in an interim evaluation of the effectiveness of the program; and

87. That for all positions with salaries above $25,000, the Licensee exert good faith efforts to improve protected class representation in those

positions, and fully document those efforts, including the use of referral agencies, numbers of persons interviewed per position, reasons for not hiring protected class persons, and other information deemed appropriateby the Commission; and

EFFECTIVE DATE

This Casino License, issued October 20, 1981 shall be effective at 12:01 a.m. local time on October 26, 1981 and shall expire one year thereafter in accordance with N.J.S.A. 5:12-87(e).

MARTIN B. DANZIGER
Acting Chairman

DON M. THOMAS
Commissioner

CARL ZEITZ
Commissioner

MADELINE H. McWHINNEY
Commissioner

I hereby certify that this document is a true and correct copy of Resolution No. 81-767 of the New Jersey Casino Control Commission.

Theron G. Schmidt
Acting Executive Secretary

Meeting of October 26, 1981
Vote Taken on Page 7

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-144
OAL DOCKET NO. 6840-80
APP. NO. 09987-21

IN THE MATTER OF THE APPLICATION :	
OF DUAANE B. CARRINGTON FOR :	
LICENSURE AS A CASINO EMPLOYEE :	FINAL ORDER
(TELLER) :	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on October 1, 1981, recommending that the application of Duaane B. Carrington for licensure as a casino employee be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, and no objections having been filed by the parties; and the Commission having resolved at its public meeting on November 10, 1981, to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this 10th day of November 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Duaane B. Carrington be and hereby is denied

based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 10, 1981

FILED
NEW JERSEY
OCT 2 1981
CASINO CONTROL COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6840-80
AGENCY DKT. NO. 80-EA-144

IN THE MATTER OF:

DUAANE B. CARRINGTON,
Applicant
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Record Closed: August 17, 1981
Received by Agency:

Decided: October 1, 1981
Mailed to Parties:

APPEARANCES:

Duaane B. Carrington, Pro se

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

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

STATEMENT OF THE CASE

This matter concerns the application of Duaane B. Carrington to the Casino Control Commission for a license to work in a casino as a teller. The Division of Gaming Enforcement has objected to licensure of the applicant. At issue is whether the applicant has demonstrated his rehabilitation, thereby overcoming the disqualification from licensure, pursuant to sections 86c(2) and 86g of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), which otherwise would result from his 1979 commission of the offenses of

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conspiracy and obtaining money under false pretenses, in violation of N.J.S.A. 2A:98-1 and N.J.S.A. 2A:111-1. Also at issue is whether the applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the applicant by letter report to the Casino Control Commission, dated July 15, 1980. The applicant was advised by letter from the Casino Control Commission, dated September 18, 1980, that there was a "substantial possibility" that the Commission would deny his application. The applicant requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The applicant is a 22-year-old high school graduate who has completed some college-level course work. He resides in Pleasantville, New Jersey, with his fiancee and their two-and-one-half-year-old daughter. Several months ago, Atlantic Human Resources, Incorporated, hired the applicant as a bookkeeper. He was subsequently promoted to the position of assistant controller, which involves the preparation of internal audits and indirect responsibility for nearly $3,000,000 in government grants.

From September 1978 until May 16, 1979, the applicant was employed as a teller at the Absecon branch of the Collective Federal Savings and Loan Bank. On July 24, 1979, the applicant was arrested by the Pleasantville Police Department and was charged with conspiracy, in violation of N.J.S.A. 2A:98-1, and with obtaining money under false pretenses, in violation of N.J.S.A. 2A:111-1. The applicant acknowledged that he had conspired with other employees of Collective Federal Savings and Loan to withdraw fraudulently money from customers' accounts, using information obtained by the employees in their capacity as tellers. By presenting forged withdrawal slips containing necessary identification information, the coconspirators were able to withdraw fraudulently approximately $4,000 from customers' accounts (Exhibits R-1 through R-3).

Because the applicant was admitted into the pretrial intervention program, he was not tried on the criminal charges of conspiracy and obtaining money under false pretenses. The conditions of the applicant's successful completion of the pretrial intervention program included biweekly meetings with a pretrial counsellor, and the making of restitution to Collective Federal Savings and Loan in the amount of $2,125. The applicant successfully completed his pretrial intervention program in February 1981.

The applicant testified that although he had been faced with numerous economic and personal problems at the time of his commission of conspiracy and obtaining money under false pretenses, he cannot now justify his actions. Having recognized that his actions had been wrong, he is now struggling to improve himself. In addition to his accounting position, the applicant is also employed in a part-time capacity as a copy person at the Atlantic City Press and as a utility person at Wash's Inn. Letters of recommendation from Detective Sergeant Paul W. Moore of the Pleasantville Police Department, and from John M. Bettis, Director of the Atlantic County Supported Work Program, were admitted into evidence on behalf of the applicant as Exhibits P-1 and P-2.

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

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c(2) of the Casino Control Act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for conspiracy, pursuant to N.J.S.A. 2A:98-1, or for obtaining money under false pretenses, pursuant to N.J.S.A. 2A:111-1, would be such an automatic disqualifier. While it is undisputed that the applicant committed these offenses between May and July 1979, he was accepted in the pretrail intervention program and was, therefore, neither prosecuted nor convicted of these or any other offense. However, section 86g of the act provides that licensure shall be denied the

applicant on the basis of the commission by the applicant of any act which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

Nevertheless, pursuant to section 90h of the act, the applicant shall not be denied a casino employee license on the basis of his commission of disqualifying offenses, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered.

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

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

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

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

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

The applicant has no record of criminal involvement aside from his admitted commission of the offenses of conspiracy and obtaining money under false pretenses. The applicant was 20 years old when he committed these offenses during a period of emotional and financial difficulty. Although it is apparent that the applicant has made substantial efforts to direct his life toward positive goals, it is of great significance that only two years have passed since his disqualifying criminal activity. It is of equal significance that

the applicant seeks licensure in the position of teller, since it was his employment in the position of teller with the Collective Federal Savings and Loan Bank which provided him the opportunity to engage in a conspiracy to withdraw fraudulently money from customers' accounts.

The applicant's obtaining of money under false pretenses may be clearly distinguished from other, more passive, fraudulent acts, such as obtaining welfare benefits by failing to report income in excess of eligibility limits. In contrast, this applicant conspired with others to use illegally information obtained while holding a position of trust, and then actively pursued the fraudulent scheme to obtain money from the accounts of customers of his former employer. Such relatively recent illegal conduct obviously reflects adversely upon the applicant's good character, honesty and integrity. While the applicant's attitude and very recent employment record indicate that he has begun to take the necessary steps to a useful life, insufficient time has passed since the applicant's commission of disqualifying criminal offenses for him to demonstrate affirmatively his rehabilitation by clear and convincing evidence.

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises. . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the applicant is disqualified from receiving a casino employee license because of his commission of offenses enumerated under section 86c(2) of the Casino Control Act. I further **CONCLUDE** that the applicant is unable to overcome this disqualification from licensure because of his failure to demonstrate by clear and convincing evidence his rehabilitation, within the meaning of section 90h of the act. I further **CONCLUDE** that the applicant is disqualified from licensure based upon his failure to prove by clear and convincing evidence his qualifications for licensure, within the meaning of section 86a of the act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Duaane B. Carrington for licensure as a casino employee be **DENIED.**

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

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

October 1, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

October 2, 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the Applicant:

P-1 Letter from Detective Sergeant Moore, dated June 28, 1981

P-2 Letter from John M. Bettis, dated June 18, 1981

For the Division of Gaming Enforcement:

R-1 Voluntary statement, dated July 24, 1979

R-2 Absecon Police Department Arrest Report, dated July 25, 1979

R-3 Supplementary Investigation Report, dated July 31, 1979

WITNESSES

For the Applicant:

Duaane B. Carrington

For the Division of Gaming Enforcement:

Richard Arnold

Paul Moore

Dean E. Loveland

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-146
OAL DOCKET NO. 6137-80
APP. NO. 8959-21

IN THE MATTER OF THE APPLICATION :
OF JOHN E. CATLOW FOR LICENSURE :
AS A CASINO EMPLOYEE (BLACKJACK :
DEALER) :

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission October 9, 1981, recommending that the application be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions or objections having been filed by the parties; and the Commission having resolved at its public meeting on November 24, 1981 to affirm and adopt the said Initial Decision, as modified, and to deny the application for licensure,

IT IS on this 15th day of December 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter, as modified herein, be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that portion of the Initial

Decision indicating that a failure to disclose information requested by the Commission on a Personal History Disclosure form is a disqualifying event only if such requested information is "material", is hereby rejected by the Commission as a misstatement of law.

IT IS FURTHER ORDERED that the license application of John E. Catlow be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified herein, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: December 15, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6137-80

AGENCY DKT. NO. 80-EA-146

IN THE MATTER OF:

JOHN E. CATLOW,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: August 25, 1981

Received by Agency:

Decided: October 9, 1981

Mailed to Parties:

APPEARANCES:

Thomas M. Russo III, Esq., (Tanner and Tanner, attorneys) for Applicant

Jane G. Lafferty, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for Respondent

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of John E. Catlow to the Casino Control Commission for a license permitting him to work in a casino as a blackjack dealer. The Division of Gaming Enforcement has objected to licensure of the applicant. At issue is whether the

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applicant should be disqualified from licensure on the ground that he has failed to reveal facts material to his qualifications for licensure. Also at issue is whether the applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the applicant by letter report to the Casino Control Commission, dated July 17, 1980. The applicant was advised by letter from the Casino Control Commission, dated September 18, 1980, that there was a "substantial possibility" that the Commission would deny his application. The applicant requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The applicant is a 51-year-old resident of New Jersey who has successfully completed a course in blackjack dealing. The Division of Gaming Enforcement has raised no objection concerning the applicant's possession of the requisite skill to perform adequately as a blackjack dealer.

In connection with his application for licensure, the applicant filed a Personal History Disclosure Form with the Casino Control Commission on May 19, 1979 (Exhibit R-1). The applicant failed to disclose his criminal and disorderly persons arrest and conviction record in response to question number 46 of his disclosure form, which requires complete disclosure of this information. As admitted at the hearing, pursuant to questioning on both direct and cross-examination, the applicant's record of criminal and disorderly persons charges is as follows:

DATE	OFFENSE CHARGED	DISPOSITION
1955	Non-support, N.J.S.A. 2A:170-4	Conviction vacated.

1957	Desertion and non-support, N.J.S.A. 2A:100-2	Conviction, sentence to Bordentown Reformatory suspended, 5 years probation. Credit for 44 days in custody.
1960	Desertion and non-support,	Charges withdrawn. N.J.S.A. 2A:100-2
1963	Sale of alcoholic beverages to minors	Conviction, fined $100.
1971	Breaking and entering, N.J.S.A. 2A:94-1	Pled guilty to downgraded charges of molesting and interfering, drunk and disorderly conduct and malicious injury to property, N.J.S.A. 2A:170-29, N.J.S.A. 2A:170-30 and N.J.S.A. 2A:170-36; 30-day suspended sentence.

Except for the 1963 charge of the sale of alcoholic beverages to minors, each of the offenses charged against the applicant between 1955 and 1971 arose from his own marital difficulties. The alcoholic beverage charge arose when the applicant was a tavern bartender. The applicant admitted that he had served a minor and was fined $100. However, the applicant testified that the tavern owner paid the fine.

The applicant also failed to disclose his involvement as a party in several civil suits, in response to question number 51 of his disclosure form, which requires complete disclosure of this information. Two of the three civil actions were complaints on contract in which the applicant was sued individually and trading as Big Red Fence Company (Exhibits R-4 and R-6). Plaintiff Esquire Wholesale Fence Supply Company, Inc. filed its complaint in the Ocean County District Court on January 2, 1979. Plaintiff Tru Wholesale

Fence Supply, Inc. filed its complaint in the Superior Court, Law Division, Gloucester County, on January 9, 1978. The third civil action was a complaint on contract in which the defendants were the applicant and his third wife, Shirley Catlow (Exhibit R-5). This civil suit was filed by Steinbach's in the Ocean County District Court on June 8, 1977. According to the applicant, the two civil actions concerning the fence supply companies arose while he was owner of the Big Red Fence Company during the approximately five-year period immediately preceding his application for a casino employee license. The applicant also testified that the civil suit filed by Steinbach's was for a debt incurred by his wife. The return of service for the Steinbach suit indicates that the applicant received personal service of the summons and complaint on May 3, 1977. The return of service for the Esquire Wholesale Fence Supply suit indicates that the applicant received personal service of the summons and complaint on January 3, 1979. The applicant acknowledged that he signed a Consent Order, entered on August 2, 1978, to satisfy the judgment in favor of the plaintiff in the civil action brought by Tru Wholesale Fence Supply, Inc. in the Superior Court of New Jersey. The consent order was filed with the Clerk of the Superior Court on August 10, 1978.

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

The factual dispute in this matter concerns the reasons for the applicant's failure to disclose on his personal history disclosure form his record of criminal and disorderly persons charges and his involvement as a party in civil suits. The applicant offered various explanations for his failures to disclose. In regard to the three civil suits, the applicant explained that at the time he filled out his disclosure form, he did not understand what a civil suit was. According to the applicant, it was not until the Division of Gaming Enforcement objected to his licensure that he found out he could sue someone for money that was owed to him when he was in business for himself. When the applicant was explaining why he had not sued anyone who had owed money to his business, he stated, "If they didn't have the money, how are you going to get it? Cost you money to go into court to sue them, and then you're not going to get it anyway, "so—."

While testifying on cross-examination, the applicant admitted that he had received a civil action summons and complaint at his home in January 1979. This was only four months before he filed his personal history disclosure form with the Casino Control Commission. The applicant also admitted that he had signed a Consent Order in August 1978. This Consent Order is clearly labeled as a "Civil Action."

In regard to his 1955 charge of non-support, in violation of N.J.S.A. 2A:170-4, the applicant asserted that he had been sentenced to one year in jail only because he had admitted to the judge that he had not regularly go to confession at his church. This sentence was vacated by another judge in the following week, when the applicant had an opportunity to explain to the judge what had happened. According to the applicant, he was informed by the second judge that the matter would not be on his record, and that he need not worry about it. The applicant did not deny knowing and remembering at the time he filed his personal history disclosure form that he had been charged with this disorderly persons offense. The applicant also acknowledged that he spent 44 days in jail awaiting trial on his 1957 charge for the indictable offense of desertion and non-support, in violation of N.J.S.A. 2A:100-2. The applicant asserted that he experienced a nervous breakdown after his release from jail, and, as a consequence, he blocked the memory of the incident from his mind. The applicant also asserted that he felt question number 46 on the personal history disclosure form applied only to criminal offenses and he did not consider non-support to be a criminal offense. The applicant also recalled being charged with desertion and non-support by either his first or second wife in 1960. After asserting that his wife withdrew the charges, the applicant stated that he did not disclose this charge on his disclosure form because he did not realize it was a criminal offense.

The applicant acknowledged going to court in 1963 on a charge of serving an alcoholic beverage to a minor. However, the applicant stated that the $100 fine which was imposed was paid by the tavern owner, and the applicant did not believe the conviction had been entered against him. The applicant acknowledged being charged by his present wife with breaking and entering, in violation of N.J.S.A. 2A:94-1, in 1971. The applicant asserted that his wife withdrew the breaking and entering charge and that he did not know he had been convicted on pleas of guilty to any downgraded charges. The applicant stated on cross-examination that he did not disclose the charges on his personal history disclosure form because the charges were dropped.

It is difficult to give credence to the applicant's explanations for his various failures to disclose information sought by questions 46 and 51 on the personal history disclosure form. Question number 46 asks, "Have you or has any member of your immediate family . . . ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" Since it is apparent that this question seeks information concerning disorderly persons offenses, the applicant's explanation that he did not disclose his desertion and non-support charges

because he did not think they were criminal offenses is nonsensical. Similarly, the applicant's explanations that he did not disclose certain charges because they were dropped, or there would be no record of them, is dubious when the question clearly calls for disclosure of any criminal or disorderly persons offenses for which the applicant has been merely charged. The applicant's assertion that he did not know what a civil suit was at the time he filed his disclosure form is improbable on its face, especially in light of his ownership of his own business for the five years preceding the filing of his disclosure form. When his credibility was tested on the question of his ignorance of the nature of a civil action, the applicant most reluctantly admitted receiving service of civil action summonses and complaints and signing a civil action consent order. The improbability of the applicant's explanations for his nondisclosures, and his obviously hesitant and anxious demeanor while testifying, might be overlooked only by one who is disposed to believe too readily.

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

1. The applicant failed to disclose on his personal history disclosure form any of his record of criminal and disorderly persons charges.

2. The applicant failed to disclose on his personal history disclosure form his involvement as a party in three civil suits.

3. The applicant's record of criminal and disorderly persons charges and his record of involvement as a party in civil suits was specifically required to be disclosed on his personal history disclosure form.

4. The applicant's failure to disclose on his personal history disclosure form any information concerning his record of criminal and disorderly persons charges, and any information concerning his involvement as a party in civil suits resulted from his conscious disregard of the requests for such information, rather than from ignorance or inadvertence.

DISCUSSION

Counsel for the applicant has contended that the information sought by questions number 46 and 51 on the personal history disclosure form is not material to the applicant's

licensure. However, it seems apparent that such information would be significant in evaluating any applicant's suitability for licensure in the strictly regulated casino industry. In addition, the Casino Control Commission has made a specific request for such information by including questions number 46 and 51 on the personal history disclosure form. Therefore, I do not accept the applicant's contention that this information is not material to his qualifications for licensure.

Counsel for the applicant also contends that question number 46, and its additional instruction included in the disclosure form, is overly broad and confusing. He further contends that question number 51 fails to explain or define adequately for an applicant the meaning of a civil suit. However, the information sought by these questions appears plainly on their faces, and there is no evidence of any substance in the record which would indicate that the applicant had any legitimate confusion concerning the nature of the information sought. The applicant also asserts that there is insufficient evidence to establish the applicant's record of criminal and disorderly persons charges. However, this record was adequately established by the applicant's own testimony on direct and cross-examination, and thus his contention must be rejected.

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Subsection 86b provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. The credible proofs in the entire record clearly establish that the applicant failed to disclose his entire record of criminal and disorderly persons charges and his involvement as a party in three civil suits. This information was required to be disclosed by the Casino Control Commission, pursuant to the applicant's filing of his personal history disclosure form. Because of the Commission's express request for this information, I **CONCLUDE** that the information which the applicant failed to disclose is material to his qualifications for licensure. Based upon the foregoing discussion and specific findings of fact, I further **CONCLUDE** that the applicant's failure to disclose material facts resulted from his conscious disregard of the requests for such information, rather than from ignorance or inadvertence.

132.

The legislature has included in the Casino Control Act an express declaration of public policy. N.J.S.A. 5:121b(6) provides, in part:

> An integral and essential element of the regulation and control of such casino facilities by the state rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict state regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises. . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the applicant is disqualified from receiving a casino employee license to work in a casino as a blackjack dealer, based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b. The applicant's failure to disclose material facts must impact adversely upon his required demonstration of good character, honesty and integrity. Therefore, I further **CONCLUDE** that the applicant is disqualified from receiving a casino employee license based upon his failure to prove by clear and convincing evidence his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of John E. Catlow for licensure as a casino employee be **DENIED**.

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

OAL DKT. NO. CCC 6137-80

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

October 9, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

October 9, 1981
DATE

CASINO CONTROL COMMISSION
Asst Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

bm

INVENTORY OF EXHIBITS

FOR THE APPLICANT:

None.

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Personal History Disclosure Form

R-2 Not in evidence

R-3 Not in evidence

R-4 Civil Action Summons and Complaint

R-5 Civil Action Affidavit and Complaint

R-6 Civil Action Summons, Complaint and Consent Order

R-7 Judgment and Indictment

R-8 Record of conviction

WITNESSES

FOR THE APPLICANT:

John E. Catlow

Shirley Catlow

FOR THE DIVISION OF GAMING ENFORCEMENT:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-EA-67
OAL DOCKET NO. CCC-3546-80

IN THE MATTER OF THE APPLICATION OF LARRY J. DeWITT FOR LICENSURE AS A CASINO EMPLOYEE (COUNTROOM EMPLOYEE)	FINAL ORDER

This matter having been brought before the Casino Control Commission upon the Initial Decision of the Office of Administrative Law dated June 22, 1981; and the Commission having carefully considered the entire record of the proceedings and said Initial Decision; and the Commission at its public meeting on August 12, 1981 having resolved to reject the Initial Decision and to grant the application for licensure,

IT IS on this 18th day of August 1981, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the application of Larry J. DeWitt as a casino employee be and hereby is granted based upon the Commission's findings that (1) the Applicant did not with intent or conscious disregard of the regulatory process fail to disclose requested information on his Personal History Disclosure Form, and (2) the Applicant has established his reputation for good character, honesty and integrity by clear and convincing evidence; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, Acting Chairman

BY: Dennis Daly
Dennis Daly
Senior Assistant Counsel

DATED: August 18, 1987

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3546-80

AGENCY DKT NO. 80-EA-67

IN THE MATTER OF:

LARRY J. DE WITT,
Applicant
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Record Closed: May 8, 1981
Received by Agency:

Decided: June 22, 1981
Mailed to Parties:

APPEARANCES:

Nathan Davis, Esq., for Applicant

Raymond Marquez, Deputy Attorney General, for Respondent (James R. Zazzali, Attorney General of New Jersey)

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

STATEMENT OF THE CASE

This matter concerns the application of Larry J. DeWitt to the Casino Control Commission for licensure to work in a casino as a countroom employee. The Division of Gaming Enforcement has objected to licensure of the applicant. At issue is whether the applicant should be disqualified from licensure on the ground that he has failed to reveal facts material to his qualifications for licensure. Also at issue is whether the applicant

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should be disqualified from licensure as a result of his conviction for an offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations. If not so disqualified, the remaining issue to be determined is whether the applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the applicant by letter report to the Casino Control Commission, dated April 10, 1980. The applicant was advised by letter from the Casino Control Commission, dated May 13, 1980, that there was a "substantial possibility" that the Commission would deny his application. The applicant requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The applicant is a 27-year-old resident of Ocean City, New Jersey, who has been employed as a warehouse hotel supervisor at Bally's Park Place Casino for over 16 months. The Division of Gaming Enforcement has raised no objection concerning the applicant's ability to perform adequately as a countroom employee.

In connection with his application for licensure, the applicant filed a personal history disclosure form with the Casino Control Commission on June 12, 1979. The applicant failed to disclose his criminal and disorderly persons arrest and conviction record in response to question No. 46 of his disclosure form, which requires complete disclosure of this information. The applicant's arrest and conviction record is as follows:

DATE OF ARREST	OFFENSE	DISPOSITION
June 18, 1972	Possession and use of marijuana under 25 grams, N.J.S.A. 24:21-20	Fined $25.00 and costs
July 27, 1973	Contempt, N.J.A.C. 2A:10-1c	Dismissed
September 30, 1974	Contempt, N.J.A.C. 2A:1c	Dismissed

DATE OF ARREST	OFFENSE	DISPOSITION
January 5, 1975	Assault and Battery, N.J.S.A. 2A:170-26	Dismissed
September 17, 1975	Contempt, N.J.A.C. 2A:10-1c	Fined $35.00 and costs
May 1976	Contempt, N.J.S.A. 2A:10-1c	Dismissed
October 5, 1979	Aggravated Assault, N.J.A.C. 2C:12-1b	Plead guilty to down-graded charge of simple assault, fined $150.00 and restitution.

The applicant explained that the complainant on the 1975 assault and battery charge was his girlfriend, and the complaint was dismissed when she decided not to prosecute the charge. The incident arose from an argument with his girlfriend, and the applicant acknowledged that he had slapped her.

In regard to his 1979 arrest for aggravated assault, the applicant explained that he had argued with a man who had, a short while earlier, struck the applicant's brother on the head with a cue stick. In the heat of the argument, the applicant picked up a wooden sawhorse and knocked the man to the ground. As part of his plea bargain arrangement on this charge, the applicant agreed to pay the victim's doctor bills.

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

The remaining factual dispute in this matter concerns the reason for the applicant's failure to disclose his arrest and conviction record, both on his personal history disclosure form and in an interview with a Division of Gaming Enforcement investigator. The applicant offered various explanations for his failures to disclose. In regard to his four arrests for summary criminal contempt, for failure to respond to motor vehicle summonses, the applicant initially explained that he was not locked up on any of these charges. According to the applicant, he felt it was necessary to spend time in jail on a charge before it would be considered an arrest. However, the applicant admitted, during cross-examination, that he had been taken into custody and held until he could post bail on the September 30, 1974, summary criminal contempt charge. The applicant then explained that he did not disclose the summary criminal contempt charges and arrests

because he did not feel the incidents were important at the time he filled out his personal history disclosure form.

In regard to his 1972 arrest for possession of marijuana, the applicant explained that he did not disclose this incident because he considered it to be a small or disorderly offense. Testifying on cross-examination, the applicant admitted that he had been arrested on the charge and had been released after posting bail. He also admitted that he had not acknowledged this arrest, during an interview with Investigator Julia Robinson of the Division of Gaming Enforcement, until she had specifically confronted him with it.

The applicant denied that he had ever been arrested on the complaint for assault and battery filed by his girlfriend in 1975. However, the applicant was aware that the charges had been filed against him. The applicant's arrest on October 5, 1979, for aggravated assault occurred subsequent to the filing of his Personal History Disclosure Form. The applicant acknowledged that he had been interviewed by Investigator Robinson around November 20, 1979, and she had asked whether he had any additional information which he wished to disclose. In particular, she asked the applicant if he had any arrests to disclose. The applicant admitted, during cross-examination, that he may have replied, "No." According to the applicant, the investigator then confronted him with an arrest report involving one of the applicant's arrests. After the applicant acknowledged the incident, he was then asked if he had any further arrests to disclose. According to the applicant's own testimony on cross-examination, he stated that there were no further arrests each time the investigator asked the question. The investigator then confronted him with the next incident, which the applicant then acknowledged. Although the applicant admitted that he did not volunteer any of the arrests, except his arrest for aggravated assault, nevertheless, he contended that he was not trying to hide anything. It is significant to note that the applicant never denied knowing that he had been charged with each of the offenses which he failed to disclose.

Testifying on behalf of the Division of Gaming Enforcement, Investigator Julia Robinson stated that she interviewed the applicant on November 20, 1979, at which time she afforded him an opportunity to disclose any additional information which he had not set forth on his personal history disclosure form. After the applicant informed her that he understood question No. 46 of the disclosure form, which requires disclosure of the applicant's criminal and disorderly persons arrest and conviction record, he stated that he

had never been arrested. When confronted with the report of his arrest for aggravated assault, and asked by the investigator as to why he did not disclose the arrest, the applicant replied, "I didn't know you wanted to know my life story." The applicant did not voluntarily disclose any of his arrests for summary criminal contempt. After he was confronted with the first of these arrests, Investigator Robinson informed him that this contempt was not a motor vehicle offense and that the Division of Gaming Enforcement was interested in knowing about such contempt arrests. Nevertheless, the applicant still failed to acknowledge each contempt arrest until it was specifically brought to his attention.

The testimony of Investigator Robinson was straightforward and sincere, and entirely worthy of credit. By contrast, the testimony of the applicant was not at all candid. This is illustrated by the applicant's denial and subsequent admission that he had actually been arrested and held until he posted bail on one of his summary criminal contempt charges. Having had ample opportunity to observe the witnesses' demeanor and assess their credibility, I accept Investigator Robinson's version of her November 1979 interview of the applicant. The applicant's lack of candor during that interview, when he failed to voluntarily disclose any of his arrests, is clear.

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

1. The arrest and conviction information, which the applicant failed to disclose on his Personal History Disclosure Form and in his interview with a Division of Gaming Enforcement Investigator, was significant and material to the evaluation of his qualifications for licensure.

2. The applicant's failure to disclose, on his Personal History Disclosure Form and in his interview with a Division of Gaming Enforcement Investigator, any information concerning his arrest and conviction record resulted from his conscious disregard of the requests for such information, rather than from inadvertence.

3. The applicant's intentional failure to disclose material information impacts adversely upon his attempt to demonstrate, by clear and

convincing evidence, that he possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

CONCLUSIONS OF LAW

Pursuant to section 86c(4) of the Casino Control Act, the Casino Control Commission shall deny a casino employee license to any applicant who is disqualified from licensure on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the Act and to casino operations. The applicant has admitted that he knocked a man to the ground with a wooden sawhorse in October 1979. Although he was originally charged with aggravated assault, which is a specifically enumerated disqualifier from licensure, the applicant eventually pled guilty to the downgraded charge of simple assault. While the credible proofs in the entire record, concerning the applicant's commission of this offense, do not necessarily establish that licensure of the applicant would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations, nonetheless, the commission of this assault reflects adversely upon the applicant's suitability for licensure.

Pursuant to section 90 of the Casino Control Act, an applicant for a casino employee license must demonstrate by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria of section 86. N.J.S.A. 5:12-86b provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. The credible proofs in the entire record clearly establish that the applicant failed to disclose material facts on his personal history disclosure form and in a subsequent interview with a Division of Gaming Enforcement investigator. Although the applicant was not required to disclose his arrests for the petty offense of summary criminal contempt on his personal history disclosure form, see, In Re Yengo, 84 N.J. 111 (1980), he was required to disclose this information in response to the specific request for it by the division investigator. This, he failed to do.

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

> An integral and essential element of the regulation and control of such casino facilities by the state rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict state regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises. . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the applicant is disqualified from receiving a casino employee license to work as a countroom employee, based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b, and based upon his failure to prove by clear and convincing evidence his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Larry J. DeWitt for licensure as a casino employee, be denied.

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

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

June 22, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

June 22, 81
DATE

Mary Jo Milner
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ms

INVENTORY OF EXHIBITS

FOR THE APPLICANT:

P-1 Personal History Disclosure Form No. 2

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Plea Bargain Agreement, dated May 30, 1980

R-2 Letter of the applicant to Deputy Attorney General Gushin, dated January 17, 1980

R-3 Police Report, dated January 5, 1975.

R-4 Police Report, dated September 30, 1974.

R-5 Police Report, dated September 17, 1975.

R-6 Police Report, dated July 27, 1973.

R-7 Police Report, dated June 18, 1972.

R-8 Police Report, dated October 5, 1979.

WITNESSES

FOR THE APPLICANT:

Larry J. DeWitt

FOR THE DIVISION OF GAMING ENFORCEMENT:

Julia Robinson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-40
OAL DOCKET NO. CCC-1833-80
APPL. NO. 4444-21

IN THE MATTER OF THE APPLICATION OF :	
JAMES R. GINDHART, JR., FOR :	
LICENSURE AS A CASINO EMPLOYEE :	FINAL ORDER
(BARTENDER) :	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein filed June 15, 1981; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed by either of the parties; and the Commission having resolved at its public meeting on August 5, 1981 to affirm and adopt the said Initial Decision, as modified herein, and to deny the application for licensure,

IT IS on this 31st day of August 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is ADOPTED by the Commission as modified herein; and

IT IS FURTHER ORDERED that the license application of James R. Gindhart, Jr. for licensure as a casino employee be and hereby is DENIED based upon the reasons set forth in the Initial Decision, as modified herein, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the portion of the Initial Decision finding that the Applicant has not established by clear and convincing evidence his financial responsibility and integrity under N.J.S.A. 5:12-90(b) be and hereby is REJECTED by the Commission; and

IT IS FURTHER ORDERED that the application of James R. Gindhart, Jr. for licensure as a casino employee be and hereby is DENIED based upon the Initial Decision which, as modified above, is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, Acting Chairman

BY: _____
Robert J. Genatt
General Counsel

DATED: August 31, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1833-80

AGENCY DKT. NO. 80-EA-40

IN THE MATTER OF:

THE APPLICATION OF JAMES GINDHART FOR LICENSURE AS A CASINO EMPLOYEE (ALCOHOLIC BEVERAGE EMPLOYEE)

Record Closed: April 24, 1981

Received by Agency:

Decided: June 3, 1981

Mailed to Parties:

APPEARANCES:

James Gindhart appeared Pro Se

Michael Grodjeski, Deputy Attorney General,
Division of Gaming Enforcement, for Respondent
(James R. Zazzali, Attorney General of the State
of New Jersey, attorney)

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

On March 28, 1979, James R. Gindhart (applicant) filed an application, including a Personal History Disclosure (PHD) Form No. 2 with the Casino Control Commission, to work in a casino as an alcoholic beverage employee (bartender). The applicant was advised by letter from the Commission's general counsel, dated March 7,

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1980, that based upon information received by letter from the Division of Gaming Enforcement, dated January 4, 1980, there was a "substantial possiblity" that the Commission would deny his application for a plenary license and that he had a right to a hearing. The applicant requested a hearing, and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on October 14, December 15, 1980 and March 9, 1981. Deputy Attorney General Grodjeski filed a legal memorandum on March 24, 1981, and the record was kept open until April 24, 1981 for any reply that the applicant might care to make.

The issues as framed in the prehearing order are as follows:

A. Whether the applicant has provided false and misleading information with respect to his residency and with respect to a car repossession under N.J.S.A. 5:12-86(b).

B. Whether the applicant has proven by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)2.

C. Whether the applicant can establish by clear and convincing evidence his financial responsibility and integrity under N.J.S.A. 5:12-89(b)1.

D. Whether the applicant has met the six-month durational residency requirement under N.J.S.A. 5:12-89(b)4.

It is undisputed that the applicant now meets the six-month durational residency requirement under N.J.A.C. 19:41-4.3 and N.J.S.A. 5:12-90(b) since he moved to 25 North Jerome Avenue, Margate, New Jersey in May 1979.

The Division contends, and the applicant denies, that he intentionally supplied false and misleading information on his PHD about his residency, the background circumstances about a car repossession, and the omission of four civil judgments in violation of N.J.S.A. 5:12-86(b).

In response to question 16 on the PHD, the applicant stated that he was "residing in [his] sister's house" from September 1978 until March 1979. Between July 1977 and September 1978, the applicant listed 605 Cranbrook Road, Apartment L, Cockeysville, Maryland as his residence.

Investigator Ronald Rauer of the New Jersey Division of Gaming Enforcement had been told by an informant that the applicant did not reside at the Margate, New Jersey address. Investigator Rauer interviewed the applicant's sister, Ms. Edith Ryan, at her Margate home. Ms. Ryan initially told the investigator that her brother (applicant) had never lived in her home. When Investigator Rauer spoke to the applicant, he stated that Ms. Ryan, his sister, was mistaken, and he steadfastly maintained that he had been living in her home between those dates. Investigator Rauer further testified that the applicant never told him that he had been residing on a part-time or temporary basis at his sister's home.

Investigator Rauer next requested that Ms. Ryan sign an affidavit that the applicant had never lived in her house. She agreed to do so. When Investigator Rauer came to Ms. Ryan's house at a prearranged time, she was not there. When Investigator Rauer spoke to Ms. Ryan again on the phone, she stated that she needed additional time before she signed the affidavit. Ms. Ryan stated that the applicant may have stayed with her a few days a week for a short period of time. Ms. Ryan subsequently told Investigator Rauer that the applicant stayed in her house between February and March 1979.

The applicant testified that he was traveling between Cockeysville, Maryland and Margate, New Jersey from September 1978 through March 1979, a distance of 230 miles each way, while he was employed as a bartender at the Hunt's Valley Marriott Corporation. The applicant claimed that he was able to remain in New Jersey three to four days each week because he was working part time as a bartender at the Marriott. To establish his nexus in Margate, the applicant placed into evidence numerous letters from residents of that community.

In rebuttal to the applicant's testimony, Investigator Rauer testified that he conducted a telephonic interview with the personnel manager at the Hunt's Valley Marriott, who stated that the applicant resigned his position in April 1979 and stated that he was "moving to New Jersey." The Division also placed into evidence a payroll department wage statement from the Marriott to refute the applicant's testimony that his hours of employment were cut back between September 1978 and March 1979.

I FIND that the applicant intentionally gave a misleading answer to question 16 on the PHD. The applicant did not state that he was maintainig a dual residence, living at his sister's house and in Cockeysville, Maryland from September 1978 until March 1979. Because of the conflicting statements given by Ms. Ryan to Investigator Rauer, any attempt to determine the truth about the applicant's residence in her home would be pure conjecture and speculation. Ms. Ryan was given an opportunity to testify. The reasons advanced for her nonappearance strain credulity. What is abundantly clear is that anyone reading the applicant's answer to question 16 on the PHD would erroneously conclude that he was residing full time at his sister's home in satisfaction of the residency requirement.

Question 51 on the PHD reads: "Have you ever been a party in a civil suit?" The applicant placed an "X" after the block designated "NO."

It is undisputed that the applicant has had four civil judgments rendered against him between 1974 and 1977 that totalled approximately $3,500. The applicant testified that he did not intentionally fail to disclose these judgments but did not understand the concept of a civil judgment within the contemplation of question 51. On cross-examination, the applicant gave conflicting and contradictory testimony. After claiming that he was not aware that he had been sued by anyone, he stated that he appeared in court on more than one occasion and that he knew that he had been sued.

I FIND that the applicant intentionally failed to disclose four civil judgments in response to question 51 on his PHD. The applicant's explanations are inconsistent and contradictory, and they evince a conscious effort not to disclose those judgments.

It is undisputed that on November 14, 1978 the applicant entered into an automobile loan agreement with Ford Motor Credit Company of Maryland to purchase a 1979 Ford Thunderbird from Towson Ford, Inc. The total loan, including interest charges, was $13,686.72, with monthly payments to be made over a period of four years at

$285.14 per month. The applicant listed his address at 605 Cranbook Road, Cockeysville, Maryland. After the applicant defaulted on his payments, the car was repossessed in June 1979 in Atlantic City, New Jersey. The car was also found in a damaged condition, and the creditors sustained a loss of $1,206.15.

On direct examination, Deputy Attorney General Grodjeski asked Investigator Rauer the following questions (page 60):

A. I asked him if he had a car repossessed from Towson Ford, stating that I had information showing that there was a repossessed car in his name.

Q. And, what did he respond?

A. He stated that the car was not repossessed.

Q. He did?

A. Yes.

Q. What — did he go on to explain anything further?

A. He stated to me that the reason he did not have the car any longer was he was delinquent in his payments and because he was moving out of the state of Maryland into another state and he was not allowed to carry the loan over. He would have to pay off the loan or return the car.

Q. And, he indicated that he returned the car?

A. Yes.

I FIND that the applicant gave false and misleading information about his car repossession to Investigator Rauer.

I CONCLUDE that the applicant violated N.J.S.A. 5:12-86(b). That statute provides for denial of licensure to any applicant who fails to reveal a fact material to qualification. The Commission has repeatedly stated that an applicant who is not totally candid with the Commission is in peril of the Commission's denial of his application.

Having found that the applicant testified in a less than candid manner about his residency, his four civil judgments and the facts surrounding the repossession of his car in New Jersey, I **CONCLUDE** that the applicant has failed to establish by clear and convincing evidence his good character, honesty and integrity under N.J.S.A. 5:12-89(b) (2) and N.J.S.A. 5:12-90(b).

The final contested issue is addressed to the applicant's financial responsibility and integrity under N.J.S.A. 5:12-89(b) (1).

I perceive that the intent of the statute is to determine whether the applicant is financially responsible now. It is conceded that credit obligations do not mean that a person is financially irresponsible per se, provided that the person attempts to meet his obligations as they come due.

Without setting forth in detail all the testimony again, I **FIND** that the applicant is not financially responsible. As the testimony and documentary evidence reveal, the applicant has four civil judgments lodged against him. All of these judgments remain unpaid. An exhibit from Ford Motor Credit Company, dated June 25, 1979, bears the notation "customer skipped - vehicle picked up in Atlantic City." It would appear that the applicant has a cavalier approach to his financial obligations.

Accordingly, I **CONCLUDE** that the applicant has not established by clear and convincing evidence his financial responsibility and integrity under N.J.S.A. 5:12-89(b) (1).

Accordingly, it is **ORDERED** that the application of James Gindhart for licensure as a casino employee (alcoholic beverage employee) be and is hereby **DENIED.**

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

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

June 3, 1981
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

June 5, 1981
DATE

Nancy O. Lubell
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ywg

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 81-CL-1

IN THE MATTER OF THE APPLICATION :

OF GNAC, CORP. FOR A :

CASINO LICENSE :

OPINION

New Jersey Casino Control Commission

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

Appearances:

For GNAC, CORP.:

Alfred J. Luciani, Esq.
Bruce A. Levin, Esq.

For Stephen A. Wynn:

Martin L. Greenberg, Esq.
Greenberg, Margolis, Ziegler and Schwartz, Esqs.
Roseland, New Jersey

For the Division of Gaming Enforcement:

James Flanagan, Deputy Attorney General
John E. Adams, Jr., Deputy Attorney General

For the Casino Control Commission:

David Arrajj, Special Counsel for Licensing
Jonathan Rosenbluth, Assistant Counsel
Bertha L. Scott, Legal Analyst

I. INTRODUCTION

This matter is before the Commission pursuant to the application of GNAC, CORP. ("GNAC") for a casino license. The history of GNAC's application, its acquisition of a Temporary Casino Permit in November 1980, and the qualification criteria pertinent to this plenary casino license proceeding are set forth in the Chairman's Instruction to the Commission and need not be repeated at length here. That Instruction has been given to the Commissioners, made a part of the record of the casino license hearing and is incorporated by reference in this Opinion.

This Opinion concerns itself only with those areas which were the subject of significant attention at the hearing in this case. Detailed findings with regard to other licensing criteria are contained in a separate proposed Resolution, which we will consider today.

The investigative report of the Division of Gaming Enforcement ("Division"), which, as modified, has been stipulated and admitted in evidence as S-1, outlined several areas of concern. Following exposition of the evidence at the hearing, the Division indicated in summation three primary areas of concern: 1) certain hiring practices of Golden Nugget, Inc., ("GNI"),GNAC's parent company; 2) certain stock option practices of the Stock Option Committee and Board of Directors of GNI; and 3) allegations of drug use and distribution by employees of GNI associated with Stephen A. Wynn, President, Chairman of the Board, and Chief Executive Officer of GNI, as well as accusations

of drug use by Mr. Wynn.

At the conclusion of the hearing, in which all three areas were fully explored, the Division interposed no objection to the qualifications of GNAC, GNI or Stephen A. Wynn. In fact, the Division stated its view that GNAC, GNI and Mr. Wynn had successfully demonstrated their qualifications by clear and convincing evidence. See N.J.S.A. 5:12-84 and 89(b). Nevertheless, it is the Commission's responsibility to evaluate independently the entire record and determine the qualifications of the business entities and natural persons who must qualify. This has been done by each Commissioner. The relevant issues may now be addressed.

A review of the testimony and documentary exhibits indicates clearly that this case turns almost entirely upon the qualifications of Stephen A. Wynn, the central actor in the events in question, and a fact consistent with his role as the unchallenged leader of GNI. Accordingly, Mr. Wynn's suitability for licensure necessarily encompasses the qualifications of the corporate applicants.

II. THE QUALIFICATIONS OF STEPHEN A. WYNN

Stephen Alan Wynn was born in New Haven, Connecticut on January 27, 1942. He is married to the former Elaine Farrel Pascal, now a Director of GNI and of GNAC. They reside with their two children in Las Vegas, Nevada. Mr. Wynn received his pre-college education in upstate New York where his family moved when he was young. Thereafter, he attended the University of Pennsylvania from which he graduated in 1963 with a Bachelor of Arts degree in English Literature.

In 1960, Mr. Wynn's father, Michael Wynn, now deceased, entered into a partnership with Mr. Edward O. Wayson, Sr., to operate a bingo hall in Upper Marlboro, Anne Arundel County, Maryland. During his college years, Stephen Wynn worked at the bingo establishment on weekends and during summers. Shortly before Mr. Wynn graduated from college, his father died. Upon graduation, Mr. Wynn took up active management of the bingo business, now known as Wayson's Amusements Co., Inc. ("Wayson's"). Mr. Wynn continued his management role until 1965, when the bingo business was incorporated. Presently, Mr. Wynn personally owns 20% of the stock of Wayson's, which is held in trust for him. Since 1963, Mr. Wynn has derived income from Wayson's in the form of dividends and has since 1967 been compensated as a consultant.

In 1965, Maurice Friedman invited Mr. Wynn to "buy points" in the then "Last Frontier" casino which was closed at the time. Mr. Wynn met Friedman and T. W. Richardson approximately a year earlier through Herb Liebert, now deceased, a friend of his deceased father. The introduction took place while Mr. Wynn was on vacation in Palm Springs, California with his wife. Mr. Liebert actually initiated investment discussions with Mr. Wynn by telephone a few weeks after Mr. Wynn returned from vacation, but they were inconclusive at the time.

In 1966, after Liebert died, Friedman called Mr. Wynn and invited him to Las Vegas to discuss investment in what was to become the "Vegas Frontier." Mr. Wynn flew to Las Vegas and met with Mr. Friedman and T. W. Richardson. After this visit, Mr.

Wynn bought 3% of the new Vegas Frontier, Inc. ("Frontier") for $30,000. He also successfully solicited investment from family friends, and through them, others in the East. He was briefly a director of the company as well as its prospective slot manager.

In mid-1967, Mr. Wynn and his family moved to Las Vegas and he took up full-time duties as the Frontier's slot manager. The new casino opened under a cloud of allegations concerning hidden ownership by alleged Detroit underworld figures through one Jack Shapiro, whose investment group had displaced Wynn as a director.

Shapiro rejected an offer by Howard Hughes to buy the Frontier before its opening, although Mr. Wynn favored acceptance. Wynn attributes poor business after the Frontier opened to inadequate management, staffing and entertainment. A second, much lower Hughes offer to buy the Frontier followed, precipitated by publicity regarding the possible revocation of Mr. Shapiro's license by the Nevada Gaming Control Board ("GCB"). This time, Shapiro agreed and the Frontier was sold. Mr. Wynn received only his original investment from this sale. He used it to buy back his Wayson's stock, which he had sold to Wayson's at the insistence of the GCB.

A later federal investigation, with which Mr. Wynn cooperated, of the Shapiro investment group resulted in the prosecution and, apparently, the criminal convictions of Shapiro and certain Detroit investors in the Frontier. Mr. Wynn was not

implicated in any way with the nefarious dealings underlying these events. We are satisfied there is nothing now before us concerning Mr. Wynn's association with the Frontier which reflects negatively upon his character or integrity.

At the time he subscribed to the Frontier venture, Mr. Wynn met E. Parry Thomas, then Chairman of the Board and now Chairman of the Executive Committee of the Valley Bank of Nevada ("Valley Bank"). Mr. Thomas also represented the Howard Hughes organization ("Hughes") upon its first attempt to acquire the Frontier. Mr. Wynn and his family soon developed a strong personal relationship with Mr. Thomas and his family, which continues to this day. Mr. Thomas testified that his friendship with Mr. Wynn could be termed a father-son relationship. This relationship has been valuable to Mr. Wynn through the years. Mr. Thomas and Valley Bank have also had a continuous business relationship with Mr. Wynn since 1966, and have been the primary financial backers, until recently, of the majority of Mr. Wynn's investment and business transactions. Mr. Thomas estimated that Stephen Wynn or his businesses have borrowed approximately $30 million from Valley Bank since 1966.

Mr. Thomas encouraged Stephen Wynn to stay in Las Vegas after sale of the Frontier. Wynn did, deriving his income from Wayson's. Mr. Wynn testified that at this time, Mr. Thomas was "the most important thing" in his life (4T-106).[1] He also

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1. The following transcript references are used throughout this opinion:

   1T - Transcript of September 14, 1981.
   2T - Transcript of September 15, 1981.
   3T - Transcript of September 16, 1981.

stated that if Howard Hughes was then the "glamor figure" in Las Vegas, E. Parry Thomas was the "power figure," a "very, very powerful man, and still is." (4T-106). During this period, Mr. Wynn would return to Maryland a few days each month to help his family oversee Wayson's.

Late in 1968, at the suggestion of Mr. Thomas, Mr. Wynn became interested in purchasing Best Brands, Inc., ("Best Brands"), the Schenley liquor distributorship for Nevada. In part, through the efforts of Mr. Thomas, Wynn succeeded in acquiring 100% of the stock of Best Brands early in 1969, for $65,000. Mr. Wynn operated this distributorship until May 1972. During this period he met, and then employed Robert R. Maxey, present Chairman of the Board and Chief Executive Officer of GNAC and Director, Executive Vice-President and Chief Operating Officer of GNI.

Also during this period, with the financial backing of E. Parry Thomas and Valley Bank, Mr. Wynn engaged in several ultimately profitable real estate transactions, some involving Best Brands and/or Schenley. He also borrowed heavily from the business but did not draw a salary until a few months before he sold it. During this period Mr. Wynn began to acquire GNI stock.

Much testimony was elicited from Messrs. Wynn, Maxey, and Thomas regarding Wynn's expansion and operation of Best Brands

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FOOTNOTE 1 CONTINUED
4T - Transcript of September 17, 1981.
5T - Transcript of September 18, 1981.
6T - Transcript of September 22, 1981.
7T - Transcript of September 23, 1981.
8T - Transcript of September 24, 1981.

until its sale, and his financial dealings with the business and its relative unprofitability. We have considered fully all the evidence, testimonial and documentary, in this regard. We find therein nothing before us now which may be said fairly to reflect negatively upon Mr. Wynn's qualifications.

One remarkable real estate transaction, which received much attention at the hearing bears comment. In November 1971, while operating Best Brands, Mr. Wynn succeeded in acquiring from Hughes a parcel of land on the Las Vegas "Strip," adjacent to Caesar's Palace. The parcel was being rented by Caesar's from Hughes for use as an employee parking lot. Mr. Wynn bought the land for $1,100,000 through Herb Knoll, an agent for Hughes. The purchase was financed by a $1,200,000 loan from Valley Bank, the $100,000 excess to cover interest. Mr. Abraham Rosenberg, a wealthy friend of Mr. Wynn, co-signed the note as guarantor. Mr. Wynn asked Rosenberg to do so because Wynn could not provide sufficient security to justify the loan. In March 1972, the land was transferred to Morning Star, Ltd., a joint venture of Messrs. Wynn and Rosenberg, in which their respective interests were 67% and 33%. On October 27, 1972, Morning Star, Ltd. sold the parcel to a Caesar's Palace real estate subsidiary for $2,250,000. After repaying Valley Bank, Mr. Wynn's share of the profit was approximately $678,400.

As noted, this transaction received significant attention at the hearing. Having carefully considered all the evidence, we can find nothing about it to impair Mr. Wynn's qualifications.

As noted, Stephen Wynn began to acquire GNI common stock while he owned Best Brands. In 1969, he purchased 14,000 shares for $115,694.45. At the time, Mr. Wynn knew the public fact that E. Parry Thomas, then Chairman of the Board of Continental Connector Corporation ("Continental Connector") was attempting to take over GNI through an agreement between the stockholders of both corporations. However, the Securities and Exchange Commission ("SEC") obtained an injunction against execution of the agreement, apparently because a faulty audit of a holding company called M & R Investment, previously acquired by Continental Connector, gave inadequate information to Continental Connector and GNI stockholders. Thus, Mr. Wynn was unable to take advantage of the Continental Connector offer as he had hoped.

In 1970, Mr. Wynn bought no GNI stock. In 1971, he purchased 4,000 shares for $23,373 and also sold 1,190 shares. Until 1972, Mr. Wynn's purpose in acquiring GNI stock was to be a passive investor. However, during negotiation of the real estate transaction with Caesar's described above, he conceived the objective of gaining control of GNI. Beginning in September 1972, he began, by increments, to acquire a large amount of GNI stock. Before October 27, 1972, Valley Bank financed the bulk of Mr. Wynn's GNI stock purchases. After October 27, 1972, proceeds of the land sold to Caesar's were available to acquire more GNI stock. Between September and the end of December 1972, Wynn bought 92,000 shares of GNI stock on the open market at a cost of $503,305. On January 1, 1973, Mr. Wynn owned 110,000 shares of GNI stock, or 5.8% of the stock issued and outstanding. Between January and

April 1973, he acquired 7,800 more shares. Because of the size of his holdings and his intention to gain control of GNI, in Autumn 1972, Mr. Wynn submitted a license application to the Nevada gaming authorities.

Also in the Fall of 1972, it became publicly known that one Jerome Zarowitz had acquired a large amount of GNI stock, in fact 92,000 shares. Philip Hannifin, then Chairman of the GCB, had been aware of Mr. Zarowitz's growing position in GNI since Spring 1972. In Hannifin's words, Mr. Zarowitz was a man of "notorious reputation." (2T-12). His holdings, in Hannifin's judgment, were not in the best interests of the State of Nevada. Accordingly, Mr. Hannifin, aware also of Mr. Wynn's large GNI holdings, and of his wish to gain control of GNI, persuaded Mr. Wynn to attempt to buy Jerome Zarowitz's GNI stock.

In 1971, other events unfolded that ultimately affected Jerome Zarowitz's sale of his GNI stock. At that time, Mr. Zarowitz's son, Lonnie, then 21 years old, applied for a Nevada license to be able to "buy into" a business known as a "slot route." Nevada's gaming authorities, not satisfied that Lonnie Zarowitz was independent of his father, denied his application. The unsuitable reputation of Jerome Zarowitz is not a new revelation to this Commission. We recognized it in In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, p. 13-18 (Docket No. 80-CL-1).

His conversations with an attorney for Jerome Zarowitz led Hannifin to conclude that Zarowitz was acquiring GNI stock to embarrass the gaming authorities because of their denial of the

license application of his son. In fact, early in 1972, Jerome Zarowitz refused a request of the GCB through GNI, that he submit a license application. His attorney, Milton Rudin, questioned the constitutionality of Nevada laws empowering the gaming authorities to require Mr. Zarowitz to submit a license application and threatened litigation. These events, and conversations with Mr. Rudin, led Mr. Hannifin to believe that if Lonnie Zarowitz was licensed, Jerome Zarowitz would sell his GNI stock to Stephen Wynn.

Lonnie Zarowitz reapplied for a license, which was granted in the Spring of 1973. Mr. Hannifin stated candidly that he voted for Lonnie Zarowitz's new application not because his relationship with his father had changed, but because he believed granting the application would induce Jerome Zarowitz to sell his GNI stock.

In the Spring of 1973, Stephen Wynn was also granted a license by the Nevada gaming authorities. Thereafter, Mr. Hannifin's expectation was fulfilled. Jerome Zarowitz agreed to sell his GNI stock to a group of investors assembled by Mr. Wynn in May 1973. Mr. Wynn himself purchased 52,000 of Mr. Zarowitz's shares with financing, again, from the Valley Bank.

Thereafter, through negotiations with GNI Directors, Mr. Wynn was elected a Director and an Executive Vice-President in June 1973. Through further negotiations, during which Mr. Wynn assembled another investor group which made a tender offer to buy 225,000 shares of GNI stock, Mr. Wynn became President of GNI and installed a substantially new Board of Directors in August 1973. He had realized his ambition to take control of GNI. The tender

offer was completed in September 1973, and Mr. Wynn acquired 25,000 more shares of GNI stock.

We cannot say that anything now in the record concerning these complicated events reflects negatively upon Mr. Wynn's qualifications. Although Mr. Wynn at one point negotiated personally with Jerome Zarowitz, nothing indicates that their association or the subsequent transaction between them was other than arms-length.

The stage is set now for discussion of the specific areas of concern noted by the Division at the hearings in this case. These areas relate to events after Mr. Wynn took over GNI.

A. GNI HIRING PRACTICES

This area of concern relates primarily to the hiring by Mr. Wynn of three individuals late in 1976 and early in 1977 to work as floormen in GNI's Las Vegas casino. They are Neil Azzinaro, Louis Cappiello, and Michael Dennis Jones. The Division, in its summation, also noted the hiring of Mr. Michael Pascal, Stephen Wynn's brother-in-law, as GNI's Treasurer on or about May 1, 1978. Questions have also been raised concerning stock options granted to these persons, and others, under GNI's 1973 Non-Qualified Stock Option Plan. The matter of stock options will be discussed later in this Opinion. We turn first to Michael Pascal.

In the Winter of 1977, after GNI opened a new hotel tower as part of the Las Vegas casino, Mr. Wynn decided the company needed a treasurer with a stronger accounting background than Mr. James Cutler, then the acting comptroller. Addition of more hotel rooms was contemplated and the company was growing. Mr. Wynn

discussed this problem briefly with Mr. Maxey, who proposed a candidate. Mr. Wynn proposed Michael Pascal, who was a CPA with a thriving practice in Florida. Mr. Wynn broached the subject to Mr. Pascal by telephone at Christmastime 1977. They met and discussed the matter in January or February 1978 at Sun Valley, Idaho, but Mr. Pascal deferred a decision. The matters discussed on both occasions included a salary of $75,000 per year and a stock option.

In March 1978, Mr. Pascal accepted, the terms being $75,000 salary and an option to purchase 50,000 shares of GNI stock under the 1973 Non-Qualified Stock Option Plan. Mr. Pascal was elected Treasurer and Chief Financial Officer of GNI at the May 1978 Board of Directors meeting. He was hired at $75,000 a year.

Considering all the circumstances, we find the hiring of Mr. Pascal to an exercise of business judgment. Mr. Wynn felt, and the Board of Directors apparently agreed, that his family relationship to Wynn provided GNI advantages in terms of loyalty and ability to communicate with management. Accordingly, we find nothing concerning this hiring transaction which reflects negatively on the character, integrity or business ability of Mr. Wynn or GNI.

The hirings of Neil Azzinaro and Louis Cappiello early in 1977 were unusual. Their hirings were called by both Messrs. Maxey and Wynn an "experiment." While subsequent events reveal the experiment was ultimately unsuccessful, in our view they do not

show the hiring decisions to be an obstacle to the qualification of Mr. Wynn or GNI.

Stephen Wynn met Neil Azzinaro in 1976 when Azzinaro operated a hair-styling establishment in Las Vegas known as "Neil's East". Mr. Wynn began using the salon at the suggestion of his wife. Wynn found Azzinaro charming and attractive, and an enjoyable conversationalist and began having his hair cut at "Neil's East." Louis Cappiello, a constant companion of Azzinaro, would often be there and Mr. Wynn also became acquainted with him. Azzinaro and Cappiello, at Mr. Wynn's suggestion, began frequenting the restaurants at the Golden Nugget and Mr. Wynn would often sit at their table. The three developed a social relationship. Over a period of time, Mr. Wynn dined at Azzinaro's residence on occasion, attended at least one birthday party for Azzinaro, and attended Cappiello's wedding after Cappiello's later employment at the Golden Nugget.

There came a time in mid or late 1976 when Azzinaro and Cappiello expressed an interest in employment at the casino. At the time, GNI's new hotel tower was under construction and Mr. Wynn felt the apparent ability he perceived of the two gentlemen to relate well to strangers might be valuable to GNI's efforts to attract customers. Mr. Wynn related this aspect of the talent he perceived to "marketing." He felt also his social relationship with Azzinaro and Cappiello was an advantage in terms of loyalty. In addition, both men seemed to him "hungry," that is highly motivated and exhibiting a very strong desire to work in a casino. Azzinaro, in particular, was "star struck" by the idea (5T-66).

Cappiello was a more serious individual. He was a professional "player," that is a sports bettor, an apparently common phenomenon in Las Vegas. Mr. Wynn drew no adverse inference from Cappiello's occupation. His one concern was that Cappiello might also be a bookmaker. Informal investigation satisfied him that this was not the case.

Before his hiring, Azzinaro told Wynn about what was apparently a running feud between himself and a Las Vegas policeman. This information displeased Mr. Wynn. When he had a chance he asked the Sheriff of Clark County, also a personal friend, if he knew about it. Wynn told the sheriff he was considering hiring Azzinaro and Cappiello. The sheriff did not indicate that they shouldn't be hired but said that Azzinaro had a "big mouth" (5T-84) and might get in trouble if he didn't "straighten out." Id. The tone of the comment was off-hand and did not alarm Mr. Wynn. Nevertheless, Mr. Wynn told Azzinaro about the conversation with the sheriff and received assurances from Azzinaro there was no genuine basis for any accusation against him or Cappiello by the policeman.

Neither Azzinaro nor Cappiello had any gaming experience. Nevertheless, Wynn felt they might be valuable because of what he perceived as their "customer marketing" talents. He viewed them as a team and felt they could learn the game of craps, in which they were eventually employed. He also felt the main purpose of casino experience was to assure control of the games and of the flow of money in the casino. He believed Golden Nugget's control systems were strict enough, and since Azzinaro and Cappiello would be

closely supervised by experienced people there would be no significant dangers in this regard.

Mr. Maxey, whom Mr. Wynn told about his desire to hire Azzinaro and Cappiello, disagreed. His hiring philosophy differed from Mr. Wynn's. He did not like Azzinaro and Cappiello, viewing them as flamboyant and undisciplined. He viewed their hiring as experimental because they lacked casino experience. While he disagreed with Mr. Wynn, he did not object to their hiring, and merely expressed his opinion that the experiment was a bad idea that would not work. It should be noted in this regard that Mr. Wynn felt that the "highly structured," "strict" and "disciplined" casino environment would test Azzinaro and Cappiello. This discipline was exactly what he felt gave him flexibility to experiment by hiring them.

Moreover, Mr. Wynn felt his own social relationship with them and the fact that he personally hired them would engender a test of another kind. Other employees in the casino might tend to ingratiate themselves or else be jealous of Azzinaro and Cappiello because of their friendship with Wynn. Accordingly, Mr. Wynn told the two men he would demand more of them than from other employees, and that they would receive the same treatment as others did from direct supervisors.

After Azzinaro and Cappiello attended gaming school for a time, Cappiello for a shorter period and Azzinaro longer, each was hired on Mr. Wynn's order as a craps floorman in February and March 1977 respectively. Mr. Wynn testified without dispute that he

reduced, and almost ceased, the social aspect of his relationship with these individuals upon their hiring.

Michael Dennis Jones, Azzinaro's roommate for a time was also hired by Mr. Wynn as a floorman, apparently in blackjack and baccarat, but earlier than the others in December of 1976. Mr. Wynn met Jones through Azzinaro but was not particularly friendly with him. Unlike the others, Jones had significant prior casino experience.

Each of these individuals was indicted in 1980 by federal authorities for criminal offenses involving the distribution of cocaine (D-51). The charges against Azzinaro were dismissed before trial. Cappiello was tried and acquitted. Jones was convicted. These charges did not occur until after the three had left the Golden Nugget. Azzinaro and Cappiello resigned voluntarily in November and December 1979 respectively. Jones was fired in July 1978 because information indicated his involvement in a scheme by employees to steal from the casino.

Nevertheless, under all the circumstances, the decision by Mr. Wynn to hire these individuals cannot itself fairly be said to reflect adversely on his character, integrity or business ability. He knew nothing of their alleged, and in the case of Jones proven, involvement in drug trafficking at the time he hired them. He also exercised minimal, but not particularly thorough, efforts to assure himself regarding the backgrounds of Azzinaro and Cappiello before they were hired. To be sure, the almost total lack of casino experience of Azzinaro and Cappiello would have made

their hiring into the positions they were given impermissible in this jurisdiction at the present time. But we do not now view this aspect of the "experiment" as a significant problem in the context of the issue at hand.

It should be noted that at one point after their hiring, apparently before Azzinaro and Cappiello were granted stock options in 1977, rumors regarding their possible involvement in drug use were conveyed to Mr. Wynn by Mr. Maxey. However, Mr. Maxey told Mr. Wynn that he had nothing concrete. Mr. Wynn instructed Mr. Maxey to stay on top of the matter and to gather more information if he could. Nothing more came of the matter during their employment, although Wynn did warn Azzinaro against drug use when he was promoted to shift boss. It may be these rumors could have been investigated more closely at the time. We would expect more aggressive action to be taken by the Applicant and Mr. Wynn should similar situations arise in the future.

In sum, under all of the foregoing circumstances, we cannot find that Mr. Wynn's association with these individuals, given its character and duration and the extent of his knowledge at the time, presents any serious difficulty to his qualification.

B. STOCK OPTION TRANSACTIONS

The Division has raised questions regarding certain GNI stock option transactions involving stock option agreements under the 1973 Non-Qualified Stock Option Plan ("1973 Plan"). These questions relate primarily to agreements between GNI and Michael Pascal, Peter Thomas, a former Director of GNI and the son of E. Parry Thomas, and Neil Azzinaro and Louis Cappiello.

1. Michael Pascal

As noted above, Mr. Wynn offered Michael Pascal a 50,000 share stock option as part of his compensation in connection with his hiring as GNI's Treasurer and Chief Financial Officer in May of 1978. Both Mr. Maxey and Mr. Wynn testified that GNI management viewed such options as part of "compensation packages" tailored for specific employees of GNI. It is clear further, from the testimony of Stock Option Committee members George Mason and David Zenoff, that Michael Pascal's stock option was a matter of extensive discussion among committee members.

Mr. Mason stated candidly that the philosophy of the Stock Option Committee, of which he is the Chairman, is to rely on the judgment and recommendations of management in the case of what may be termed ordinary employees of GNI. While Mr. Mason and Mr. Zenoff both stated that their first duty is to the stockholders, Mr. Mason indicated his opinion that this duty is ordinarily fulfilled by giving great weight to management's recommendations in run-of-the-mill cases, unless there appears some obvious impropriety. However, he also indicated that greater scrutiny would be given in less ordinary cases, such as recommendations to grant stock options to Directors, substantial shareholders or relatives of management. Mr. Pascal's option fell into the last category, was given substantial scrutiny according to Mr. Mason and was found justified.

According to pertinent provisions of the 1973 Plan, the Stock Option Committee has the sole authority to administer the Plan, grant options and, within

the limitations of the Plan, to determine varying terms of individual agreements. The Committee is required, however, to keep minutes of its meetings and to report its actions to the Board of Directors. These provisions of the Plan were the subject of scrutiny at the hearing, with reference to the facts revealed regarding individual plans. In the case of Michael Pascal, it appears that the vesting schedule in his original stock option agreement for 50,000 shares (J-14A)[2] and the effective date of the agreement was incorrectly reported to the Board (D-19), at least insofar as it was reported in writing. However, Mr. Mason addressed a letter dated June 14, 1978 to Mr. Maxey correctly describing the vesting schedule. In addition, all Directors who testified indicated that they were aware of the correct vesting schedule.

There was considerable testimony at the hearing regarding the apparent fact that the Stock Option Committee kept no formal written minutes titled as such. Mark Moskowitz, GNI's securities attorney, testifying as an expert, stated without contradiction that there is no uniform legal definition of "minutes" and that they could therefore take any written form memorializing the Committee's actions including letters and memoranda. He also expressed his opinion that no particular form of reporting by the Committee to the Board of Directors is required by the Plan. Our own review of the Plan does not contradict Mr. Moskowitz' opinions with regard to these matters.

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2. J - refers to joint exhibits; AW - refers to Applicant Wynn exhibits; AG - refers to Applicant GNAC exhibits; and D- refers to Division exhibits.

In light of the foregoing, we are unable to draw any adverse inference therefrom with regard to the qualifications of Mr. Wynn or GNI. Nevertheless, it appears clear that the record keeping and reporting practices of the Stock Option Committee could be much improved.

In early 1979, Mr. Pascal was asked to step down from his post as Treasurer and to assume the title of Assistant Treasurer. Shortly after his original hiring as Treasurer, GNI embarked upon its newly conceived program to develop a hotel-casino complex in Atlantic City. This new project engendered more company growth, involving new public debt security offerings and a substantially heavier burden upon Mr. Pascal. Mr. Wynn and Mr. Maxey decided that the company required a person more experienced in these matters as its Treasurer. They therefore recruited Mr. Clyde T. Turner, who has extensive experience in public offerings and was then managing partner of Kafoury, Armstrong & Turner, a public accounting firm, to take over Mr. Pascal's position.

Mr. Turner's negotiated compensation was relatively high and he was to be granted a stock option under the 1973 Plan for 100,000 shares. However, there were at that time less than that number of shares left available for distribution. Mr. Wynn asked Mr. Pascal to surrender approximately one-third of the 50,000 shares designated in his option agreement to make up the difference needed for Mr. Turner. He consented to do so. Accordingly, a new stock option agreement dated March 28, 1979, was executed by Mr. Pascal for 33,342 shares (J-17). He resigned as Treasurer and was appointed Assistant Treasurer.

Because of the worsening of a long-standing illness of his mother, living in Florida, Mr. Pascal later decided to resign his

position with GNI and return to Florida and did so effective May 1, 1980. But prior to that date he requested that the certain vesting dates in his stock option agreement be accelerated. As of that time, 13,342 shares had not yet vested. Ten-thousand shares were to vest on June 14, 1980 and the remainder one year later.

Because of the fact that Mr. Pascal was leaving the company under difficult family circumstances and that had his agreement been dated as of his original employment date rather than one and one half months later, 10,000 of the remaining shares would have vested on May 1, 1980, the Stock Option Committee considered that the only genuine acceleration being requested was for 3,342 shares. In further consideration of Mr. Pascal's earlier surrender of approximately one-third of his options, his loyal service, and of his agreement to act as a consultant and cooperate with gaming authorities, the requested acceleration was granted (See AG-4E).

Mr. Wynn testified without contradiction that he did not recommend this result. He instead referred Mr. Pascal's requests in this regard to Bruce Levin, GNI's General Counsel, who in turn referred them to the Stock Option Committee (See AG-4A and 4B). The transaction appears to have been fully documented and within the authority of the Stock Option Committee. We find nothing of serious concern inherent in it.

It should be noted here that upon his departure from GNI, Mr. Pascal was also granted what was termed severance pay of $37,500. This course of action was undertaken at the suggestion of Mr. Maxey, not Mr. Wynn. It was approved essentially in light

of Mr. Pascal's forced departure as well as of the fact that he had originally dissolved his CPA practice in Florida to become employed by GNI. Other employees had been given severance pay in similar circumstances. Again, we can find nothing in the evidence regarding this transaction which reflects adversely on the qualifications of Mr. Wynn or the Applicant.

2. Peter Thomas

Peter Thomas became an outside Director of GNI in November 1976. He was a member of the Executive Committee and on December 16, 1977, was granted a stock option for 10,000 shares (adjusted to 30,000 because of a 3 for 1 stock split on February 10, 1978) (J-10). The original agreement provided a vesting schedule of 20% of the shares per year.

Peter Thomas resigned as a GNI Director on July 12, 1978, at the behest of Valley Bank, his employer (J-11). Shortly thereafter, Mr. Thomas requested that he be permitted to exercise 40% of the options specified in his agreement, or 12,000 shares. He argued in part that the first 20% segment (6,000 shares) had vested the day he signed the agreement. He also theorized that he was entitled to exercise upon at least half of the second 20% segment since he would have been entitled to all of it had he remained a Director until December 16, 1978. In part because it was considered prudent not to dispute with a highly placed employee of Valley Bank, GNI's principal lender, and in part because Mr. Thomas apparently contemplated litigating the matter, the Stock Option Committee granted his request. However, an indemnification agreement was obtained from Mr. Thomas in the event of liability with regard to this acceleration (AG-6).

The Stock Option Committee's action was reflected in the minutes of the GNI Board of Directors meeting of October 18, 1978. At this time, Mr. Thomas had already exercised his option on 4,000 of his previously vested shares, 2,000 on July 27, 1978 and 2,000 more on August 31, 1978. On October 18, 1978, he exercised the remainder of his accelerated option as approved, specifically, 8,000 shares. It should be noted that this purchase occurred six days beyond the 90 day limitation period on the exercise of options following termination contained in the 1973 Plan. Mr. Mason testified that he had no knowledge of why this was permitted or recollection of approving it and we find no mention of it in the documentary exhibits. We can only ascribe it to a lack of attention to detail which we believe the GNI management should take steps to remedy in the future.

Before Mr. Thomas began exercising his options, as described, and while he was still a Director of GNI, he sold 2,000 shares of GNI stock. This sale and purchase within a six month period, with one transaction occurring while Mr. Thomas was a Director, gave rise to a cause of action against Mr. Thomas by GNI or its shareholders to recover his profit under Section 16(b) of the Securities and Exchange Act of 1934.

This matter was not discovered until June of 1980 by Mark Moskowitz during his review of Directors' stock transactions in preparation of a registration statement. On behalf of GNI, Mr. Moskowitz negotiated a settlement of the claim with Mr. Thomas' counsel which resulted in the payment by Mr. Thomas to GNI of a total of $32,000 and his execution of an indemnification agreement.

The circumstances surrounding the occurrence of this Section 16(b) liability on the part of Mr. Thomas presents no serious obstacle to the qualification of the Applicant or GNI in our view. It agains appears to have resulted from sloppiness and a lack of attention to detail. We are satisfied from the evidence that GNI, at the direction of Mr. Wynn, took prompt and appropriate action to remedy the problem once it was discovered.

Finally, we are satisfied that the evidence shows no impropriety in connection with the decision to accelerate Mr. Thomas' vesting date in the first instance. The action was within the authority of the Stock Option Committee and was supported by the substantial, if not compelling, reason of avoiding litigation. Nor was Mr. Wynn involved in the decision. He testified without contradiction that he made no recommendation and left the matter entirely to the Stock Option Committee. Properly, he did not wish to be involved because of his personal relationship with Peter Thomas and his father, E. Parry Thomas. Accordingly, we find nothing in these events to reflect negatively on Mr. Wynn's qualifications.

3. Neil Azzinaro and Louis Cappiello

At the time of the hiring of Neil Azzinaro and Louis Cappiello, they were offered stock options under the 1973 Plan by Mr. Wynn. When Mr. Wynn discussed their hiring with Mr. Maxey, he also discussed the matter of stock options. Mr. Maxey persuaded Mr. Wynn not to recommend stock options for them immediately, but instead to wait until their job performance could be evaluated. Azzinaro and Cappiello were informed of this decision and commenced employment.

All witnesses who testified on the subject indicated that Azzinaro and Cappiello performed reasonably in their jobs. While their were some disciplinary problems, they apparently occurred later and were not severe or unusual. Accordingly, Mr. Wynn did finally recommend to the Stock Option Committee that they be granted options later in 1977. In accordance with its policy of relying upon management recommendations in cases of this type, the options were granted by the Committee. Agreements were then prepared providing that none of the 5,000 shares granted would vest until two years after the date thereof, that is, December 16, 1977. The designated price was $10.00 per share.

The terms of these agreements were duly reported to the Board of Directors (See J-3). However, at the time they were presented to Azzinaro and Cappiello by Mr. Wynn, they asked that the vesting period be reduced to 12 months on the ground that they had already been employed for nearly a year. Under the two year vesting period, they would not be able to exercise their options until nearly three years after hiring rather than two as they felt they had been promised.

Mr. Wynn acceded to this request and asked the Stock Option Committee to reduce the vesting period to 12 months. This was done at the direction of the Committee by "whiting out" the number 24 in the agreements and typing in the number 12. This change was never formally reported to the Board of Directors in writing. Again, however, all Board members who testified stated that they had been aware of the change at the time and perceived it as the correction of an error rather than a genuine amendment.

For the sake of clarity of the corporate records, these changes to stock option agreements probably should have been reported upon in writing. We can only ascribe this oversight as with the others described above, to sloppiness and a lack of uniform recording and reporting procedures. But we do not find therein any seriously negative reflection on the qualifications of GNI or Mr. Wynn. Obviously, such procedures should be improved.

C. Allegations of Drug Use by Stephen Wynn.

At the hearing, significant attention was given to certain allegations that Stephen Wynn had been a user of a controlled dangerous substance, cocaine. These allegations emanated from three individuals, none of whom testified at the hearing. As to one of these people, one Kathy Thomas, statements she apparently gave were not introduced in evidence. Mr. Wynn was cross-examined about them and during that cross-examination, the Division indicated that Ms. Thomas' accusations against Mr. Wynn were later recanted under oath. We therefore give no weight to references in the record to her apparent accusations. It should be noted in addition that Mr. Wynn categorically and straightforwardly denied these accusations under oath on cross-examination.

The other two individuals making such accusations are Anita Kayne Cosby and Shirley Ann Fair. Their transcribed statements given under oath were admitted in evidence as D-57 and D-58, respectively. We will consider them in that order.

Ms. Cosby is a former employee of Golden Nugget. She was personally fired by Mr. Wynn on May 21, 1979, upon her arrest

under criminal charges involving illegal drug distribution (See AW-17). She later entered a plea of guilty to possession of cocaine and was convicted. In evaluating the credibility of Ms. Cosby's statement (D-57), we take into account Ms. Cosby's possible bias against Mr. Wynn because of her firing. See State v. Smith, 101 N.J.Super. 10 (App. Div. 1968), certif. denied, 53 N.J. 577 (1969). We also take into account the matter of her criminal conviction as affecting her credibility. See State v. Sands, 76 N.J. 127 (1978). Mr. Wynn, on cross-examination by the Division, also clearly and categorically denied Ms. Cosby's allegations under oath.

Ms. Fair was not an employee of Golden Nugget. She is apparently a former "girlfriend" of Michael Jones. The Division stipulated that she is an admitted prostitute and a paid informant. She was apparently a major witness in the criminal proceedings against Azzinaro, Cappiello and Jones. Significantly, the charges against Azzinaro were dismissed before trial and Cappiello was acquitted.

In her statement, Ms. Fair accuses Mr. Wynn of using cocaine on several occasions. She also accuses a Mr. Frank DeAngelo of distributing cocaine to Mr. Wynn. Mr. DeAngelo was a co-defendant of Azzinaro, Cappiello and Jones in the proceedings mentioned above. In addition, the only specific date she identified on which she stated she saw Mr. Wynn use cocaine, among other unspecified occasions, was on New Years' Eve 1977 at the home of Jones. She apparently also accused Mr. DeAngelo of being

present on this occasion.

Mr. DeAngelo, during two polygraph examinations in connection with the criminal proceedings against him, denied ever supplying cocaine for Mr. Wynn and denied being present on New Years' Eve 1977. These statements are in evidence (AW-16). Apparently as a result of these examinations, the charges against Mr. DeAngelo were voluntarily dismissed by the United States Attorney for the District of Nevada (AW-16). Also apparently taken into account in this regard were statements by two persons not involved in the charges, that Mr. DeAngelo was with them on New Years' Eve 1977 at a party held in a condominium at North Lake Tahoe, California (AW-16). It should also be noted that the Division has stipulated that other persons alleged to have been at Michael Jones' home on New Years' Eve 1977 have given statements denying their presence. These matters, even apart from the conclusions of the polygraph examiner regarding Mr. DeAngelo's truthfulness, which we do not consider (See State v. McDavitt, 62 N.J. 36 (1972)), certainly serve to undercut the credibility of Ms. Fair's statement.

Further, Mr. Wynn has produced the affidavits of several disinterested individuals stating that on New Years' Eve 1977, Mr. Wynn was at a party in their presence in Sun Valley, Idaho (AW-16). Flight logs for the GNI plane were also introduced indicating Mr. Wynn's flight to Sun Valley on December 28, 1977. These serve to corroborate the foregoing statements. These matters further undercut the credibility of Ms. Fair's accusations against Mr. Wynn.

Furthermore, Mr. Wynn has forthrightly and with candid emeanor denied Ms. Fair's accusations and subjected himself to searching cross-examination with regard to them. His appearance of candor and credibility is bolstered by the testimony of several witnesses at the hearing as to his good reputation for honesty as well as to their opinions that he is an honest person.

In light of all of the foregoing, we simply find the testimony of Mr. Wynn more credible than the statements of Ms. Pair and Ms. Cosby. On balance, therefore, we cannot find that the record supports these allegations of drug use against Mr. Wynn. Accordingly, we do not find therein anything to reflect adversely on the qualifications of Mr. Wynn.

CONCLUSION

In light of all of the foregoing facts and conclusions, this Commission is satisfied that the Applicant GNAC has established by clear and convincing evidence its qualifications for licensure, according to all relevant criteria, as well as the qualifications of GNI, its holding company, and of Stephen A. Wynn. Accordingly, a casino license will issue to GNAC subject to conditions contained in the Resolution regarding this matter which we will consider adopting today, in such form as it may be finally adopted.

NEW JERSEY CASINO CONTROL COMMISSION

Martin B. Danziger, Acting Chairman

Madeline H. McWhinney, Commissioner

Don M. Thomas, Commissioner

Carl Zeitz, Commissioner

Dated: October 13, 1981

New Jersey Casino Control Commission
Resolution
No. 81-747

RESOLUTION ISSUING A PLENARY CASINO LICENSE AND CONTAINING FINDINGS, CONDITIONS AND EFFECTIVE DATE FOR GNAC, CORP.

WHEREAS, GNAC, CORP. t/a Golden Nugget (hereinafter: the "Applicant"), is a New Jersey corporation which holds a Temporary Casino Permit (Permit) pursuant to N.J.S.A. 5:12-95.1 et seq. which was made effective on December 12, 1980 and subsequently renewed in accordance with N.J.S.A. 5:12-95.7 and which will expire on December 12, 1981 or upon issuance of a plenary Casino License; and

WHEREAS, the Applicant has made an application for a plenary Casino License in accordance with the provisions of N.J.S.A. 5:12-80 et seq.; and

WHEREAS, the Division of Gaming Enforcement (hereinafter: the "Division") on June 25, 1981, filed its report regarding this application as required by N.J.S.A. 5:12-76; and

WHEREAS, on July 23, August 4, and September 11, 1981, respectively, prehearing conferences were conducted, attended by representatives of the Applicant and Division and Commission staffs; and

WHEREAS, the Commission from September 14 through September 24, and on October 13, 1981, conducted a hearing,

received all information, considered the evidence and took final action on said application for a plenary Casino License; and

WHEREAS, the Commission has found by the affirmative vote of four of its members that, except as otherwise noted herein, the Applicant has complied with all requirements of the Casino Control Act for the issuance of a plenary Casino License;

NOW, THEREFORE BE IT RESOLVED by the New Jersey Casino Control Commission that GNAC, CORP., a New Jersey corporation, t/a Golden Nugget is hereby issued a Casino License for its approved hotel located on the Boardwalk between Boston and Pacific Avenues in Atlantic City, based upon the findings contained in the record of the aforesaid hearing and in this Resolution and subject specifically to the conditions and effective date contained herein.

FINDINGS

Based upon its consideration of all evidence in the record concerning this Casino License application, the Commission finds:

APPLICANT

1. That GNAC, CORP. is a New Jersey corporation formed on May 5, 1977 (originally named "Golden Nugget Gambling Hall, Inc." which on January 30, 1979, was changed to "GNAC, CORP.");

2. That GNAC, CORP. is authorized to issue 2,500 shares of common stock and has issued and outstanding ten shares, all of which are owned by holding company Golden Nugget, Inc.;

3. That GNAC, CORP. filed its application for a Casino License pursuant to N.J.S.A. 5:12-80 et seq. and paid an initial deposit of $100,000 on August 15, 1979 (N.J.A.C. 19:41-9.2(c));

4. That GNAC, CORP. has paid to the Commission all fees and taxes assessed to date, prior to the issuance of this plenary Casino License as required by N.J.A.C. 19:41-9.2(a);

FILING REQUIREMENTS

5. That the Applicant has satisfied the filing requirements of N.J.S.A. 5:12-85(a)(1) to (9) pertaining to the organization, businesses, personnel, securities, and securities holders of it and its holding company;

HOLDING COMPANY

6. That Golden Nugget, Inc. (hereinafter:"GNI") was incorporated in Nevada on December 22, 1949; that from August 1946, until the date of its incorporation, GNI operated as a partnership; that GNI became a publicly-traded corporation in 1965; and that its common stock is currently traded on the New York Stock Exchange;

7. That GNI is qualified to do business in New Jersey, and has issued and outstanding the following securities, both of which are publicly traded:

(a) As of December 31, 1980, 9,405,906 shares common ($.10 par) stock, including treasury stock, distributed among 5,580 shareholders; and

(b) As of December 31, 1980, $1.8 million 12% subordinated debentures due 1994, distributed among 235 bondholders;

8. That in addition to the Applicant, GNI has seven (7) other wholly-owned subsidiaries, none of which are holding companies as to the Applicant as defined by N.J.S.A. 5:12-26:

(a) GNLV, CORP., a Nevada corporation, owns and operates the Golden Nugget Gambling Hall and Rooming House, a casino hotel in downtown Las Vegas;

(b) Golden Nugget Development Corp., a Nevada corporation, may develop and construct a casino hotel on "The Strip" in Las Vegas;

(c) Golden Nugget's Victoria Bay, a Nevada corporation, may operate a casino hotel on "The Strip" in Las Vegas;

(d) TYOH Advertising, Inc., a Nevada corporation, provides advertising services to GNI affiliates;

(e) Golden Coach A.C., Inc., a New Jersey corporation, provides transportation services to the Applicant;

(f) Leisure Time Tours, a New Jersey corporation, operates buses, primarily in New Jersey; and

(g) Atlandia Design and Furnishings, Inc., a New Jersey corporation, operates as a purchasing company for the Golden Nugget corporate family and is an applicant for a gaming-related casino service industry license pursuant to N.J.S.A. 5:12-92(a);

9. That GNI and the Applicant also have issued and outstanding three classes of publicly traded debt instruments: $65 million 11 3/4% mortgage notes due July 1, 1994; $25 million 14 3/4% subordinated debentures due June 15, 1994; and $21 million 12 1/2% secured senior sinking fund debentures due March 1, 1994;

10. That GNI is presently the sole holding company of the Applicant required to register with the Commission and has done so (N.J.S.A. 5:12-85(b));

OWNERSHIP, CONTROL, AND MANAGEMENT

11. That the Applicant owns the hotel-casino building, parking garage and the land thereunder having acquired title in fee through seven deeds and is thus eligible to hold a casino license (N.J.S.A. 5:12-82(b)(1), (2), and (4));

12. That Applicant manages its own casino (N.J.S.A. 5:12-82(b)(3) and (c));

ELIGIBILITY

13. That the Applicant meets the New Jersey incorporation, on-site office, State corporation law compliance, ownership ledger, operating bank account, and express corporate charter purposes requirements of N.J.S.A. 5:12-82(d)(1) through (6);

TRANSFERS OF INTERESTS IN THE APPLICANT AND HOLDING COMPANY

14. That the Applicant has adopted bylaw provisions which, except as to the publicly held mortgage notes due July 1, 1994, and the publicly held subordinated debentures due June 15, 1994, establish the right of the Commission to prior approval of all transfers of any and all securities, shares, and other interests in GNAC, CORP. as required by N.J.S.A. 5:12-82(d)(7),

and the absolute right of the Applicant to repurchase at the lesser of market or purchase price any such interests in GNAC, CORP. other than the said publicly traded notes and debentures, the transfer of which has been disapproved by the Commission as required by N.J.S.A. 5:12-82(d)(8);

15. That the Applicant has adopted bylaw provisions which establish that the publicly traded mortgage notes and subordinated debentures are held subject to the condition that if a holder thereof is found to be disqualified by the Commission such holder shall dispose of all such notes and debentures so held (N.J.S.A. 5:12-82(d)(7));

16. That publicly traded holding company GNI has adopted bylaw provisions which establish that its publicly traded securities are held subject to the condition that if a holder thereof is found to be disqualified by the Commission,such holder shall dispose of said interest in GNI, as required by N.J.S.A. 5:12-82(d)(7);

LIMIT OF THREE CASINO LICENSES

17. That the Applicant neither holds nor has been issued a casino license in this State and thereby meets the requirement of N.J.S.A. 5:12-82(e) limiting to three the number of casino licenses a person may hold;

QUALIFIERS (NATURAL PERSONS)

18. That the seventeen (exclusive of duplication) persons listed below are those presently found to be Casino License qualifiers pursuant to N.J.S.A. 5:12-85(c) and (d)(1):

§85(c) QUALIFIERS (GNAC)

	NAME	ID	DOB	RS	POSITION(S)
***	Wynn, Stephen A.	013A-11	01-27-42	NV	Director and Chairman of Executive Committee
	Maxey, Robert R.	013A-02	06-24-37	NV	Chairman of Board and Chief Executive Officer and Acting Chairman of Executive Committee
*	Bybee, Shannon L.	013A-04	08-29-38	NJ	President
	Wynn, Kenneth R.	013A-01	06-22-52	NV	Secretary, Director and Member of the Executive Committee
	Turner, Clyde T.	013A-03	07-18-37	NV	Director and Member of Executive Committee
	Levin, Bruce A.	013A-14	09-05-39	NV	Assistant Secretary
	Wynn, Elaine	013A-10	04-28-42	NV	Director
	Mason, George J.	013A-07	11-09-30	CA	Director
	Wolzinger, Melvin B.	013A-08	06-10-20	NV	Director
	Zenoff, David	013A-09	03-08-16	NV	Director
	Popeil, Ronald	013A-15	05-03-35	CA	Director
**	Hornbostel, Henry W.	1174-11	02-15-52	NJ	Corporate Controller, Assistant Secretary
**	Patay, Paul E.	1107-11	02-05-31	NJ	Vice President, Food & Beverage
*	Sovern, Charles	1627-11	05-25-23	NJ	Vice President, Administration
**	Wayson, Daniel B.	1050-11	12-16-52	NJ	Vice President, Treasurer

* Licensure as Casino Key Employee Required.
** Currently licensed as Casino Key Employee.
*** On leave of absence since December 1, 1980.

§85(d)(1) QUALIFIERS (GNI)

NAME	ID	DOB	RS	POSITION(S)
Wynn, Stephen A.	013A-11	01-27-42	NV	President, Chairman of Board, Chief Executive Officer and Director
Wynn, Kenneth R.	013A-01	06-22-52	NV	Secretary, Director and Member of Executive Committee
Maxey, Robert R.	013A-02	06-24-37	NV	Executive Vice President, Chief Operating Officer and Director
Turner, Clyde T.	013A-03	07-18-37	NV	Senior Vice President, Chief Financial Officer and Treasurer
Levin, Bruce A.	013A-14	09-05-39	NV	Vice President, General Counsel and Assistant Secretary
Bybee, Shannon L.	013A-04	08-29-38	NJ	Vice President
Powers, James M.	013A-17	10-04-28	NV	Vice President, Corporate Security
Wynn, Elaine	013A-10	04-28-42	NV	Director
Mason, George J.	013A-07	11-09-30	CA	Director, Member of Audit and Stock Option Committees
Wolzinger, Melvin B.	013A-08	06-10-20	NV	Director, Member of Executive Committee
Zenoff, David	013A-09	03-08-16	NV	Director, Member of Audit and Stock Option Committees
Popeil, Ronald	013A-15	05-03-35	CA	Director, Member of Audit and Stock Option Committees
Adams, Thomas G.	013A-18	11/13/49	NV	Internal Auditor

19. That, except as noted otherwise in these findings, all said qualifiers are presently individually qualified for approval as casino key employees, but for residence, as required by N.J.S.A. 5:12-85(c), 85(d)(1), 89 and 94(b), or are actually licensed as casino key employees;

WILLIAM W. BOYD

20. That at the issuance of the Permit, William W. Boyd was identified as an individual qualifier of GNI (See Resolution No. 80-500, Paragraph 21);

21. That Mr. Boyd served as a Director of GNI since June 12, 1969; that on September 22, 1981, Mr. Boyd tendered his letter of resignation to the Board of Directors of the GNI and GNLV, CORP. for the reasons represented by counsel and contained in the record; and that counsel represented the respective Boards will by resolution accept his resignation and will notify the Commission of formal acceptance thereof (See the condition contained in Paragraph 116 of this Resolution);

22. That presently William W. Boyd is no longer deemed a qualifier as defined by N.J.S.A. 5:12-85(d)(1) with regard to this Casino License application;

STEPHEN A. WYNN

23. That Stephen A. Wynn, as President, Chairman of the Board, Chief Executive Officer and Director of holding company GNI and as Director and Chairman of the Executive Committee of the Applicant, is presently individually qualified for approval as a casino key employee, but for residence, as required by N.J.S.A. 5:12-85(c)and (d)(1) for the reasons set forth in the

Commission's Opinion attached hereto and incorporated herein as part of this Resolution;

24. That no other person associated with the Applicant or its holding company is presently deemed appropriate for individual qualification;

25. That the Applicant has nominally issued two classes of debt securities: (a) $25 million 14 3/4% subordinated debentures; and (b) $65 million 11 3/4% (originally 11 1/2% mortgages notes; and that in addition, the Applicant is guarantor of the $21 million 12 1/2% (originally 12 1/4%) secured senior sinking fund debentures issued by its holding company GNI (See Paragraph 8 and the condition contained in Paragraph 109 of this Resolution);

26. That all of these debt securities are "hybrid" issues of GNI, which is the primary obligor thereon and therefore are considered to be issues of GNI for purposes of N.J.S.A. 5:12-85(c) and (d)(1) (See discussion set forth in Exhibit C - 8 pages 10-16);

27. That, with the concurrence of the Director of the Division, none of the holders of the publicly traded debt securities of GNI or the Applicant other than the persons named herein as qualifiers now have the ability to control GNI or the Applicant or elect one or more directors thereof and that, therefore, the requirement of N.J.S.A. 5:12-85(d)(1) that said debt security holders be individually qualified for approval is presently hereby waived;

28. That, with the concurrence of the Director of the Division, none of the securities holders of the publicly traded holding company GNI, other than those persons named herein as qualifiers, now have the ability to control GNI or elect one or more officers thereof and that, therefore, the requirement of N.J.S.A. 5:12-85(d)(1) that said security holders be individually qualified for approval is presently hereby waived;

EDWARD M. DOUMANI

29. That at the issuance of the Permit, Edward M. Doumani was identified as a possible individual qualifier of GNI as defined by N.J.S.A. 5:12-85(d)(1) (See Resolution No. 80-500, Paragraph 23);

30. That Edward Doumani served as a Director of GNI from August 1, 1973 to October 19, 1978, at which time he resigned; and that Edward Doumani and his wife and children in the aggregate own or beneficially hold 344,190 (3.7%) shares of GNI common stock in the following manner:

(a)	Edward M. Doumani, individually	86,250 (.9%)
(b)	Edward and Eleanore (wife) Doumani, jointly	167,940 (1.8%);
	and	
(c)	Edward Doumani, as custodian for Lawrence Doumani	45,000 (.5%)

31. That there remains an issue as to whether Edward M. Doumani is an individual qualifier of GNI with respect to this Casino License application;

32. That, with the concurrence of the Director of the Division the requirement of N.J.S.A. 5:12-85(d)(1) that Edward M. Doumani be presently individually qualified is presently hereby conditionally waived; and that said conditional waiver

will continue until such time as the Division has completed its investigation of Mr. Doumani but no later than January 1, 1982;

33. That during this period, the Chairman and Board of Directors of GNI shall have no direct or indirect business contact with Edward M. Doumani in any way, except as may be necessary to execute legal and regulatory responsibilities regarding the GNI stock he holds either individually, jointly or as parental custodian; and that the GNAC Chairman of the Board shall certify to the Commission its notice and acceptance of the burden to inform the Commission and Division of any change of status (See the condition contained in Paragraph 114 of this Resolution);

SHANNON L. BYBEE

34. That Shannon L. Bybee, as President of the Applicant and as Vice President of GNI is an individual qualifier (N.J.S.A. 5:12-85(c) and (d)(1)); and that as an on-site officer of the Applicant, Bybee is required to conform to casino key employee licensure requirements of N.J.S.A. 5:12-89(b);

35. That, except for residence, Bybee has established by clear and convincing evidence his qualifications for casino key employee licensure;

36. That the Applicant has requested a waiver of the six month durational residency requirement as to Bybee, pursuant to N.J.A.C. 19:41-4.3(a)(5) and has made the requisite showing thereunder;

37. That, as to Shannon L. Bybee, a waiver of the durational residency requirement is hereby granted and licensure as a casino key employee is hereby approved in accordance with N.J.S.A. 5:12-89(b);

CHARLES SOVERN

38. That Charles Sovern, as Vice President for Administration of the Applicant is an individual qualifier (N.J.S.A. 5:12-85(c)); and that as an on-site officer of the Applicant, Sovern is required to conform to casino key employee licensure requirements of N.J.S.A. 5:12-89;

39. That Sovern has established by clear and convincing evidence his qualifications for casino key employee licensure;

40. That, as to Charles Sovern, licensure as a casino key employee is hereby approved in accordance with N.J.S.A. 5:12-89(b);

FINANCIAL SOURCES

41. That the Applicant has identified its present financial sources related to its hotel casino as follows:

(a) Girard Bank (80%) and Guarantee Bank (20%) extended a $12 million line of credit, $5 million of which is secured by a first mortgage on the hotel casino;

(b) First National State Bank of New Jersey extended a $1 million line of credit;

(c) First Greyhound Leasing Company extended $6.9 million in lease financing for furniture, fixtures and equipment;

(d) McDonnell Douglas Industrial Finance Company extended $4 million in lease financing for furniture, fixtures and equipment;

(e) First National State Bank of South Jersey is the holder of mortgages upon a residence of the Applicant in Ventnor and two condominiums of the Applicant in the aggregate amount of approximately $679,000;

(f) Xerox Corporation is the holder of installment debt for copying equipment in the approximate amount of $76,000; and

(g) Ercole A. and Rita M. Nestore and Michael A. and Marie Madias are co-holders of a note and mortgage issued by GNI in connection with the facility's garage site in the approximate amount of $123,800 to be satisfied within two years;

42. That the following licensed financial institutions are trustees with regard to certain publicly traded debt securities of GNI and the Applicant (See Paragraphs 9, 25 and 26 of this Resolution):

(a) Midlantic National Bank ($25,000,000, 14 3/4% Subordinated Debentures);

(b) Fidelity Union Trust Company ($65,000,000, 11 1/2% mortgage notes); and

(c) First National State Bank of New Jersey ($21,000,000, 12 1/2% Senior Sinking Fund Debentures);

43. That these licensed financial institutions are not financial sources as defined by N.J.S.A. 5:12-84(b);

44. That by virtue of their positions as trustees of the holders of the aforedescribed publicly traded debt securities, these licensed financial institutions are encompassed in the waiver of qualification, the subject of Paragraph 27 of this Resolution;

45. That no other financial sources which bear any relation to the Applicant's casino proposal have been identified;

46. That the Applicant has, with the exception of McDonnell Douglas Industrial Finance Company, established by clear and convincing evidence both the integrity and reputation of the named financial sources and that its financial resources are adequate to complete the casino proposal and to operate the casino as required N.J.S.A. 5:12-84(b);

MCDONNELL DOUGLAS

47. That there is an issue regarding the qualifications of McDonnell Douglas Industrial Finance Company, a subsidiary of McDonnell Douglas Corporation; and that such issue involves an indictment and reported conviction of McDonnell Douglas Corporation on federal criminal charges and the relationship existing between McDonnell Douglas Industrial Finance Company and its parent company;

48. That the Applicant is presently unable to gather or produce sufficient information by which to establish the qualifications of McDonnell Douglas Industrial Finance Company, as a financial source as required by N.J.S.A. 5:12-84(b);

49. That the Applicant has stipulated it will terminate its furniture, fixture and equipment (non-gaming) lease agreement with McDonnell Douglas Industrial Finance Company (See the condition contained in Paragraph 115 of this Resolution);

FINANCIAL STABILITY, INTEGRITY AND RESPONSIBILITY

50. That the Applicant has established by clear and convincing evidence its financial stability, integrity and responsibility and that of its holding company as required by N.J.S.A. 5:12-84(a);

REPUTATION FOR HONESTY AND INTEGRITY

51. That the Applicant has established by clear and convincing evidence its reputation for honesty and integrity and that of its holding company as required by N.J.S.A. 5:12-84(c);

BUSINESS ABILITY AND CASINO EXPERIENCE

52. That the Applicant has established by clear and convincing evidence that it and its holding company have sufficient business ability and casino experience to demonstrate the likelihood of its creation and maintenance of a successful, efficient casino operation as required by N.J.S.A. 5:12-84(d);

NEVADA GAMING

53. That holding company GNI conducts, through its subsidiary, GNLV, CORP., licensed gaming activities in the State of Nevada through the operation of a 579 guest room facility containing a casino room of 32,000 square feet and that by order of November 14, 1980, the Nevada Gaming Commission, upon recommendation of the Nevada Gaming Control Board and pursuant to Nevada Revised Statutes 463.700 through 463.720 and the Regulations of the Nevada Gaming Commission and Gaming Control Board concerning foreign gaming, granted approval to GNI to continue its gaming operations in Nevada while participating in casino gaming in the State of New Jersey through the operation of the Golden Nugget hotel casino in Atlantic City;

QUALIFICATION OF GNAC AND GNI

54. That in consideration of Paragraphs 3, 4 and Paragraphs 11 - 15, 17, 19, 22, 23, 27, 28, 46 and Paragraphs 50 - 52 this Resolution, and for the reasons set forth in the Commission's Opinion attached hereto and incorporated herein as part of this Resolution, the Applicant, GNAC, CORP. is qualified for issuance of a Casino License in accordance with the pertinent provisions of the Casino Control Act;

55. That in consideration of Paragraphs 7, 10, 16, 19 and 23 of this Resolution, and for the reasons set forth in the Commission's Opinion attached hereto and incorporated herein as part of this Resolution, GNI is qualified as the holding company of the Applicant in accordance with the pertinent provisions of the Casino Control Act;

THE HOTEL CASINO FACILITY

56. That the Applicant's hotel-casino complex is situated on a 4.0 acre site in Atlantic City comprised of 2.81 acres bounded by the Boardwalk and Pacific Avenue between Boston and Providence Avenues on which the hotel-casino is located; and 1.19 acres on the northernly side of Pacific Avenue between Boston and Providence Avenues on which the parking garage is located and is an entirely new hotel-casino structure;

THE IMPACT

57. That as required by N.J.S.A. 5:12-84(e) the Applicant has established to the satisfaction of the Commission that, subject to certain conditions described in Paragraph 21 and Paragraphs 124 through 126 of this Resolution, the casino and its related facilities and its location are suitable and that neither the Atlantic City patron market nor the overall environment or its economic, social

demographic, competitive, or natural resource conditions will be adversely affected by its casino proposal;

IMPACT ON REGIONAL HOUSING STOCK

58. That the Applicant is required by N.J.S.A. 5:12-84(e) to establish to the satisfaction of the Commission that its proposal will not adversely affect overall environmental conditions in the Atlantic City region including its economic, social, and demographic conditions;

59. That, by virtue of the fact that the Applicant employes 3,339 persons as of September 14, 1981 at its hotel-casino facility, its proposal will affect the overall environment in the Atlantic City region including its economic, social, and demographic conditions and will as a practical matter, particularly affect the limited residential housing stock available to the Atlantic City region;

60. That continuing discussion has been maintained with each operating casino so that the Commission may determine the extent and nature of the participation of each in the dissipation of any adverse impact their Atlantic City employees may have on the residential housing stock available in the region and the Commission may require such participation as a condition of licensure; and that particularly, such discussion has been maintained with Boardwalk Regency Corporation since the June 1979 issuance of its Permit; with Bally's Park Place, Inc. since the December 1979 issuance of its Permit; with Resorts International Hotel, Inc. since the February 1980 renewal of its Casino License; with Greate Bay Hotel and Casino, Inc. since the August 1980 issuance of its Permit; with Marina

Associates since the November 1980 issuance of its Permit; with Playboy Elsinore Associates since the April 1981 issuance of its Permit; with Claridge, Ltd. since the July 1981 issuance of its Permit; and with the Applicant since the November 1980 issuance of its Permit;

61. That during the period from January to November 1980, the Commission, through its Chairman and staff, has undertaken an investigative analysis of, among other things, the conditions of available housing stock in the Atlantic City region, and has conducted six public hearings; and that in July 1981, in response to a petition filed by the New Jersey Department of the Public Advocate, the Commission determined to conduct a detailed analysis of the housing supply and demand issue facing Atlantic City to assist in developing its policy concerning the role of hotel-casino operators in housing;

62. That as a condition of its Permit, the Applicant was required to cooperate with the Commission in finding solutions to alleviate housing shortages in the Atlantic County region (See Resolution No. 80-500, Paragraph 78);

63. That due to the fact that the Commission is currently engaged in a comprehensive study of the Atlantic City housing shortage, the Applicant's compliance with this condition is deferred (See the condition contained in Paragraph 123 of this Resolution);

QUALIFYING SPACE

64. That the hotel presently contains a total of 95,562 square feet of qualifying space, including 50,433 square feet of

qualifying dining, entertainment, and sports space, 25,441 square feet of qualifying meeting and exhibition space, and 19,688 square feet of qualifying kitchen support facilities, and thereby exceeds the minimum qualifying space requirements set forth in N.J.S.A. 5:12-83(b) and (c), and (g);

65. That, as a condition of its Permit, the Applicant was required to complete the 2,555 square foot gourmet restaurant "Lillie Langtry's" and the 2,759 square foot gourmet restaurant "Victoria's" within thirty days of the opening of the hotel casino complex (See Resolution No. 80-500, Paragraph 76);

66. That the Applicant has completed the aforedescribed gourmet restaurants and thereby has satisfied this condition;

CERTIFICATE OF OCCUPANCY

67. That, as a condition of its Permit, the Applicant was required to obtain and maintain Certificates of Occupancy with respect to all 504 sleeping units, the casino room and all qualifying space (excluding two gourmet restaurants and tower suite units then under construction) (See Resolution No. 80-500, Paragraph 67);

68. That the Applicant has obtained and maintains these Certificates of Occupancy and thereby has satisfied this condition;

69. That, as a condition to its Permit, the Applicant was required to obtain and maintain Certificates of Occupancy for its two gourmet restaurants "Victoria's" and "Lillie Langtry's" and additional tower suite sleeping units (See Resolution No. 80-500, Paragraph 68);

70. That the Applicant has obtained and maintains Certificates of Occupancy for its two gourmet restaurants and thereby has satisfied this condition in part, but has failed to comply with this condition as related to the additional tower suite sleeping units (See Paragraph 72 and 73 and the condition contained in Paragraph 120 of this Resolution);

QUALIFYING SLEEPING UNITS

71. That the hotel presently contains a total of 504 sleeping units of a typical size of 425 square feet which are immediately available for guest occupancy, and thereby satisfies the minimum qualifying sleeping unit requirements of N.J.S.A. 5:12-27 and 83(a);

72. That as a condition to its Permit, the Applicant was required to complete certain tower suite sleeping units within 180 days of the opening of the hotel casino complex (See Resolution No. 80-500, Paragraph 76);

73. That the area previously dedicated to these tower suite sleeping units is currently under review by the Applicant; that one option under consideration involves the substitution of non-guestroom qualifying indoor public space for

the involved area (See the condition contained in Paragraph 118 of this Resolution):

CASINO ROOM

74. That the hotel facility contains a single casino room of 40,662 square feet which does not exceed the maximum square footage limitations set forth in N.J.S.A. 5:12-83(d);

CASINO DOMINANCE

75. That the casino room as situated does not impermissibly dominate the Applicant's hotel-casino complex;

CASINO VISIBILITY

76. That there exists an issue of casino visibility regarding the Applicant's facility; that more particularly there is a question as to whether there is visibility of the casino room from the exterior of the facility; that Commission staff is currently undertaking a comprehensive review of the issue of casino visibility and the standards relating thereto; and that such review will involve the hotel-casino facility of the Applicant, as well as those of all other operating hotel-casinos;

77. That a determination as to the issue of casino visibility as it relates to the Applicant's facility is deferred (See the condition contained in Paragraph 128 of this Resolution);

APPROVED HOTEL

78. That based on the findings contained in Paragraph 56 and Paragraphs 64 through 77 of this Resolution, the Applicant's facility is found to be an "approved hotel," in accordance with N.J.S.A. 5:12-83, subject specifically to the

conditions contained in Paragraphs 117 through 122 and Paragraphs 124 through 128 of this Resolution;

EQUAL EMPLOYMENT OPPORTUNITY - CONSTRUCTION

79. That construction of the Applicant's approved hotel facility commenced in August 1979, and concluded in March 1981;

80. That the Applicant on September 27, 1979, filed written guarantees that it would require its contractors and subcontractors to afford equal employment opportunities to all persons employed in connection with the construction of its approved hotel facility as required by N.J.S.A. 5:12-134(a); that the Applicant filed on August 7, 1980, comprehensive documents in support of its contention that such equal employment opportunities were, in fact, afforded to all such employees, as required by N.J.S.A. 5:12-134(a); and that the Applicant tendered its affirmative action submissions on a substantially timely basis;

81. That during August 1979, the Applicant appointed Frank Montero, an employee of Tishman Construction Corporation of New Jersey (Tishman), construction manager and agent of the Applicant, as its Affirmative Action Officer for construction as required by N.J.S.A. 5:12-135(f); and subsequently appointed Thurston Gault, to that position for the duration of the construction period;

82. That the Applicant failed to achieve the percentage employment goals of N.J.A.C. 19:53-1.5(c) and 1.14(a) of twenty percent minority and 6.9 percent female journeyworkers and apprentices by trade;

83. That the Applicant's construction workforce from August 1979, through March 18, 1981, contained the following proportions for protected class members:

a. Journeyworkers (No Females Employed)

TRADE	TOTAL	WORKER WEEKS MINORITY	% MINORITY
Taper	325	123	38%
Painter	202	73	36%
Elevator Construction	487	118	24%
Insulators	134	29	22%
Ironworker	2,785	431	15%
Plumber	2,476	344	14%
Bricklayer	705	99	14%
Cement Mason	588	83	14%
Glazier	270	38	14%
Carpenter	5,254	532	10%
Sprinklerfitter	273	26	10%
Electrician	3,380	309	9%
Operating Engineer	587	38	6%
Sheetmetal Worker	599	29	5%
Teamster	85	3	4%
Plasterer	94	3	3%
Roofer	102	3	3%
TOTAL	18,346	2,281	12%

B. Apprentices

TRADE	WORKER WEEKS TOTAL	WORKER WEEKS MINORITY	% MINORITY	WORKER WEEKS FEMALE	% FEMALE
Bricklayer	17	10	59%	7	41%
Glazier	50	24	48%	0	0%
Electrician	268	96	36%	0	0%
Ironworker	53	8	15%	0	0%
Carpenter	163	20	12%	0	0%
Plumber	40	0	0%	9	22.5%
Elevator Construction	13	0	0%	13	100%
TOTAL	604	158	26%	29	4.8%

C. Laborers

WORKER WEEKS TOTAL	WORKER WEEKS MINORITY	% MINORITY	WORKER WEEKS FEMALE	% FEMALE
2,956	1,861	63%	65	2.2%

84. That in each of the three trades of carpenter, electrician, and plumber which collectively represent sixty-one percent of the total journeyworker workforce on the project between August 1979, and March 1981, the percentage of minority journeyworkers ranked between nine and fourteen percent; that despite some efforts by the Applicant the goals of twenty percent minority and 6.9 percent female journeyworkers by trade were not achieved; and that construction of the Applicant's hotel-casino project has been substantially completed;

85. That resolution of the question of whether the Applicant has made good faith efforts to achieve percentage goals by trade involves, among other things, an analysis of the efforts of the Applicant as well as the efforts of its construction manager, Tishman, its contractors, and represented trade unions; involves a comparison of those efforts and achievements with those contemporaneously made and achieved at the Sands (formerly Brighton), Harrah's, and Playboy hotel casino construction projects; and involves a determination as to what further efforts may have reasonably been made by the Applicant to achieve the percentage goals within its construction workforce;

86. That Atlantic Construction Training Program, Inc., (ACTP) a non-profit corporation formed to develop apprentice training programs, presently appears to be one viable vehicle to increase the representation of protected classes in journeyworker positions within the Atlantic County construction workforce, and that the Applicant is encouraged to voluntarily make a reasonable financial contribution to it or some other such worthy program;

87. That, on September 3, 1981, the Applicant made an initial $15,000 financial contribution to ACTP; that the Applicant reaffirmed its commitment to make similar annual financial contributions to ACTP; and that the duration of such undertaking will be dependent upon (a) similar financial participation by other operating casinos, (b) meaningful financial participation from governmental sources, (c) representation on the governing body of said corporation from construction trade unions, construction contractors, operating casinos and governmental designees, and (d) the achievement of a reasonable degree of success with regard to the equal employment opportunity objective of said training program after a reasonable opportunity to determine the same;

88. That a final determination as to whether the Applicant has demonstrated that it has made good faith efforts to achieve its equal employment opportunity goals in its construction workforce as required by N.J.S.A. 5:12-134(a) and N.J.A.C. 19:53-1, et seq. is deferred;

89. That such final determination will be made following the receipt of a report from the Division as to its further investigation, review, and analysis of the facts relating to the four construction projects of the Applicant, the Sands (formerly Brighton), Harrah's, and Playboy; following receipt of a further report of Commission staff relating to the four projects; and following, if necessary, a hearing as to those aspects of the question left unresolved by such reports;

90. That the Applicant shall continue to cooperate with the Division and Commission staff in the preparation of such reports and, if necessary, such a hearing (See the condition contained in Paragraph 129 of this Resolution;

EQUAL EMPLOYMENT OPPORTUNITY - OPERATIONS

91. That, as a condition of its Permit, the Applicant was required to submit certain information regarding the composition of its hotel-casino employee workforce (See Resolution No. 80-500, Paragraph 84);

92. That the Applicant's compliance with this condition is continuous and has been satisfactory;

93. That, as a condition of its Permit, the Applicant was required to submit certain information relating to staffing deficiencies, projections and promotion policies (See Resolution No. 80-500, Paragraph 85);

94. That the Applicant has satisfied this condition;

95. That, as a condition of its Permit, the Applicant was required to exert additional and extensive recruitment efforts to improve equal employment opportunity goal compliance in all hotel and casino positions salaried in excess of $25,000 and further to fully document those recruitment efforts (See Resolution No. 80-500, Paragraph 86);

96. That the Applicant has not complied with this condition (See the condition contained in Paragraph 131 of this Resolution);

97. That, as a condition of its Permit, the Applicant was required to submit a description of its upward mobility promotion and training programs (See Resolution No. 80-500, Paragraph 87);

98. That the Applicant has satisfied this condition;

99. That, as a condition of its Permit, the Applicant was required to make good faith efforts to increase protected class representation and to achieve interim goals in all job categories in which it had not attained equal employment opportunity goal compliance (See Resolution No. 80-500, Paragraph 88);

100. That the Applicant has not complied with this condition (See the condition contained in Paragraph 133 of this Resolution);

101. That the Applicant has filed written guarantees that it will afford equal employment opportunities to all prospective and actual employees and has filed Affirmative Action Status Reports assuring that its program is designed to afford equal employment opportunities to persons qualified for licensure in all employment categories of its workforce; that on January 23, and August 13, 1981, the Applicant submitted its Affirmative Action Status Reports containing detailed information regarding the composition of its workforce, in support of its contention that it has made good faith efforts to afford equal employment opportunities to all prospective and actual employees

and has abided by its affirmative action program; and that the Applicant has made affirmative action filings pertaining to its operations workforce in a timely manner;

102. That the Applicant, in August 1981, initiated a series of personnel changes such being the appointment of Frank Donato, formerly Employment Manager, to the position of Employment and EEO/AA Manager, pursuant to N.J.S.A. 5:12-135(f), and the promotion of Thurston Gault, formerly Affirmative Action Officer for Operations from February 1980, to August 1981, to the position of Director of Personnel and Labor Relations;

103. That as of September 14, 1981, the Applicant had a workforce totaling 3,339;

104. That the Applicant meets the percentage employment goals of twenty percent minorities and forty-three percent females as set forth in N.J.A.C. 19:53-1.5(e) with respect to its overall hotel-casino workforce which consists of 24% minority and 43% female employees; but presently fails to meet these goals as required by N.J.A.C. 19:53-1.5(a)(2) in the indicated (*) categories;

JOB CATEGORIES	TOTAL POSITIONS	FEMALE EMPLOYEES		MINORITY EMPLOYEES	
*Executives	6	(0)	(0%)	0	0%
*Managers & Directors	15	5	33%	1	6%
*Assistant Managers Assistant Directors	114	25	25%	10	9%
*Supervisors Assistant Supervisors	446	162	36%	100	22%
Professionals	558	247	44%	128	23%
*Technicians	6	0	0%	0	0%
Sales	35	30	86%	9	26%
Office & Clerical	449	319	71%	79	18%
*Craft Worker	90	15	17%	11	12%
Operatives	120	16	13%	20	17%
Laborers	11	1	9%	0	0%
Service Workers	1,476	623	42%	453	31%
Trainees/Production	9	3	33%	3	33%
*Trainees(White Collar)	4	2	50%	0	0%
TOTAL	3,339	1,448	43%	814	24%

104. That the Applicant has made good faith efforts to achieve the percentage employment goals in all levels of its hotel casino workforce;

CONDITIONS

Based upon the evidence presented at the hearing and the findings contained herein, this plenary Casino License is issued, subject specifically to the following conditions:

BURDEN OF ESTABLISHING COMPLIANCE

105. That the Applicant has the continuing affirmative burden of establishing to the satisfaction of the Commission its compliance with all conditions of this plenary Casino License and its Certificate of Operation as amended, all provisions of the Casino Control Act, the regulations promulgated thereunder and Commission directives or good cause for its failure or inability to so comply;

SECURITY HOLDERS

106. That the Applicant file with the Commission quarterly reports listing all owners and holders of publicly-traded 11 3/4% mortgage notes and 14 3/4% subordinated debentures in accordance with N.J.S.A. 5:12-105(f) and that GNI make available upon request of the Commission or Division a listing of all record holders of any and all of its publicly-traded securities;

107. That the Applicant immediately notify the Commission and Division if any security holder of it or its holding company GNI shall obtain the ability to control GNAC or GNI or elect one or more directors thereof;

108. That the Applicant itself not issue any additional publicly-traded securities without the express, prior written approval of the Commission, which approval shall expressly consider the provisions of N.J.S.A. 5:12-82(d)(7) and (8), 85(c), 105, 39 and 44;

109. That the Commission reserves the right to require at any future time the qualification of any person or entity that it may deem appropriate for qualification;

HOLDING COMPANY COOPERATION

110. That holding company GNI adhere to all conditions imposed upon the Applicant by both this plenary Casino License and its Certificate of Operation, and take all action necessary and appropriate to enable the Applicant to comply with such conditions and all provisions of the Casino Control Act, the regulations promulgated thereunder and Commission directives;

REPLACEMENT OF DIRECTORS AND CORPORATE OFFICERS

112. That both the Applicant and its holding company GNI report promptly in writing to the Commission and the Division the election of any new member of their respective Boards of Directors or the appointment of any new corporate officer; and that any new Director or Corporate Officer of GNI shall submit to individual qualification as required by N.J.S.A. 5:12-85(c) and (d)(1) by filing any required application forms prior to the assumption of any and all duties and responsibilities relating to such position;

113. That any new Director or Corporate Officer of the Applicant not perform any duties or exercise any powers relating to such position until qualified by the Commission in accordance with N.J.S.A. 5:12-105(g)

EDWARD M. DOUMANI

114. That Edward M. Doumani, the Applicant and GNI conform to the provisions of Paragraph 33 of this Resolution;

MCDONNELL DOUGLAS

115. That the Applicant terminate its $4 million non-gaming furniture, fixture and equipment lease agreement with McDonnell Douglas Finance Company by no later than January 1, 1982;

WILLIAM W. BOYD

116. That GNI and GNLV, CORP. conform to the provisions of Paragraph 21 of this Resolution;

FIRST CLASS QUALITY

117. That the Applicant maintain and operate its approved hotel complex as a facility of superior, exceptional, first-class, five star and deluxe quality in accordance with N.J.A.C. 19:41-2.7;

ALTERATION OF QUALIFYING SPACE

118. That the Applicant not alter or limit the use of any qualifying space or sleeping units within the approved hotel as required by N.J.S.A. 5:12-27 and 83 without the express, prior written approval of the Commission;

COMPLETION OF CONSTRUCTION

119. That the Applicant complete construction of its 37 additional qualifying sleeping units, to be located within the top two floors of the guestroom tower, within 180 days of the effective date of this plenary Casino License; in the alternative, and in the event that the Applicant determines to substitute non-guestroom qualifying indoor public space for the involved areas, that the Applicant describe, in detail, such plans for substitution of spaces, including a time schedule for completion of construction utilizing the format and procedure of the Project Data Report of the Facilities Review Section for such purposes;

CERTIFICATES OF OCCUPANCY

120. That pursuant to N.J.S.A. 5:12-84(e) and N.J.S.A. 52:27(d)-119 et seq., the Applicant obtain from the local construction official of Atlantic City appropriate Certificates of Occupancy with respect to all qualifying indoor public spaces and/or additional qualifying sleeping units as may be added to the approved facility during the term of this plenary Casino License; and that the Applicant maintain at all times such valid Certificates of Occupancy;

OTHER AGENCY APPROVALS

121. That the Applicant comply with all conditions appended to facilities approvals received from the Atlantic City Planning Board, the New Jersey Department of Environmental Protection and all other agencies of government;

OCCUPANCY OF RETAIL SPACE

122. That while qualifying owner operated retail space within the approved hotel is required by N.J.S.A. 5:12-83(c) to be at all times complete and used as shops available to the public, the Applicant is permitted to operates its Boardwalk fronting shops, "The Great Stuff Store" and "Hot Diggity Dog," on a six month basis annually between April 1st and October 1st, so long as the shops are seasonal in nature;

HOUSING

123. That in consideration of Paragraphs 58 through 60 of this Resolution, the Applicant cooperate with the Commission toward finding solutions to alleviate the housing problem in the Atlantic City area, and, if so required, participate further in providing a reasonable share of the housing construction

requirements for the Atlantic City area, with the specific nature and extent of such participation to be determined by the Commission at a later date pursuant to N.J.S.A. 5:12-84(e) and the Atlantic City Planning Board resolution dated December 6, 1978; and that initial implementation of these conditions will occur through the housing study presently being conducted by the Commission;

TRAFFIC

124. That the Applicant make every reasonable effort to monitor and maintain an efficient flow of traffic of the general ingress and egress routes to the hotel casino complex in cooperation and consultation with the Atlantic City Department of Public Safety and the New Jersey Department of Environmental Protection and to the satisfaction of the Commission;

EMPLOYEE INTERCEPT PARKING

125. That the Applicant cooperate with and participate in the development of appropriate employee and patron intercept parking facilities and make every reasonable effort to develop an efficient employee transportation system in cooperation and consultation with the Atlantic City Planning Department and the New Jersey Department of Environmental Protection and to the satisfaction of the Commission;

GUIDEWAY TRANSIT AND SKYWAY CONNECTION SYSTEMS

126. That the Applicant cooperate with and contribute toward the development of a municipal guideway transit system and

skyway linkage system as envisioned by the Atlantic City Master Plan;

CONTINUING COMPLIANCE AND MODIFICATIONS

127. That, in the context of N.J.S.A. 5:12-80(a) and (d), the Applicant prepare and submit to the Facilities Review Section information as to qualifying square footages and related facility data, which submission shall be made on the forms developed and provided to the Applicant by the said Facilities Review Section, and shall be made according to a bimonthly schedule or such other periodic schedule as may be determined;

CASINO VISIBILITY

128. That, in consideration of Paragraphs 76 and 77 of this Resolution, the Applicant cooperate with the Facilities Review Section during its comprehensive review and preparation of its report concerning the issue of casino visibility and appropriate standards relating thereto;

EQUAL EMPLOYMENT OPPORTUNITY - CONSTRUCTION

129. That the Applicant shall cooperate with the Division and Commission staff in the preparation of reports and, if necessary, a hearing relating to a final determination by the Commission on the question of whether the Applicant has demonstrated that it has made good faith efforts to meet the equal employment opportunity goals in its construction workforce as set forth in Paragraphs 88 through 90 of this Resolution;

CONSTRUCTION TRAINING PROGRAM

130. That in consideration of Paragraphs 86 and 87 of this Resolution and in accordance with its representations, the

Applicant continue to make annual financial contributions to an appropriate organization approved by the Commission for the apprentice training of minorities and females for employment in the Atlantic County construction workforce;

EQUAL EMPLOYMENT OPPORTUNITY - OPERATIONS

131. That the Applicant submit on a continuing basis and in a timely manner data and information relating to its compliance with equal employment goals in the form and manner prescribed by Commission staff;

132. That for all positions with salaries in excess of $25,000, the Applicant exert good faith efforts to improve protected class representation in those positions, and fully document those efforts, including the use of referral and employment agencies and community based organizations, numbers of persons interviewed per position, allotted time for filling positions, reasons for not hiring protected class persons, and other relevant information deemed appropriate by the Commission staff;

133. That the Applicant continue to exert good faith efforts to increase protected class representation in all job categories in which it presently does not meet equal employment opportunity goals and maintain goal compliance where presently achieved;

134. That the Applicant implement by December 1, 1981, its Upward Mobility Program; that concurrent with that date the Applicant submit to the Commission appropriate data containing:(a) number of participants, (b) race and sex, (c)

methods of recruitment, (d) criteria used for selection inclusive of tests if applicable, and (e) identification of participants' present EEO job titles; and that the Applicant participate with Commission staff in an interim review and assessment of its Upward Mobility Program complete with the preparation and submission of progress reports documenting efforts of the Upward Mobility Program, said review to commence by June 1, 1982;

EFFECTIVE DATE

This Casino License issued October 13, 1981, shall be effective at 12:01 a.m. local time on October 14, 1981 and shall expire one year thereafter in accordance with N.J.S.A. 5:12-87(e).

Martin B. Danziger, Acting Chairman

Don M. Thomas, Commissioner

Carl Zeitz, Commissioner

Madeline H. McWhinney, Commissioner

I hereby certify that this document is a true and correct copy of Resolution 81-747 of the New Jersey Casino Control Commission.

Theron G. Schmidt
Acting Executive Sectretary

Meeting of October 13, 1981
Vote Taken on Page 25

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-239
OAL DOCKET NO. 7853-80
APP. NO. 6955-40

IN THE MATTER OF THE APPLICATION
OF PAUL J. GODISH FOR LICENSURE
AS A CASINO HOTEL EMPLOYEE
(FOOD & BEVERAGE CASHIER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission November 6, 1981, recommending that the application of Paul J. Godish for licensure as a casino hotel employee be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, and the exceptions to the Initial Decision filed by the Division of Gaming Enforcement on December 2, 1981 and the Applicant's response thereto filed December 8, 1981; and the Commission having resolved at its public meeting on December 15, 1981, to affirm and adopt the said Initial Decision and to grant the application for licensure subject to the condition that the Applicant provide proof of full payment of the fine imposed and termination from probation,

IT IS on this 16th day of December 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino hotel employee linense application of Paul J. Godish be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that issuance of the Applicant's casino hotel employee license be and hereby is conditioned upon proof of full payment of the fine previously imposed and termination from probation; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATE: December 16, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7853-80

AGENCY DKT. NO. 80-EA-239

PAUL J. GODISH,

Petitioner

v.

CASINO CONTROL COMMISSION,

Respondent

APPEARANCES:

CLIFFORD L. VAN SYOC, Esq. (Tomar, Parks, Seliger, Simonoff & Adourian, attorneys), for Applicant, Paul J. Godish

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

Record Closed September 25, 1981 Decided November 6, 1981

BEFORE R. JACKSON DWYER, ALJ:

The applicant Paul J. Godish filed a Personal History Disclosure (PHD) Form No. 4 with the Casino Control Commission (Commission) for licensure as a casino hotel employee pursuant to N.J.S.A. 5:12-91. The Division of Gaming Enforcement (Division) opposes the applicant's licensure because he pleaded guilty to gambling: bookmaking on a sporting contest, in violation of N.J.S.A. 2A:112-3, on December 14, 1979. The Division asserts that the offense is a per se statutory disqualifier under N.J.S.A. 5:12-86(c)(2), that the applicant has not affirmatively established his rehabilitaton under N.J.S.A. 5:12-91(d), and the applicant does not possess the requisite good character, honesty and integrity under N.J.S.A. 5:12-91(b).

The applicant was advised by the Commission on November 26, 1980, that based on a letter report of the Division dated, September 5, 1980, there was a "substantial possibility" that the Commission would deny his application, and that he had a right to a hearing. The matter was transmitted to the Office of Administrative for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on June 3, 1981. The record closed on September 25, 1981.

The essential facts are undisputed and can be narrated briefly. Applicant, Paul J. Godish, is 22 years old. The applicant attended Bridgeton and Vineland High Schools, graduating in 1976. The applicant then attended Cumberland County College for two years and received an Associate of Arts degree in 1978.

The applicant was arrested on September 27, 1978, at age 20, when a state police search of his vehicle, pursuant to a valid warrant, revealed that he possessed 32 football pool tickest and $64 in cash. On December 14, 1979, the applicant pleaded guilty to the charge of gambling: bookmaking on a sporting contest, a

violation of N.J.S.A. 2A:112-3, in the Salem County Superior Court. The trial judge sentenced the applicant to a suspended sentence, two years probation, and a $1,000 fine payable during the probationary term. The applicant has been making regular payments on the fine and presently owes approximately $350.

The applicant had been employed at the Resorts International Hotel Casino and the Brighton Hotel and Casino subsequent to his conviction. The applicant is presently unemployed; but, he has several job prospects in the casino industry, if he achieves permanent licensure.

There is no legal dispute between the parties that the crime of gambling: bookmaking on a sporting contest, a violation of N.J.S.A. 2A:112-3, constitutes a per se disqualifier for licensure under N.J.S.A. 5:12-86(c)(2) and N.J.S.A. 5:12-91(b). The parties further agree that, since the applicant's criminal offense comes under 5:12-86(c)(2), that conduct cannot also come under what is commonly referred to as the "inimical"clause under N.J.S.A. 5:12-86(c)(4).

The sole legal issues are whether the applicant has affirmatively established his rehabilitation, and his honesty, integrity and good character under the act.

N.J.S.A 5:12-91(d) sets forth the following eight specific criteria to be evaluated when a determination of rehabiliation is to be made:

Based upon uncontroverted testimony, I **FIND:**

(1) The nature and duties of the position applied for — Applicant has applied for licensure as a food and beverage cashier. Applicant will be responsible for the counting of cash taken in by the casino hotel. The position also involves the handling of a great number of paper transactions, such as book accounts, credit card slips, city ledgers and "stamp stubs." There are stringent in-house controls regulating the shortage of cash.

(2) The nature and seriousness of the offense — The applicant pleaded guilty to the charge of gambling: bookmaking on a sporting contest. The trial judge imposed a two- year suspended sentence, placed the applicant on probation, and imposed a $1,000 fine.

A conviction for illegal gambling is potentially a serious offense with respect to licensure in the casino industry because of its potential nexus to syndicated crime. The applicant's involvement consisted solely in distributing football pool tickets for his uncle, John Godish, and selling them to the applicant's aunts, uncles, parents, brothers and close friends. On one occasion, the applicant was approached by a Paul Monahan who desired to place high wages on the football pools. The applicant, after conferring with his uncle, declined to accede to Monahan's request.

(3) The circumstances under which the offense occurred - -Applicant's involvement in illegal gambling occurred over approximately a six- week period commencing at the beginning of the football season and terminating with his arrest on October 22, 1978. The applicant sold the football tickets at the instigation of his uncle, John Godish, and took other football tickets in lieu of cash as remuneration for services. The applicant's sales of football pool tickets appear to have occurred within a limited sphere of contacts. All proceeds were turned over to the applicant's uncle.

(4) The date of the offense — Applicant was arrested for offense on October 27, 1978. Applicant pleaded guilty to the offense on December 14, 1979. The applicant has not been arrested or convicted of any other criminal offense since the date of his arrest.

(5) The age of the applicant when the offense was committed — The applicant was born on August 21, 1958. His age at the time of his arrest on October 27, 1978 was 20 years and 2 months.

(6) Whether the offense was an isolated or repeated incident — The offense was ongoing from the beginning of the football season until applicant's arrest on October 27, 1978.

(7) Any social conditions which may have contributed to the offense — The applicant did not have a father the first 10 years of his life. There were 16 siblings in the family. The applicant's mother remarried and the applicant's stepfather suffered from alcohol and drug-related problems. Since applicant's uncle, John Godish, and his stepfather, David Snyder, were also charged with illegal gambling and received the same sentence as the applicant, all probabilities are that the applicant came under their bad influences, and lacked wisdom and judgment.

(8) Any evidence of rehabilitation . . . the recommendation of persons who have or have had the applicant under their supervision — The applicant

offered two witnesses, Derek Hall, his probation officer, and Noel Langley, his immediate supervisor at Resorts International, and certain letters of recommendation from prior employees.

Uncontroverted testimony by Derek Hall established that the applicant reported to him once a month with regularity, and that he was hardworking and amiable. Hall stated that if the applicant continued to behave as he had been over the past 18 months, he would either terminate the applicant's probationary period or make a recommendation to his superiors to that effect. Hall found no deficiency in the applicant's good character.

Uncontroverted testimony from Noel Langley established that applicant discharged his duties as a cashier in the food and beverage department at Resorts International Hotel Casino to his employer's satisfaction. The applicant was polite, courteous, diligent, hardworking and truthful. No consideration was ever given to terminating the applicant while he worked at Resorts International Hotel Casino.

The applicant also placed into evidence letters of recommendation from Gil Hawn, cashier-manager, of Resorts International Hotel Casino, and Kenneth M. Oeffler, head cashier, the Claridge, attesting to the fact that the applicant has the requisite good character and integrity to be hired for the position of food and beverage cashier if permanent licensure is secured.

Central to rehabilitation is an applicant's admission of prior wrongdoing, and a desire to change direction. The applicant testified candidly that he had made a mistake, and that he has severed his relationships with his uncle, John Godish, and his stepfather, David Snyder. The applicant will never again be involved in selling football pool tickets or, indeed, any illegal gambling activities.

I CONCLUDE that the applicant has demonstrated by clear and convincing evidence his rehabilitation within the contemplation of N.J.S.A. 5:12-91(d).

N.J.S.A. 5:12-89(b)(2) burdens an applicant to show by "clear and convincing evidence (his) reputation for good character, honesty and integrity." Character witnesses and documentary evidence attest to the fact that the applicant does not presently have a flawed character or a deficiency in honesty and integrity, and that he is suitable for licensure as a food and beverage cashier.

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

It is, therefore, ORDERED that the application of Paul J. Godish for licensure as a casino hotel employee (food and beverage cashier) be GRANTED.

This recommended decision may be affiremd, 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.

Nov 6, 1981
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

Nov. 10, 1981
DATE

Nancy O. Finkle
~~DIVISION OF MOTOR VEHICLES~~
Casino Control Commission
Assistant Counsel

Mailed To Parties:

11-12-81
DATE

Ronald I. Parbertz
FOR OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-37
OAL DOCKET NO. CCC 001737-81
APP. NO. 7688-21

IN THE MATTER OF THE APPLICATION
OF RODNEY E. HILL FOR LICENSURE
AS A CASINO EMPLOYEE
(SECURITY OFFICER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission November 4, 1981, recommending that the application of Rodney E. Hill for licensure as a casino employee be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed; and the Commission having resolved at its public meeting on December 22, 1981, to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this 14th day of December 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: December 29, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1737-81

AGENCY DKT. NO. 81-EA-37

IN THE MATTER OF THE APPLICATION OF RODNEY E. HILL FOR LICENSURE AS A CASINO EMPLOYEE (SECURITY OFFICER)

Record Closed: September 21, 1981 Decided: November 2, 1981

APPEARANCES:

David G. Sciarra, Esq., (Cape-Atlantic Legal Services) for the Applicant, Rodney E. Hill

Rosemary Quinn, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for the Respondent, Division of Gaming Enforcement, Department of Law and Public Safety

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

STATEMENT OF THE CASE

This matter concerns the application of Rodney E. Hill, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (security officer) pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of its contention that the applicant had failed to disclose his criminal record, pursuant to

N.J.S.A. 5:12-86b and lacked the requisite good character, honesty and integrity for licensure under N.J.S.A. 5:12-89b(2).*

PROCEDURAL HISTORY

Mr. Hill filed his application with the Commission on June 15, 1979 (P-2). The applicant was advised by letter from the Commission, dated March 12, 1981, that, based upon information received by letter from the Division, dated January 26, 1981, there was a "substantial possibility" the Commission would deny his application and that he had a right to a hearing. Mr. Hill requested a hearing, and the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 10, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Hill is 27 years of age. He has never known his father. He lived with his maternal grandmother in Baltimore, Maryland until age 11. After his grandmother's death, he lived with his mother in Pleasantville, New Jersey. After the applicant had completed the 11th grade, his family moved to Baltimore. He graduated from Northwestern High School in 1973.

The applicant was involved in an incident on April 13, 1973, in Baltimore (R-1). He was arrested and charged with assault and battery. Mr. Hill was 18 years of age at the time of the incident. The circumstances surrounding the incident were in dispute and will be discussed infra. The charges were dismissed for lack of prosecution.

Thereafter, Mr. Hill returned to Pleasantville.

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*The Division withdrew its objections to licensure, under N.J.S.A. 5:12-86c(4) and 86g, which rendered moot the issue of rehabilitation under Section 90h.

The applicant was involved in an incident on December 4, 1973 in Pleasantville. He was arrested and charged with possession of under 25 grams of marijuana in violation of N.J.S.A. 24:21-20A(4). The court conditionally discharged Mr. Hill. Upon application, the conditional discharge was vacated in 1980. The applicant was retried in the Pleasantville Municipal Court and found guilty. However, the conviction was reversed on March 24, 1981 (P-3).

On March 16, 1974, Mr. Hill, at age 20, entered the United States Army. The applicant was honorably discharged on March 25, 1977. Thereafter, he returned to Atlantic City.

Between June 1977 and April 1979, Mr. Hill was employed at various positions, with the exception of the period from January until May 1978, when he was a student at Atlantic Community College. Between October 1979 and January 1980, the applicant attended and successfully completed a training program with the Kelly Security Academy in Atlantic City.

Mr. Hill was employed by the Boardwalk Regency Corporation (BRC) as a hotel security guard in May 1979. During February 1980, as a result of an incident which will be discussed in greater detail infra, the applicant was put on leave and subsequently suspended from duty. In June 1980, he voluntarily submitted his resignation, upon request.

Mr. Hill was involved in an incident on February 16, 1980, in Atlantic City. He was arrested and charged with possession of a weapon without a permit, in violation of N.J.S.A. 2A:150-41, possession of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20A(1), and possession of under 25 grams of marijuana in violation of N.J.S.A. 24:21-20A(4). The circumstances surrounding the incident were in dispute. The applicant successfully completed a Pretrial Intervention Program. Accordingly, the charges against him were dismissed on July 8, 1981 (P-1).

Since he left BRC, the applicant has been employed as a security officer for various public agencies.

Mr. Hill filed his Personal History Disclosure Form (P.H.D.F.) dated April 23, 1979, with the Commission on June 15, 1979 (P-2). In response to Question No. 46, the

applicant stated that he had not "been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction."

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

(B) DISPUTED FACTS

In dispute was the extent of Mr. Hill's involvement in the three incidents and his failure to disclose these incidents since he was arrested and charged with criminal offenses.

In regard to his arrest in Baltimore, Mr. Hill testified that he was with a friend and the friend's girlfriend. The friend and the girlfriend were involved in a fight. They were arrested and Mr. Hill was taken along.

The police report (R-1) indicated that three males, one of whom was the applicant, took money from and physically assaulted a female, although an Anthony Parker was identified as the primary offender. The applicant was 18 years of age and the other two males were 17 and 15. The female was 22 years of age. Mr. Hill was arrested only as an accomplice.

Although the applicant's version of the incident differs somewhat from the police report, they are generally compatible. There was no indication that the applicant took any money from or personally assaulted the victim.

In regard to the Pleasantville incident, the applicant testified that there was a 9:45 p.m. curfew in effect in Pleasantville at that time. He had joined a group of people on a street corner. The members of the group were stopped by police during an identification check. Another person threw something on the ground, which was apparently marijuana, and the entire group was arrested. Some time after the arrest, Mr. Hill had occasion to speak with the Municipal Court Judge in the judge's private law offices regarding the matter. The applicant recalled that he advised the judge of his intention to enter the Army, to which the judge responded favorably. The applicant then joined the Army and never appeared in court regarding the charges. During his first five

months in the Army he was stationed at Fort Dix. The applicant believed the charges had been dropped because he heard nothing further from the municipal court.

The third incident involved the applicant's arrest on February 16, 1980, in Atlantic City. The applicant testified that he had agreed to meet a friend to clean a souvenir gun. While enroute to a friend's residence, he and a friend stopped at a bar for a drink. His friend gave him a bag, the contents of which were unknown to the applicant, to hold while the friend went outside to speak with someone. A short while later, the applicant left the bar in order to return the bag to his friend, who was outside the bar and was speaking with a person unknown to him, who turned out to be a police officer in an unmarked vehicle. The applicant was arrested.

The Division offered the arrest report regarding the incident (R-2). Its narrative of the incident differs from the version given by the applicant. The arrest was made at 2:05 a.m. in the parking lot of a bus station. Further, the applicant was not only in possession of a weapon, but he possessed two live rounds of ammunition. Also, both persons arrested each possessed controlled dangerous substances and marijuana.

Although Mr. Hill's testimony may, in part, be considered compatible with the police report, there are some significant differences. The applicant attempted to convey the impression that the weapon which he possessed was a souvenir and had no lethal potential. The fact that he possessed two live rounds of ammunition, without any further explanation, establishes a different inference, i.e., that the weapon was other than a souvenir. Likewise, the applicant gave the impression that he had no knowledge that the bag his friend gave him contained drugs. However, it is apparent from the police report that both persons separately possessed drugs. Again, in the absence of any further explanation by the applicant, the inference to be drawn is that the applicant individually possessed drugs. Therefore, I am not convinced, as the applicant would have me believe, that his possession of a weapon and drugs was purely harmless and without adverse reflection upon his character.

Mr. Hill testified that because of difficulties he had completing the P.H.D.F. he enlisted the assistance of his aunt, Annette Parker. Although the applicant had completed at least one other P.H.D.F. and made three or four attempts to complete the subject P.H.D.F., unspecified problems developed which caused him to seek assistance. According to the applicant, Ms. Parker read the questions to him and he provided the

information to be placed on the P.H.D.F. He signed the application and initialed each page.

The applicant testified that Ms. Parker read Question No. 46 to him as whether he had ever been "arrested and convicted." Because the charges in Baltimore had been dismissed and, as he contended, he was unaware of the disposition of the Pleasantville charges, he replied in the negative. Nevertheless, the applicant conceded that he was aware of the two arrests at the time he completed his P.H.D.F.

Ms. Parker was not called, nor was any explanation offered for the applicant not calling her as a witness.

The applicant further testified that from discussions with co-workers at BRC, he learned that his failure to disclose his two prior arrests might have an adverse impact upon his application for licensure. However, the applicant took no action to advise the Commission of his claimed oversight or otherwise correct his P.H.D.F.

During February 1980, the applicant was interviewed by telephone by Division Investigator Carl Bodenschatz. At that time, Investigator Bodenschatz had been employed by the Division for a period of one month. The investigator testified that he read Question No. 46 to Mr. Hill, that he asked and was advised the applicant understood the question and that the applicant denied ever being arrested or charged with any offense. The investigator then confronted the applicant with the Baltimore and Pleasantville arrests. In reply to an inquiry why the arrests had not been disclosed, the applicant stated that he did not believe it was required because they were dismissed. Thereafter, Mr. Hill denied that there were any other arrests. Although Investigator Bodenschatz testified, based upon his recollection, that the telephone interview was conducted subsequent to the February 16, 1980 arrest, there was no evidence upon which a date certain could be established.

The investigator again contacted Mr. Hill by telephone during August 1980 concerning his failure to disclose the Atlantic City arrest. The applicant responded that he did not know why he had not disclosed that arrest during the first telephone interview.

Mr. Hill testified that he did not disclose to Investigator Bodenschatz the fact of his arrest on February 16, 1980, upon the advice of counsel not to discuss the matter

with anyone. However, he did not manifest such a reason to the investigator during either telephone interview.

I am not persuaded to accept the testimony of Mr. Hill regarding the non-disclosures of his arrests. Question No. 46 reads: "Has you or any member of your immediate family, (as defined on page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction?" Given the fact that Mr. Hill is a high school graduate and can read and write, filled out at least one P.H.D.F. by himself, made at least three attempts to complete the subject P.H.D.F. and had Ms. Parker read the question to him before he supplied the information, his explanation that he understood the question to say "arrested and convicted" is not believable. Even if he did not, he certainly should have understood the question. The applicant's explanation is further undermined by his denial of any arrests to Investigator Bodenschatz during the telephone inquiry of February 1980. Further, although it is not possible to find that the applicant was interviewed by the investigator at a time subsequent to his arrest on February 16, 1980, his explanation at the hearing, that he did not disclose this arrest upon the advice of counsel, although plausible, was not consistent with the explanation he gave to the investigator in August 1980, at a time when his recollection of the events should have been more fresh.

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

1. The applicant did not commit an assault or robbery in Baltimore in 1973; however, he was with and observed a friend assault and rob the victim.

2. Because of his reliance upon his discussions with the Municipal Court Judge in regard to the 1973 incident in Pleasantville, and his entry into the U.S. Army, the applicant was unaware of the entry of the conditional discharge.

3. On February 16, 1980, in Atlantic City, the applicant was in possession of a weapon, two live rounds of ammunition and unlawful drugs.

4. The applicant received the assistance of a Ms. Annette Parker in the completion of his P.H.D.F.

5. Ms. Parker read the questions from the P.H.D.F. to the applicant, who then supplied the information to be included on the application.

6. The applicant signed the P.H.D.F. and initialed each page.

7. The applicant had made three attempts to complete the subject P.H.D.F.

8. The applicant recalled the 1973 arrests in Baltimore and Pleasantville at the time he completed his P.H.D.F.

9. The applicant had personally completed at least one other P.H.D.F.

10. While employed at BRC, the applicant learned that his non-disclosure on his P.H.D.F. of his two 1973 arrests might adversely affect his application for licensure. However, he did not notify the Commission or the Division of his omission.

11. During his first telephone interview with Investigator Bodenschatz in February 1980, the applicant did not disclose the two 1973 arrests.

12. The applicant advised Investigator Bodenschatz that he had not disclosed the two 1973 arrests because of his belief that they did not have to be disclosed in the absence of a conviction. However, the applicant did not advise the investigator that a third party had completed the application, which was his testimony at the hearing.

13. The applicant never manifested that he was acting upon the advice of counsel as his excuse for not disclosing the 1980 arrest in Atlantic City to Investigator Bodenschatz.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succinctly described the purposes for the inclusion of Section 86b within the act and its application in In the matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1275-79

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

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80(a), (b) and (c); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

An applicant is required to provide all material facts when his application for licensure is submitted. "Material" includes both positive and negative information. N.J.S.A. 5:12-86b penalizes the mere failure to provide any fact material to qualification. The materiality, weight and significance of the information provided are thereafter

evaluated by the Commission under Section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his qualifications to the satisfaction of the Commission. Arrests and charges of criminal violations are facts material to qualification for licensure.

Mr. Hill argued that his nondisclosures of his 1973 arrests and charges were excusable, and that he should not be denied licensure under N.J.S.A. 5:12-86b, because of the miscommunications regarding the requirements of the P.H.D.F. between himself and the third party who actually completed the application.

The Commission has held in In the matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 2252-79 (November 15, 1979), modified Casino Control Commission, 79-EA-10 (March 20, 1980), at 7-10, that applicants for licensure who fail to disclose information material to licensure on their personal history disclosure forms will not be allowed to avoid disqualification from licensure based upon reliance upon third parties. Under such circumstances, the Commission will strictly apply N.J.S.A. 5:12-86b and deny licensure. Id. at 10. Therefore, assuming arguendo that Mr. Hill's reliance upon Ms. Parker for assistance in completing his P.H.D.F. was believable, such reliance, when he was fully capable of verifying the accuracy and completeness of the information provided, cannot excuse the nondisclosures and avoid disqualification from licensure. In any event, Mr. Hill's claim of reliance upon Ms. Parker for the accuracy and completeness of his P.H.D.F. was not reasonable.

The applicant should have known that Question No. 46 required disclosure of arrests and charges individually, and he was fully capable of verifying the information included on his P.H.D.F. The applicant was a high school graduate, had prepared and previously submitted another P.H.D.F. and had made three attempts to prepare the subject P.H.D.F., in addition to having it read to him by Ms. Parker. The question asked for far more than whether an applicant has been "arrested and convicted." Under the circumstances, such a reading or interpretation of the question is not reasonable. Further, the applicant's continuing conduct subsequent to the filing of his P.H.D.F. reveals no disclosure at any time of any portion of his arrest record. By his own admission he became aware of potential difficulties during the course of his employment at BRC,

yet he took no corrective action. Also, he did not reveal the arrests to Investigator Bodenschatz. There was no evidence to support the applicant's contention that the nondisclosures were the result of ignorance or inadvertence, and, therefore, were excusable.

I **CONCLUDE** that the failure of Mr. Hill to disclose both 1973 arrests on his P.H.D.F. mandates that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86b.

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

Under section 89b(2) of the act, Mr. Hill was required to establish, by clear and convicing evidence, his reputation for good character, honesty and integrity. Resorts, supra, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In the matter of the Application of Boardwalk Regency Corporation for a Casino License, ____ N.J. Super. ____ (App. Div. 1981) slip opinion at 15, In the matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980), at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 19.

The Commission has also held that the disqualification criteria found in N.J.S.A. 5:12-86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). William Gonzalez, supra, at 8. Therefore, the conclusion that Mr. Hill failed to disclose his 1973 arrests in violation of Section 86b of the Act automatically estops the applicant from meeting his burden under Section 89b(2).

In addition, Mr. Hill's involvement in the incident of February 16, 1980, in Atlantic City negatively reflects upon his character, honesty and integrity. I cannot

accept the explanation of the underlying circumstances offered by the applicant, that his involvement in the incident was purely innocent. Rather, he was in possession of a weapon with live ammunition and also individually in possession of drugs. Further, this incident occurred at a time when the applicant was employed at BRC under a temporary hotel employee license and while his application for permanent licensure was pending.

I **CONCLUDE** that Mr. Hill has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity.

DISPOSITION

Therefore, I **ORDER** that the application of Rodney E. Hill for licensure as a casino employee (security) be **DENIED.**

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

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

November 2, 1981
DATE

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

Receipt Acknowledged:

November 4, 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

11-6-81
DATE

Ronald I. Parkertz
OFFICE OF ADMINISTRATIVE LAW

plb

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

P-1 State of New Jersey v. Rodney Eugene Hill, Order of Dismissal under Rule 3:28, July 8, 1981 (3 pages)

P-2 Personal History Disclosure Form - 2, Rodney Eugene Hill, April 23, 1979 (30 pages)

P-3 State of New Jersey v. Rodney Eugene Hill, Appeal No. 49186, Order, March 24, 1981 (2 pages)

R-1 Baltimore Police Department - Investigation Report, April 13, 1973 (5 pages)

R-2 Atlantic City Police Department - Arrest Report and Investigation Report, February 16, 1980 (2 pages)

EXHIBITS NOT ADMITTED INTO EVIDENCE

P-4 I.D. Letter to Honorable Joseph P. Lordi, Chairman, Casino Control Commission, from Deputy Attorney General Rosemary Quinn, January 26, 1981 (3 pages)

WITNESS LIST

For the Applicant:

Rodney E. Hill

For the Division:

Carl Bodenschatz

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-179
OAL DOCKET NO. CCC 6838-80
APP. NO. 11487-21

IN THE MATTER OF THE APPLICATION
OF RONALD A. INGENITO FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein filed on July 24, 1981, recommending that the application be denied; and the Commission having considered the entire record of these proceedings, the Initial Decision, and the exceptions and comments filed by each of the parties; and the Commission having resolved at its public meeting on September 23, 1981, to affirm and adopt the said Initial Decision and to DENY the application for licensure,

IT IS on this 25th day of September 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the license application of Ronald A. Ingenito be and hereby is DENIED based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 25, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6838-80

AGENCY DKT. NO. 80-EA-179

IN THE MATTER OF:

RONALD A. INGENITO,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: June 8, 1981

Received by Agency: July 24, 1981

Decided: July 23, 1981

Mailed to Parties: July 28, 1981

APPEARANCES:

Alfred J. Bennington, Jr., Esq., (Blatt, Blatt, Mairone and Biel, attorneys) for Applicant

Jane G. Lafferty, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for Respondent

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Ronald A. Ingenito to the Casino Control Commission for a license permitting him to work in a casino as a craps dealer. The Division of Gaming Enforcement has objected to licensure of the applicant. At issue is whether the applicant possesses sufficient business ability and casino experience so as to establish the reasonable liklihood of success and efficiency in the position of craps

dealer. Also at issue is whether the applicant should be disqualified from licensure on the ground that he has failed to reveal facts material to his qualifications for licensure. If not so disqualified, the remaining issue to be determined is whether the applicant has sustained his affirmative burden of establishing by clear and convincing evidence his reputation for good character, honesty and integrity.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the applicant by letter report to the Casino Control Commission, dated September 9, 1980. The applicant was advised by letter from the Casino Control Commission, dated October 8, 1980, that there was a "substantial possibility" that the Commission would deny his application. The applicant requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The applicant is a 28-year-old resident of Brigantine, New Jersey, who was formerly employed as a craps and blackjack dealer at the Circus-Circus Casino in Reno, Nevada. The applicant acquired his Nevada casino experience following his successful completion of craps and blackjack dealing courses at the New York School of Gambling in June 1978. The applicant returned to New Jersey from Nevada in July 1979, after accepting an offer of employment from Bally's Park Place Casino in Atlantic City, New Jersey. While his application for licensure was pending, the applicant worked for approximately one year as a clerk in the payroll department of Bally's Park Place Casino. During the last seven months, the applicant has been employed by the Atlantic Limousine Company as a driver.

In connection with his application for licensure, the applicant filed a Personal History Disclosure Form with the Casino Control Commission on August 14, 1979 (Exhibit P-2). In response to question No. 46 on his disclosure form, which requires disclosure of the applicant's criminal or disorderly persons arrest and conviction record, the applicant

revealed that he had been arrested in Florida in 1971 for possession of marijuana. This charge against the applicant was dismissed. The applicant failed to reveal on his personal history disclosure form that he had been arrested on February 6, 1976, in Paramus, New Jersey, for the offense of shoplifting, in violation of N.J.S.A. 2A:170-97. The applicant also failed to disclose his February 11, 1976 conviction upon his plea of guilty on this shoplifting charge. There are no other criminal or disorderly persons arrests or convictions on the applicant's record.

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

One of the material factual disputes existing in this matter concerns the amount of craps dealing experience acquired by the applicant while he was employed in the Nevada casino industry. The applicant testified that he worked primarily as a craps dealer at the Circus-Circus Casino in Reno, Nevada, from June 13, 1978 until July 15, 1979. These dates of employment were corroborated by a letter dated October 16, 1980, from Kathi Ober, a personnel clerk at the casino (Exhibit P-1). The applicant acknowledged that he occasionally dealt blackjack during the 13 months that he was employed by the Nevada casino. However, the time spent dealing blackjack consisted of no more than approximately one hour per day over the course of two and one-half or three months. The remainder of the applicant's work day would have been spent dealing craps. Kutlun Tsang, who is presently employed as a craps floorperson at Bally's Park Place Casino, testified that he worked with the applicant on the swing shift at the Circus-Circus Casino. He agreed that the applicant dealt craps during most of the time he worked for the Nevada casino.

Division of Gaming Enforcement Investigator Thomas Rossi testified that he was told by Circus-Circus Personnel Clerk Sue Canable that the applicant was employed by the casino as a craps and blackjack dealer from July 1, 1978 until July 15, 1979. The casino did not maintain records concerning how much time was spent by the applicant dealing either of the two games. Unlike the applicant, the Division of Gaming Enforcement offered no supporting documentation concerning the applicant's dates of employment in Nevada.

The remaining factual dispute in this matter concerns the reason for the applicant's failure to reveal his entire arrest and conviction record on his personal history disclosure form. The applicant explained that he failed to disclose his 1976 arrest and conviction for shoplifting because he had his 1971 marijuana arrest foremost in his mind and he forgot about the shoplifting incident. When he was interviewed by Investigator Rossi in April 1980, the applicant admitted his shoplifting conviction and explained that he had not disclosed it on his personal history disclosure form because he had completely forgotten about it. The applicant denied telling the investigator that he had misread question No. 46 on the disclosure form, which requires complete disclosure of his arrest and conviction record.

Contrary to the applicant's denial, Investigator Rossi testified that the applicant's explanation for his failure to disclose his arrest and conviction for shoplifting was that he had misread the question on the personal history disclosure form and that he had thought the marijuana arrest to be more important. The testimony of Investigator Rossi was straightforward and sincere, and entirely worthy of credit. Having had ample opportunity to observe the witnesses' demeanor and assess their credibility, I accept Investigator Rossi's version of the explanation offered by the applicant during the April 1980 interview.

The applicant's arrest and conviction for shoplifting occurred only three years prior to the filing of his personal history disclosure form with the Casino Control Commission. Standing alone, the applicant's explanation that he forgot all about his shoplifting arrest and conviction, yet remembered a dismissed marijuana charge occurring eight years earlier, is inherently improbable and is, therefore, not easily accepted. When this explanation for nondisclosure is shown to be in direct conflict with the applicant's earlier explanation offered to Investigator Rossi, the applicant's lack of candor becomes clear. As a consequence of the applicant's lack of candor, I am unable to accept his contention that the failure to disclose his entire arrest and conviction record was inadvertent.

The credible testimony of several character witnesses established the applicant's present reputation for good character, honesty and integrity. This testimony notwithstanding, the applicant's intentional failure to disclose material facts impacts adversely upon his attempt to demonstrate that he actually possesses the degree of good character, honesty and integrity requisite for licensure as a casino employee.

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

1. During his employment with the Circus-Circus Casino in Reno, Nevada, the applicant acquired at least nine months of experience dealing craps.

2. The arrest and conviction information which the applicant failed to disclose on his personal history disclosure form was significant and material to the evaluation of his qualifications for licensure.

3. The failure of the applicant to disclose on his personal history disclosure form his 1976 arrest and conviction for shoplifting resulted from the applicant's conscious disregard of the request for such information, rather than from inadvertence.

CONCLUSIONS OF LAW

Pursuant to N.J.S.A. 5:12-90b, an applicant for a casino employee license may establish the reasonable liklihood of his success and efficiency in the position sought by a showing of sufficient casino job experience. The Casino Control Commission has proposed specific regulations relating to minimum experiential requirements for casino employees. If adopted, the experiential requirement for a craps dealer would be satisfied if the applicant were employed for at least nine months as a craps dealer (see proposed N.J.A.C. 19:41-7.18(a)2, at 12 N.J.R. 225). The credible proofs in the entire record establish the applicant's satisfaction of the proposed minimum experiential requirement of at least nine months employment as a craps dealer.

N.J.S.A. 5:12-86b provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification. The credible proofs in the entire record clearly establish that the applicant intentionally failed to disclose material facts concerning his arrest and conviction record on his personal history disclosure form. N.J.S.A. 5:12-89b(2), as incorporated in section 90b of the Casino Control Act, requires that an applicant for a

casino employee license demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. The applicant is unable to demonstrate that he actually possesses these qualities as a result of his intentional failure to disclose material facts.

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises. . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the applicant is disqualified from receiving a casino employee license to work as a craps dealer, despite his satisfaction of the minimum experiential requirement, based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b, and based upon his failure to prove by clear and convincing evidence his good character, honesty and integrity, within the meaning of N.J.S.A. 5:12-86a.

ORDER OF DISPOSITION

It is, therefore, ORDERED that the applicantion of Ronald A. Ingenito for licensure as a casino employee be DENIED.

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

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

July 23, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

July 24, 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 28, 1981
DATE

OFFICE OF ADMINISTRATIVE LAW

ij

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-154
OAL DOCKET NO. CCC 6731-80
APP. NO. 10614-21

IN THE MATTER OF THE APPLICATION
OF ELMER L. JONES FOR LICENSURE
AS A CASINO EMPLOYEE
(SURVEILLANCE PERSON)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission November 6, 1981, recommending that the application of Elmer L. Jones for licensure as a casino employee be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions or objections having been filed ; and the Commission having resolved at its public meeting on December 22, 1981, to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this day of 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: _____
THOMAS N. AURIEMMA
DEPUTY DIRECTOR, LEGAL DIVISION

DATED: _____

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6731-80

AGENCY DKT. NO. 80-EA-154

ELMER L. JONES,

Applicant

v.

CASINO CONTROL COMMISSION,

Respondent

APPEARANCES:

RICHARD E. McMAHON, Esq. (Console, Marmero and Livolsi, attorneys), for the applicant, Elmer L. Jones

JANE G. LAFFERTY, Deputy Attorney General (James R. Zazzali, Attorney General of New Jersey), for the Respondent, Division of Gaming Enforcement, Department of Law and Public Safety

Record Closed October 9, 1981 Decided November 4, 1981

BEFORE R. JACKSON DWYER, ALJ:

The applicant, Elmer L. Jones, filed a Personal History Disclosure form (PHD) No. 2 with the Casino Control Commission (Commission) on July 23, 1980 for licensure to work as surveillance employee. Based upon certain unfavorable information contained in a letter report of the Division of Gaming Enforcement (Division), dated July 16, 1980, the applicant was advised by a letter dated September 18, 1980 from the Commission's general counsel that there was a "substantial possibility" that the Commission would deny his application. The applicant requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on June 29, 1981 at the Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record closed on October 9, 1981.

The essential facts are undisputed and can be briefly narrated as follows: following graduation from Atlantic City High School, the applicant served in the United Stated Army from 1952 to 1954, receiving an honorable discharge. He worked at odd jobs until he was hired as a patrolman by the Atlantic City Police Department in April 1958. He was promoted to detective in 1962, and for the next 12 years was assigned to general law enforcement activities including juvenile delinquency, prostitution, robbery and homicide.

On or about April 13, 1973, the applicant and his partner were assigned a municipal vehicle to transport an extradited felon from Philadelphia to Atlantic City. On that date, the applicant had a brief conversation in a parking lot with Lee A. Cohen and agreed to pick up an elderly woman in Philadelphia and transport her to one of Cohen's rooming houses in Atlantic City. The applicant testified that he made no attempt to look for the woman.

On or about July 27, 1973, the applicant took $10 from Cohen in the men's room at police headquarters. At the time, Cohen had become a state police informant and passed the money while he was bugged. According to the applicant, there was no connection between that $10 gift and Cohen's prior request for favor on April 13, 1973. The applicant testified that, "he (Cohen) just gave it to me for no

reason at all." The applicant also added that "Well, I didn't have a reason for not taking it. I didn't owe him for taking no favors or anything, so why not? I like money." The applicant did not report to his superiors that Cohen asked him for a favor on April 13, 1973 or that Cohen gave him $10 on July 27, 1973.

Because of Cohen's discovered relationships with numerous Atlantic City police officers, the applicant was called to testify before the grand jury. The applicant gave false testimony under oath to the grand jury and denied that he had received any money from Cohen.

The applicant was indicted by the State grand jury for the following offenses: (1) Unlawful taking of money, in violation of N.J.S.A. 2A:105-1; (2) Conspiracy, in violation of N.J.S.A. 2A:98-1; (3) Misconduct in office, in violation of N.J.S.A. 2A:85-1; and (4) False swearing, in violation of N.J.S.A. 2A:131-4.

The applicant entered into a plea bargain arrangement with the State of New Jersey and pleaded guilty to misuse of city property, a disorderly persons offense, in violation of N.J.S.A. 2A:170-43. The applicant received a six- month, suspended jail term, two years non-reporting probation, and a $300 fine as a result of this conviction. In return, the State of New Jersey moved to dismiss all indictable offenses. The applicant then resigned from the Atlantic City Police Department.

After the applicant's suspension, he worked at jobs, including employment as a surveillance person at Bally Park Place Casino until his termination in October 1980 pending the outcome of this hearing.

Aside from the 1973 incidents involving Cohen and false swearing before the grand jury, the applicant has maintained an unblemished record.

The disputed facts principally concern themselves with whether the applicant is presently rehabilitated. The applicant called two witnesses to testify about his honesty, integrity and good character. Henry Tyner, Captain of Detectives, Atlantic City Police Department, testified that he was familiar with the investigation of certain police officers in his department in 1973. He strongly disapproved of certain investigative techniques used to obtain evidence against those police officers. The applicant volunteered his services to assist a boys' club after his termination from the department. Captain Tyner's association with the applicant, both professional and social, had spanned many years. Captain Tyner was aware that the applicant had received $10 from a Lee A. Cohen for some service that Cohen wanted, and that the applicant pleaded guilty to a disorderly persons offense. Captain Tyner felt that "it could have happened to anyone in those circumstances, any man, regardless."

Captain Tyner had no knowledge that the applicant gave false testimony before a grand jury; however, assuming that to be true, Captain Tyner felt that the applicant "did it in defense of a career that has been taken from him, and based upon the circumstances, at that particular time, he probably didn't have much of a choice." Captain Tyner felt the applicant was a person of honesty, good character and integrity. Captain Tyner recommended the applicant to Bally Park Place for employment as a surveillance employee after his termination from the police department.

Bernard Cresswell, a director of a program for housing rehabilitation in Atlantic City, testified that he has known the applicant for approximately 11 years and that they frequently socialized together. Cresswell testified that he admired the applicant "tremendously" because "he didn't fall apart after his termination from the police department." Cresswell related that the applicant took a construction job to maintain his family and its standard of living.

Cresswell testified that in his opinion the applicant possesses the highest honesty, integrity and good character despite the fact that the applicant gave false testimony before the grand jury. Cresswell opined . . . "I don't think there is a person yet that hasn't ever told a lie."

A.

IS THE APPLICANT DISQUALIFIED FOR LICENSURE BY REASON OF HIS COMMISSION OF CERTAIN ACTS HELD TO CONSTITUTE AN OFFENSE UNDER N.J.S.A. 5:12-86(g) DESPITE THE FACT THAT HIS CONDUCT HAS NOT BEEN PROSECUTED AS ONE OF ENUMERATED OFFENSES UNDER N.J.S.A 5:12-86(c) OF THE ACT.

The applicant was indicted on the following charges: unlawful receiving, a violation of N.J.S.A. 2A:105-1; conspiracy, a violation of N.J.S.A. 2A:98-1 and 2; misconduct in office, a violation of N.J.S.A. 2A:85-1; as well as false swearing, a violation of N.J.S.A. 2A:131-4. These charges were disposed of by way of applicant's plea to N.J.S.A. 2A:170-43, misuse of city property, a disorderly persons offense.

The applicant made an admission that he gave false testimony before the grand jury regarding his relationship with Lee Cohen. That admission establishes a violation of N.J.S.A. 2A:131-4, a per se disqualifier under the statute, N.J.S.A 5:12-86(c)(2).

I would have to resort to conjecture and speculation to establish the necessary elements of the other indictable offenses. While money gifts are not usually exchanged in the men's room at police headquarters unless some quid pro quo has occurred, nevertheless, the record only contains the uncontroverted testimony of the applicant that the money was a gift from Cohen, and that there was no nexus between that gift and the applicant's prior promise, many months before, to transport an elderly lady in a municipal vehicle from Philadelphia to Atlantic City.

I CONCLUDE that the Division has established by a preponderance of the credible and believable evidence that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86(g), by virtue of the applicant's admission of false swearing, in violation of N.J.S.A. 2A:131-4, a per se statutory disqualifier under N.J.S.A. 5:12-86(c) of the act.

B.

DOES THE APPLICANT'S CRIMINAL RECORD MAKE HIS LICENSURE AS SURVEILLANCE EMPLOYEE INIMICAL TO THE POLICIES OF THE CASINO CONTROL ACT UNDER N.J.S.A. 5:12-86(c)4.

N.J.S.A. 5:12-86(c)4 provides in pertinent part that:

> The Commission shall deny a casino license to any applicant who is disqualified on the basis of any . . . offense which indicates that licensure of the applicant would be inimical to policy of the act and to casino operation . . ..

In the matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth certain criteria to be applied in detemining whether an offense is inimical to the policies of the act. The Commission stated (at page 15):

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offenders conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in the light of the circumstances, indicate that participation by that person either would justifiably undermine public confidence and the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities, in the conduct of gaming with 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, provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intended purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operations," and by the exclusion from participation in casino gambling of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

Justice Handler also made similar observations in Knight v. City of Margate, _____ N.J. _____ (1981) (Slip opinion at 7-8).

The Division contends that the applicant's conduct which lead to his indictment, and which charged him with the offenses of N.J.S.A. 2A:98-1 and 2;

N.J.S.A 2A:85-1; N.J.S.A. 2A:105-1; and N.J.S.A. 2A:131-4, together with his conviction for a violation of N.J.S.A. 2A:170-43, establishes that licensure of the applicant would be inimical to the policies of the act. The applicant disputes that premise and asserts that there will never be a replication of similar conduct.

The applicant, while occupying a position of public trust and confidence, gave false testimony to a grand jury under oath. While on duty as a police officer, he also took money from a Lee A. Cohen, a person of unsavory reputation, in the Atlantic City community. These acts cannot be condoned.

The applicant now seeks licensure as a surveillance employee. In this position he would be required to make background and criminal checks on other applicants for licensure. Such a position requires the utmost honesty and integrity. Public confidence and trust in the credibility and integrity of the regulatory process would not be enhanced if the applicant were employed in such a position.

I CONCLUDE the Division has established by a preponderance of the credible and believable evidence that the licensure of the applicant as a surveillance employee would be inimical to the policies of the act.

C.

HAS THE APPLICANT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE HIS REHABILITATION PURUSANT TO N.J.S.A 5:12-90h.

Notwithstanding the provision of N.J.S.A. 5:12-86(g), which subjects an applicant to mandatory disqualification from licensure, an applicant for a casino license can overcome this disqualification by establishing by clear and convincing evidence his rehabilitation.

Section 90h of the act provides:

> 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 — Applicant seeks licensure as surveillance person. In that position he will be required to do background checks of employment and criminal records of other applicants for licensure. The position requires utmost integrity and honesty.

(2) The Nature and the seriousness of the offense — The applicant gave false testimony before a grand jury, and, while on duty as a police officer, accepted money from a Lee A. Cohen, a person of unsavory character in the Atlantic City community and pleaded guilty to use of city property, a violation of N.J.S.A. 2A:170-43, a disorderly persons offense. Applicant's conduct is antithetical to the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations.

(3) The circumstances under which the offense occurred— Applicant took money from Lee A. Cohen in the men's room at police headquarters. The applicant stated when asked why he took the money "well, I didn't have a reason for not taking it. I didn't owe him for taking no favors or anything, so why not? I like money." The applicant was also asked if he was in the habit of taking money from anyone who happened to offer it to him. The applicant replied, "well, if anyone offered me money, I think I would take it." Applicant further stated that he did not feel that his acceptance of money from Lee A. Cohen compromised him in any way as a police officer.

Applicant further stated that he gave false testimony before the grand jury because he was apprehensive that he would lose his job as a police officer.

(4) The date of the offense — The offenses occurred in 1973.

(5) The age of the applicant when the offense was committed — The applicant was born in July 1932. He was 43 years old at the time of the offense.

(6) Whether the offense was an isolated or repeated incident — The record does not reveal that the applicant had taken money from Lee A. Cohen on prior occasions. Applicant's false testimony before the grand jury is isolated with no likelihood of repetition. Applicant had no prior or subsequent blemishes on his record.

(7) Any social condition which may have contributed to the offense — There was no evidence to suggest that the applicant was from a deprived or underprivileged environment. He was gainfully employed as a detective on the Atlantic City Police Department when his criminal conduct occurred.

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in work-release programs, the recommendation of persons who have or who have had the applicant under their supervision — The applicant produced two character witnesses, Captain Henry Tyner of the Atlantic City Police Department and Bernard Cresswell. The witnesses testified that, despite the applicant's guilty plea to a disorderly persons offense, his resignation from the Atlantic City Police Department, and his admission of false swearing before a grand jury, the applicant possessed honesty, integrity and good character. I feel that minimal weight should be placed upon their opinions.

It is commendable that, after the applicant's termination from the Atlantic City Police Department, he did volunteer his services to a boys' club. The applicant also obtained employment to maintain his family's standard of living.

> The applicant's testimony is disturbing. When asked by counsel on direct examination how he felt about his plea of guilty to the events that occurred in 1973, he replied, "I feel that I was done a great injustice period. I wouldn't want to elaborate any further." When asked by counsel whether he felt justified in doing what he did in 1973, he replied, "Mr. McMahon, if it's possible, I would like to leave that statement as I made it and I wouldn't want to elaborate on it."
>
> If the applicant does not feel that he has been guilty of some wrong-doing, then it is impossible to suggest that he is rehabilitated from such wrongdoing.

I CONCLUDE that the applicant has failed to affirmatively demonstrate that he has sufficiently rehabilitated himself under N.J.S.A. 5:12-90(h).

D.

HAS THE APPLICANT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE HIS REPUTATION FOR GOOD CHARACTER, HONESTY AND INTEGRITY PURSUANT TO N.J.S.A 5:12-89b(2).

N.J.S.A. 5:12-89(b) of the act, which was made applicable to the applicant by N.J.S.A. 5:12-90(b), provides that "each applicant . . . shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity.

The Commission has held that:

> 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 Commissioners a firm belief for conviction as to the truth of the matter sought to be established . . . the applicant must present clear and convincing proof of the facts on which the Commission may base a reasonable conclusion as to suitability. In the matter of Resorts, supra, at pages 5 and 6.

The applicant has applied for licensure as a surveillance employee. The criterion of good character, honesty and integrity is an indispensable requisite for such a position. For reasons previously stated, especially the applicant's current position that he was "done a great injustice" regarding the 1973 incidents leading to his termination as a police officer, I CONCLUDE that the applicant has not established by clear and convincing evidence his good character, honesty and integrity under N.J.S.A. 5:12-89b(2) of the act.

It is, therefore, ORDERED that the application of Elmer L. Jones for licensure as a casino employee (surveillance person) be DENIED.

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

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

Nov 4, 1981
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

Nov. 6, 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed To Parties:

11-10-81
DATE

Ronald I. Parker
FOR OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-49
OAL DOCKET NO. CCC 2027-81
APP. NO. 6763-40

IN THE MATTER OF THE APPLICATION
OF FREDDIE L. JONES FOR LICENSURE
AS A CASINO HOTEL EMPLOYEE
(STEWARD ASSISTANT)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission November 16, 1981, recommending that the application of Freddie L. Jones for licensure as a casino hotel employee be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed; and the Commission having resolved at its public meeting on December 22, 1981, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 24th day of December 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: December 24, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2027-81

AGENCY DKT. NO. 81-EA-49

IN THE MATTER OF
THE APPLICATION OF
FREDDIE L. JONES
FOR LICENSURE AS A
CASINO HOTEL EMPLOYEE
(STEWARD ASSISTANT)

Record Closed: October 2, 1981

Decided: November 13, 1981

Received by Agency: 11-16-81

Mailed to Parties: 11-18-81

APPEARANCES:

David G. Sciarra, Esq., (Cape-Atlantic Legal Services) for the Applicant, Freddie L. Jones

Stephen D. Schrier, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for the Respondent, Division of Gaming Enforcement, Department of Law and Public Safety

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

STATEMENT OF THE CASE

This matter concerns the application of Freddie L. Jones, applicant, for licensure by the Casino Control Commission (Commission) as a casino hotel employee (steward assistant), pursuant to N.J.S.A. 5:12-91. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of its contention that the applicant had failed to disclose his criminal record, pursuant to N.J.S.A. 5:12-86b, and lacked the requisite good character, honesty and integrity for licensure, under N.J.S.A. 5:12-89b(2).

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PROCEDURAL HISTORY

Mr. Jones filed his application with the Commission on June 19, 1979 (J-1). The applicant was advised by letter from the Commission, dated March 23, 1981, that, based upon information received by letter from the Division, dated January 16, 1981, there was a "substantial possibility" the Commission would deny his application and that he had a right to a hearing. On April 1, 1981, the applicant requested a hearing, and the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 29, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Jones was born on October 31, 1925 in North Carolina. He had virtually no formal education, as he was required to work on his family's farm during his school age years. He cannot read or write words or numbers with the exception of his name (P-2). Although he can make his signature, he is unable to legibly print his name (P-2). The applicant has resided in the Atlantic City area for the past 15 years.

On March 2, 1959, the applicant was found guilty of a violation of N.J.S.A. 2A:90-1, atrocious assault and battery, concerning an incident which occurred on November 27, 1958. He was sentenced to 12 to 18 months, suspended, and three years probation.

On October 18, 1968, the applicant was found guilty of a violation of N.J.S.A. 2A:90-3, possession of a dangerous instrument, concerning an incident which occurred on May 27, 1968. Charges of atrocious assault and battery and assault with a dangerous instrument were dismissed upon motion of the prosecutor (R-2). The applicant was sentenced to two to three year's imprisonment. He was paroled on December 16, 1969, after he served 14 months, for good behavior.

Mr. Jones has not otherwise been accused of any wrongful conduct.

Since his release from prison on December 16, 1969, Mr. Jones has been employed in various kitchen and housekeeping positions with several Atlantic City hotels and a nursing home. He became employed by Resorts International Hotel, Inc., (Resorts) in 1978. He was first employed by Resorts in the Laundry Room. He then worked in the Linen Room and now works in the Housekeeping Unit. His current duties and responsibilities involve the cleaning of public rooms and walkways. The applicant is also employed at the Golden Crest Nursing Home in a housekeeping function.

Mr. Jones filed his Personal History Disclosure Form - 4 (P.H.D.F.), dated May 31, 1979, with the Commission on June 19, 1979 (J-1). In response to the question: "Have you ever been convicted of a crime or disorderly persons offense in this state or in any other jurisdiction?" Mr. Jones replied that he had not.

In March 1980, the applicant was interviewed by telephone by Division Investigator Michael Orsini. The investigator did not repeat the question regarding criminal convictions from the P.H.D.F. to the applicant. Rather, he merely inquired why the two convictions had not been disclosed on the P.H.D.F. The applicant responded that someone else completed the application and he signed it. The applicant did not recall who completed the application, but stated that it was someone with whom he worked.

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

(B) DISPUTED FACTS

In dispute was the reason for Mr. Jones' failure to disclose his two convictions and his character, honesty and integrity.

Mr. Jones cannot read or write words or numbers. Consequently, a friend, Ellen Woodall, takes care of most of his paperwork.

It was evident that the applicant was not capable of understanding the communications printed on the P.H.D.F., nor could he complete the form as required. Upon an examination of his P.H.D.F. (J-1), the applicant was only able to recognize his name and his picture. Another person must certainly have completed the P.H.D.F. for Mr. Jones.

Mr. Jones recalled that at the time he was first employed by Resorts he went to the Personnel Department. Some paperwork was completed there by a person named Joanne. He also recalled that some paperwork was done in the laundry by either Walter Hayes and/or Bob Smith. The applicant did not know what the various items of paperwork consisted of or their significance. However, he did know that it was necessary to complete the paperwork for him to work at Resorts. The applicant was unable to identify which person completed which form regarding his employment and/or licensure. Mr. Hayes testified that he did not help complete Mr. Jones' P.H.D.F.

Although Mr. Jones acknowledged that the signature on the P.H.D.F. was his, he had no recollection of the events surrounding its completion. In response to questioning about why his convictions were not revealed, the applicant stated that whoever completed the P.H.D.F. did not ask him about them. It was also evident that other information supplied on the P.H.D.F. regarding the applicant's prior addresses and employment history, although within the limited knowledge of the applicant, were inaccurately stated.

When questioned at the hearing about his conviction of 1959, the applicant stated that he did not believe he had been convicted. On the basis that he had spent 30 days in jail prior to his trial date, no person testified against him and because he was not sent to jail after his court appearance, the applicant believed he had not convicted. However, the record revealed that the court suspended imposition of the sentence. It was evident that Mr. Jones simply does not understand the meaning of a conviction, nor does he know that he was convicted in 1959. In spite of an entry of a plea of guilty, it was believable that the applicant had no understanding of what had transpired at the time of his conviction. The incident involved a fight at a party.

Mr. Jones also testified in regard to his conviction in 1968. At the time of the incident, he and his then wife were separated. His wife and their son lived together with another man. The applicant always made support payments for his son. On one occasion he went to the place where his wife and son resided in order to visit his son. The man with whom they were living denied him access to his son. A dispute between them ensued. As Mr. Jones attempted to leave the residence to secure assistance, the other man initiated a fight. During the fight, the applicant used a knife which he had in his possession due to his employment in a kitchen. Because of the knife, the applicant was sentenced to Trenton State Prison. He was released early from prison and placed on probation because of good behavior.

Three witnesses were called on behalf of the applicant to testify in regard to his character, honesty and integrity. The first was Ms. Woodall, a long-time friend of Mr. Jones and the mother of two of his children. The witness lives near Mr. Jones and takes care of most of his paperwork. She described his inability to read and write and some of the problems which this has caused. More specifically, on occasion the applicant has had minor difficulty performing his work (such as finding assigned work locations) because he cannot read or write and because he is reluctant to admit this fact to his supervisors. The witness has been able to assist Mr. Jones with these infrequent problems. The applicant provides support for his children, and the witness is of the opinion that he is an honest person.

Walter E. Hayes, the applicant's second witness, is presently the Linen Supervisor at Resorts. Previously, he was a supervisor at Consolidated Laundries. The witness was of the opinion that the applicant was a hard worker and an honest person.

The applicant called Reverend Howard Fischer as his third witness. The witness is an assistant minister of a church in Philadelphia and also a private duty nurse. He described attempts to teach the applicant the alphabet and the provision of assistance with various items of paperwork, such as automobile insurance. The witness was of the opinion that Mr. Jones is an honest person and has integrity.

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

1. The applicant was not capable of understanding the information printed on his P.H.D.F.

2. The applicant was not capable of completing the P.H.D.F.

3. Another person completed the applicant's P.H.D.F.

4. The applicant was not capable of verifying the information placed on his P.H.D.F.

5. The applicant signed his name to the P.H.D.F.

6. The applicant did not recall the identity of the person who completed his P.H.D.F., nor the time or circumstances under which it was completed.

7. In addition to the two convictions which were not disclosed on the applicant's P.H.D.F., misinformation was supplied concerning the applicant's prior addresses and employment history, but which information the applicant was able to recall accurately.

8. The applicant did not understand that he had been convicted of a crime in 1959.

9. The incident of May 27, 1968 involved a denial of the applicant's right to visit his child.

10. Aside from the two convictions, the applicant has never been charged with any other incident of wrongdoing.

11. The applicant has a reputation for good character, honesty and integrity among his friends and co-workers.

12. The applicant has a history of satisfactory performance of his work responsibilities.

13. The applicant has been employed almost constantly since 1969.

14. The applicant testified honestly and credibly in every respect, and answered every inquiry to the best of his limited ability to recall the information sought.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succinctly described the purposes for the inclusion of Section 86b within the act and its application in In the matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning, OAL DKT. CCC 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L] egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b) (8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80 (a), (b) and (c); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the matter of the Application of Robert J. Alois for a Gaming School Resident Director License, Casino Control Commission, 78-EA-8 (January 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure.

Harl Lee Cooper, supra, at 16; In the matter of the Application of Steven M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (December 6, 1979), modified, Casino Control Commission, 79-EA-9 (June 30, 1980), at p.3; In the matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission, 30-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his application for licensure is submitted. "Material" includes both positive and negative information. N.J.S.A. 5:12-86b penalizes the mere failure to provide any fact material to qualification. The materiality, weight and significance of the information provided are thereafter evaluated by the Commission under Section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. Arrests and charges of criminal violations are facts material to qualification for licensure.

The applicant argued that the nondisclosures of his two convictions were excusable, and that he should not be denied licensure under N.J.S.A. 5:12-86b because of the fact that a third party actually completed the application. The Commission has held in In the matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 2252-79 (November 15, 1979), modified, Casino Control Commission, 79-EA-10 (March 20, 1980), at 7-10, that applicants for licensure who fail to disclose information material to licensure on personal history disclosure forms will not be allowed to avoid disqualification from licensure by reliance upon others. Under such circumstances, the Commission will strictly apply N.J.S.A. 5:12-86b and deny licensure. Id. at 10.

Had the applicant merely relied upon another person to complete his application he would be disqualified from licensure. However, the unrefuted facts in this matter present unique circumstances. The applicant was unable to understand the P.H.D.F. and was not capable of completing the form. It was essential that he rely upon another person. The applicant was also unable to verify the information on the form. Further, the applicant did not understand the meaning of an arrest or conviction. It was also evident that the applicant had no understanding whatsoever of the purpose of the form or the requirements for licensure, as he testified that he believed licensure was

accomplished through the Personnel Department. Under these circumstances, his reliance upon another person was absolutely necessary, albeit reasonable.

Mr. Jones' unfortunate lack of ability to understand the licensure process made it impossible for him to form a conscious disregard of the regulatory system, especially a system which he did not know existed. Further, the applicant did not deny the existence of his convictions to the Division investigator when questioned regarding the nondisclosure. Again, he explained then as he did in his testimony, that the form was completed by someone else. The applicant was unable to recall the identity of the person who completed the form, because he was not capable of understanding what form was completed at what time among the several forms which were completed when he commenced employment at Resorts.

Although it is clear that Mr. Jones failed to disclose material information requested by the Division, I believe that the reason testified to was reasonable and constitutes an omission due to ignorance. This does not mandate disqualification.

I **CONCLUDE** that Mr. Jones did not violate the provisions of N.J.S.A. 5:12-86b.

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

Under Section 89b(2) of the Act, Mr. Jones was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Resorts, supra, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In the matter of the Application of Boardwalk Regency Corporation for a Casino License, _____ N.J. Super. _____ (App. Div. 1981) slip opinion at 15, In the matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980), at 5. In accordance with the

regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 19.

Aside from Mr. Jones' failure to disclose his two convictions on his P.H.D.F., which failure was explained away, the only other negative factors concerning the applicant were his two convictions. The 1959 conviction involved a fight and nothing more. The 1968 conviction was the most recent and most serious of the two offenses. Although the applicant's conduct cannot be condoned, the unrefuted circumstances of being denied visitation to his son and apparently being attacked by another person do mitigate against the seriousness of the offense.

It is also necessary to examine the applicant's conduct since his release from prison in 1969. He has been employed at various jobs for the majority of the past 12 years. He is presently working at two jobs. He has provided support for his children and maintained financial stability. The applicant also had a satisfactory on-the-job employment history. He has accomplished this despite the serious handicap of being unable to read and write. Also, the applicant has not been involved in any other misconduct of any kind.

The applicant has clearly and convincingly established his good character, honesty and integrity, and his suitability for licensure as a steward assistant at a casino hotel in this State. A denial of licensure under these circumstances would constitute a penalty to the applicant on the basis of his handicap and would be unjust.

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

ORDER OF DISPOSITION

I **ORDER** that the application of Freddie L. Jones for licensure as a casino hotel employee (steward assistant) be **GRANTED.**

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

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

November 13, 1981
DATE

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

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

11-18-81
DATE

Ronald I. Parker Jr.
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-4, Freddie L. Jones, May 31, 1979 (4 pages)

P-1 Affidavit of Margaret Jacobs, September 29, 1981 (2 pages)

P-2 Sheet containing written signature and printed name of Freddie Lee Jones

R-1 Certified Copy of Conviction, State of New Jersey v. Fred Lee Jones, Docket No. I.259-58-J, February 5, 1959 (2 pages)

R-2 Certified Copy of Judgment of Conviction, State of New Jersey v. Freddie Lee Jones, Docket No. I.678-67-M, July 18, 1968 (3 pages)

WITNESS LIST

FOR THE APPLICANT:

Reverend Howard Fischer

Walter E. Hayes

Freddie Lee Jones

Ellen Woodall

FOR THE RESPONDENT:

Michael Orsini

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-121
OAL DOCKET NO. CCC 566-81
APP. NO. 107-60

IN THE MATTER OF THE APPLICATION
OF SHELLY KEITZ FOR LICENSURE
AS A GAMING SCHOOL INSTRUCTOR

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein filed August 14, 1981, recommending that the application be denied; and the Commission having considered the entire record of these proceedings, the Initial Decision, and the exceptions filed by the Division of Gaming Enforcement; and the Commission having resolved at its public meeting on September 23, 1981, to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this 24th day of September 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the license application of Shelly Keitz be and hereby is DENIED based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 24, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0566-81

AGENCY DKT. NO. 80-EA-121

IN THE MATTER OF:

THE APPLICATION OF SHELLY KEITZ FOR LICENSURE AS A CASINO EMPLOYEE (GAMING SCHOOL INSTRUCTOR)

Record Closed: July 10, 1981

Received by Agency:

Decided: August 13, 1981

Mailed to Parties:

APPEARANCES:

Shelly Keitz, Applicant, Pro se

Stephen D. Schrier, Deputy Attorney General (James R. Zazzali, Attorney General of New Jersey, attorney), for the Respondent, Department of Law and Public Safety, Division of Gaming Enforcement

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Shelly Keitz, applicant, for licensure by the Casino Control Commission (Commission) as a gaming school instructor (blackjack, craps, roulette, baccarat and casino management). N.J.S.A. 5:12-92b. The Department of Law and Public Safety, Division of Gaming Enforcement (Division), respondent, opposed licensure and alleged that the applicant had failed to disclose his criminal record, lacked

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the requisite good character, honesty and integrity for licensure, and did not possess the requisite experience for licensure.

PROCEDURAL HISTORY

Mr. Keitz was advised by letter from the Commission, dated January 8, 1981, that based upon information received by letter from the Division, dated June 16, 1980, there was a "substantial possibility" the Commission would deny his application and that he had a right to a hearing. On January 19, 1981, Mr. Keitz requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 7, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

The facts in issue concern Mr. Keitz's conviction in 1966, his experience in the gaming industry and his reputation for good character, honesty and integrity. Each will be treated separately.

(A) CONVICTION

In March 1966, Mr. Keitz was indicted by a Grand Jury in the United States District Court for the Southern District of California, Central Division, for an alleged violation of 18 U.S.C. 2312 (R-1). It was alleged that the applicant transported a stolen 1965 Cadillac in interstate commerce from New York City, New York, to Los Angeles, California, with the knowledge that the motor vehicle had been stolen. Mr. Keitz was convicted by a jury on March 24, 1966 (R-2). He was sentenced to 18 months imprisonment, with all but 60 days suspended, and three years' probation. He satisfactorily completed his sentence.

Mr. Keitz has not been involved in any criminal activity since 1966.

In response to Question 46 on his Personal History Disclosure Form (P.H.D.F.), Mr. Keitz denied that he had been arrested, indicted or convicted of any criminal offense; more specifically, he did not disclose his arrest, indictment or conviction (J-1).

In his direct testimony, the applicant unequivocally stated that he had lied on his P.H.D.F. regarding the conviction. Further, he admitted that the misstatement was deliberate and calculated on his part to keep secret that which he thought would jeopardize his chances for licensure. He also stated that he has lied at other times about the conviction since 1966 and it has never been uncovered. Further, he stated that he paid his dues to society and, in his mind, the conviction does not exist. This was the same statement Mr. Keitz gave to Detective Albert Kormondy of the New Jersey State Police, who is attached to the Division, during an interview regarding his P.H.D.F. The detective corroborated this testimony.

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

(B) CASINO EXPERIENCE

From Mr. Keitz's testimony and his responses to Question 31 on his P.H.D.F., it was established that during his employment with the Concord Hotel he worked in the casino from approximately March or April 1972 until June 1974. He was a floorman and taught the residents of St. Maarten, Netherlands Antilles, to work in the casino.

He then became employed by the El San Juan Hotel Corp. in Puerto Rico. From April 1975 until October 1976, he was a casino director. His self-described duties and responsibilities were to observe and supervise the games and he established rules and systems for the casino operation.

From May 1977 until June 1978, the applicant was employed as Casino Director by the Hotel Casino La Bateliere, Schoelcher, Ft. de France, Martinique, French West Indies. Again, his self-described duties and responsibilities were to supervise all four table games (blackjack, craps, roulette and baccarat).

From June 1978 until June 1980, Mr. Keitz was employed as Chief Instructor at the New York School of Gambling. His self-described duties and responsibilities were the instruction of from three- to five-hundred students in the four games, and he taught a course entitled "Casino Management." The New York School of Gambling is not licensed by the New Jersey Casino Control Commission.

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

Although the applicant testified to his general duties and responsibilities in his various places of employment in the gaming industry, he did not describe the functions he performed with any degree of specificity. Rather, both in his direct testimony and cross-examination, he consistently described the functions he performed in terms of the success he had in teaching his students that which they needed to know in order to run a casino. While the degree of success the applicant had in his instructional efforts is of merit, of deeper concern, and specifically identified as such at the prehearing conference and during the course of cross-examination, is the lack of identification of the precise functions performed and courses of study taught by Mr. Keitz. These were not set forth. Consequently, I am unable to determine with any reasonable degree of accuracy the general scope of the applicant's gaming experience. Although the appearance that he has substantial experience is obvious, there was insufficient information offered upon which reasonably to base such an inference.

Further, in addition to the applicant's admitted failure to disclose his conviction, he voluntarily stated that he had worked in other locations, such as Yugoslavia, France, Iran, etc., that were not set forth on his P.H.D.F. The reasons he gave for the failure to disclose these places of employment were that it would be impossible to trace or uncover the positions and that he acted merely as a consultant.

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

1. Mr. Keitz instructed casino-type employees during the course of his employment at the Concord Hotel Casino, El San Juan Hotel, Casino La Bateliere and the New York School of Gambling.

2. There was no proof offered to show the nature and extent of the programs of instruction given by the applicant.

3. During the course of the applicant's employment at the Concord Hotel Casino, El San Juan Hotel and Casino La Bateliere, he was employed as a consultant at undetermined times, for undetermined periods of time and for unknown employers at various locations throughout the world, which

were not disclosed on his P.H.D.F. The applicant failed to disclose these positions because he did not believe they could be uncovered and because he acted as a consultant.

4. The nature and extent of the programs of instruction given by Mr. Keitz at these undisclosed places of employment were not set forth.

(C) AFFIRMATIVE QUALIFICATION CRITERIA

Mr. Keitz testified that he had never had any employment problems, had never been involved in a scandal and was a completely honest person.

In addition to the applicant's admitted and intentional failure to disclose his conviction, he has not otherwise established his good character, honesty and integrity. His admissions, although candid, that he did not disclose various places of employment cause me to have serious doubts in regard to his honesty and forthrightness. The applicant has purposefully evaded full and complete disclosure, as required.

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

1. The applicant did not offer evidence of his good character, honesty and integrity.

2. The applicant's failure to make full and complete disclosure of his employment history on his P.H.D.F. shows that he has a lack of candor and forthrightness.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succinctly described the purposes for the inclusion of Section 86b within the act, as well as its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), CCC 1275-79 (N.J. O.A.L., August 29, 1979), modified by Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at page 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
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> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80(a), (b) and (c); 90(b, and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, 78-EA-8 at p.19 (January 30, 1980). Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra, at p.16; In the Matter of the Application of Steven M. Cohen for Licensure as a Casino Employee (Dealer), CCC 3133-79 (N.J. O.A.L. December 6, 1979), modified by Casino Control Commission, 79-EA-9 (June 30, 1980), at p.3; In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), CCC 684-80 (N.J. O.A.L., July 17, 1980), modified by Casino Control Commission, 80-EA-4 (September 5, 1980). There is no doubt that convictions of crimes are facts material to qualification.

Mr. Keitz's failure to disclose his conviction was a deliberate and calculated lie. Further, it was made with the belief that disclosure could have jeopardized his chances for licensure. Consequently, the nondisclosure was intentional and demands disqualification of the applicant.

I CONCLUDE that the failure of Mr. Keitz to disclose his conviction of May 24, 1966, for a violation of 18 U.S.C. 2312 on his P.H.D.F. mandates that he be disqualified from licensure under N.J.S.A. 5:12-86b.

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

Section 86c(1) of the act mandates that a person who has been convicted of any offense "which would be under New Jersey law at the time of application a violation of any of the following provisions of law" be disqualified from licensure. Although Mr. Keitz was convicted of a violation of 18 U.S.C. 2312, transportation of a stolen motor vehicle in interstate commerce, it was argued without opposition that the equivalent New Jersey statute was N.J.S.A. 2A:139-3, receiving stolen property, which is an enumerated disqualifying offense.

I CONCLUDE that Mr. Keitz's conviction for a violation of 18 U.S.C. 2312 is a statutory equivalent of N.J.S.A. 2A:139-3, which mandates that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(1).

(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 (February 1979), the Casino Control Commission set forth the criteria to be applied in individual cases when a determination whether an offense is inimical to the policies of the act is made. The Commission stated at p.15:

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

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

Although there is no doubt that the offense of which the applicant was convicted is serious, the fact that it was a one-time occurrence, that it occurred in 1966 and that the applicant has not been convicted of any other offense either before or since weighs heavily in his favor. Further, the offense was non-gaming in nature and it has not been established, in any respect, that it exhibited, either at the time of its commission or at the present, that the applicant would be likely to corrupt gaming or casino business operations. Also, licensure of an individual who was convicted of such a crime in 1966 and which person has been rehabilitated, to be discussed infra, would not reasonably undermine the public confidence in the integrity of the casino industry and the regulation thereof.

I **CONCLUDE** that the potential licensure of Mr. Keitz, in light of his conviction for violation of 18 U.S.C. 2312, has not been established by the preponderance of the credible evidence as inimical to the policies of the act.

(D) AFFIRMATIVE CRITERIA - SECTION 89b(2)

Under Section 89b(2) of the act, Mr. Keitz was required to establish by clear and convincing evidence his reputation for good character, honesty and integrity. Resorts, supra at p. 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, 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 the Matter of the Application of Boardwalk Regency Corp. and the JEMM Company for Casino Licenses, Casino Control Commission (November 13, 1980) at p. 5. Further, the Commission has held that the disqualification criteria found in Section 86 cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under Section 89b(2). William Gonzalez, supra, at p. 8. Therefore, the conclusion that Mr. Keitz failed to disclose his conviction in violation of Section 86b and the conclusion that he is disqualified pursuant to Section 86c(1) of the act automatically estop the applicant from meeting his burden under Section 89b(2).

Further, the fact that the applicant admitted during his testimony to other intentional failures to disclose information and that he provided misleading statements in his P.H.D.F., together with the total absence of any other testimony or evidence on his behalf, establishes conclusively that he has failed to meet his burden of proof.

I CONCLUDE that Mr. Keitz has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity.

(E) REHABILITATION - Section 90h

An applicant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the eight specific criteria to be evaluated when a determination of rehabilitation is to be made.

The applicant has applied for licensure as a gaming school instructor. As such, he would instruct potential casino employees both in the operation of casino games and in the business of casino gaming. He would have a direct influence upon potential licensees at a critical time, their virtual initiation into the gaming industry.

Although the offense of which Mr. Keitz was convicted was serious, it occurred 16 years ago when he was 30 years of age. Further, he was the only apparent participant in the incident. Also, accepting the applicant's testimony as true, it is reasonably probable that he was unaware that the motor vehicle had been stolen and that he treated all too lightly the criminal proceedings in California.

This is the only criminal matter in which the applicant has been involved; 16 years have passed without any other problem of a criminal nature and the applicant has been a productive and respectable citizen.

The Division's contention that the applicant could not establish his rehabilitation because of his failure to disclose the conviction, because the nondisclosure indicated his unwillingness to accept the conviction as a fact, lacks merit. Rather, the contrary appears to be true; Mr. Keitz refused to disclose the conviction because he had been a law-abiding citizen for the past 16 years and does not consider himself to be or want to be associated with the criminal element in our society.

I **CONCLUDE** that the applicant has established by clear and convincing evidence his rehabilitation, pursuant to Section 90h of the act.

(F) EXPERIENCE

Pursuant to Sections 92b, 86 and 90 of the Casino Control Act, an applicant for a gaming school instructor license is required to establish that he possesses the requisite experience for the position for which he seeks licensure. The Division contested the applicant's qualifications on the basis that the majority of his experience as an instructor was at the New York School of Gambling, an out-of-state and unlicensed gaming school.

However, because of my finding that the applicant failed sufficiently to establish the nature and scope of his gaming industry experience, it is not necessary at this time to determine whether gaming instructor experience gained at an out-of-state and unlicensed (by New Jersey) gaming school is recognizable experience, pursuant to N.J.A.C. 19:44-5.1(a)2. The applicant simply did not meet his burden of proof for licensure.

I **CONCLUDE** that the applicant failed to establish by clear and convincing evidence his experience as a gaming school instructor sufficient to establish his qualifications for licensure. N.J.S.A. 5:12-92b.

DISPOSITION

Therefore, I **ORDER** that the application of Shelly Keitz for licensure as a gaming school instructor be **DENIED.**

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

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

August 13, 1981
DATE

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

Receipt Acknowledged:

August 14, 1981
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Aug 20 1981
DATE

Ronald I. Parker
OFFICE OF ADMINISTRATIVE LAW

plb

LIST OF EXHIBITS

J-1 Personal History Disclosure Form, Shelly Keitz, September 18, 1978

P-1 Letter to D.S.G. Robert W. Kent from Sy Kanner, February 21, 1979

P-2 Letter to Department of Law and Public Safety, Division of Gaming Enforcement, from Paul Tramoni, February 14, 1979

R-1 United States District Court for the Southern District of California, Central Division, Indictment No. 35913, Filed March 16, 1966, Shelly Keitz

R-2 United States District Court for the Southern District of California, Central Division, No. 35913 - Criminal Conviction, Sheldon Keitz, May 24, 1966

WITNESSES

For the Applicant:

Shelly Keitz

For the Respondent:

Albert Kormondy

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-246
OAL DOCKET NO. CCC 7610-80
APP. NOS. 804-11; 12660-21

IN THE MATTER OF THE APPLICATIONS
OF PETER KOLIASTASIS FOR LICENSURE
AS A CASINO KEY EMPLOYEE (PIT BOSS)
AND CASINO EMPLOYEE (FLOORPERSON)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission September 1, 1981, recommending that the applications of Peter Koliastasis for licensure as a casino key employee and casino employee be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, the exceptions to the Initial Decision filed by the Division of Gaming Enforcement and the reply to the exceptions filed by the Applicant; and the Commission having resolved at its public meeting on November 17, 1981, to affirm and adopt the said Initial Decision and to grant the applications for licensure,

IT IS on this 19th day of November 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino key employee and casino employee license applications of Peter Koliastasis be and hereby are granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 19, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7610-80

AGENCY DKT. NO. 80-EA-246

IN THE MATTER OF:

THE APPLICATIONS OF PETE KOLIASTASIS FOR LICENSURE AS A CASINO KEY EMPLOYEE (PIT BOSS IN CRAPS, BLACKJACK AND BIG SIX) AND AS A CASINO EMPLOYEE (FLOORPERSON)

Record Closed: July 17, 1981

Received by Agency: 9-1-81

Decided: August 31, 1981

Mailed to Parties: 9-3-81

APPEARANCES:

Alfred J. Bennington, Jr., Esq., (Blatt, Blatt, Mairone & Biel, attorneys) for the Applicant, Pete Koliastasis

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

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the applications of Pete Koliastasis, applicant, for licensure by the Casino Control Commission (Commission) as a casino key employee (pit boss in craps, blackjack and big six) and as a casino employee (floorperson). N.J.S.A. 5:12-89; N.J.S.A. 5:12-90. The Department of Law and Public Safety, Division of Gaming

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Enforcement (Division), respondent, objected to licensure based upon its contentions that the applicant had failed to disclose certain material information, had conducted himself in a manner which rendered licensure inimical to the policies of the Casino Control Act (act), and lacked the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

Mr. Koliastasis filed his application for licensure as a casino employee with the Commission on September 26, 1979, and filed his application for licensure as a casino key employee on January 15, 1980. The applicant was advised by the Commission that based upon information received by letter from the Division, dated October 20, 1980, there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing. On December 10, 1980, the applicant requested a hearing. On December 11, 1980, the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 23, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

The evidence in this matter was concerned primarily with the Division's objections to licensure. The objections concerned Mr. Koliastasis' conduct during certain incidents and, separately, over extended periods of time. This initial decision shall first address the undisputed facts and then the disputed facts.

A. UNDISPUTED FACTS

Mr. Koliastasis was born in Athens, Greece, in 1946 (R-1 and R-2). In 1962, at age 16 he emigrated to the United States and resided with his sister, Katherine, in Fort Worth, Texas. He spoke no English. They soon moved to Las Vegas, Nevada, where he completed high school in 1965. Between 1965 and 1968, the applicant served in the United States Army, from which he was honorably discharged. He served a tour in Vietnam and is a disabled veteran. The applicant is a volunteer member of the Civil Air Patrol. Mr. Koliastasis is a naturalized citizen of the United States.

In 1968 or 1969, the applicant's sister, Katherine, married Lawrence E. Tripp. Mr. Tripp was a major stockholder of, and with three or four other individuals owned, the Ponderosa Hotel and Casino, Inc., (Ponderosa) in Reno, Nevada. At or about the time of the marriage, Mr. Tripp purchased his business associates' interests in the Ponderosa. Also at the same time, Mrs. Tripp assumed the duties and responsibilities of the General Manager of the Ponderosa and acquired an ownership interest.

Mr. Koliastasis became employed at the Ponderosa during 1969. Initially, he was a front desk clerk, a bellboy and a dealer-trainee for short periods. He soon became a blackjack dealer. Between 1969 and 1975, the applicant dealt craps and roulette. He was promoted subsequently to boxperson, floorperson and pit boss.

During 1975, the applicant was promoted to the position of Casino Manager for the Ponderosa. The casino was relatively small; it contained six blackjack tables, one craps table and one roulette wheel, in a room with dimensions of 20 feet by 30 feet. The employee staffing for each shift consisted of approximately 17-20 dealers, one boxperson, one floorperson and one pit boss or shift manager. Although the applicant was the Casino Manager, he had no managerial responsibilities for the keno or slot machine departments, which were located in an adjoining room. The applicant usually worked on the night shift, but was present occasionally in the hotel and casino facility at other times.

At or about the time of his promotion to Casino Manager, Mr. Koliastasis also became a named Key Employee licensee on the Ponderosa's casino license. The other Key Employee licensees were Mr. and Mrs. Tripp. However, Mr. Koliastasis had no ownership interest in the Ponderosa and was not a corporate officer. The sole owners and officers of the Ponderosa were Mr. and Mrs. Tripp.

During July 1977, Mr. Koliastasis terminated his employment with the Ponderosa. He left his position because of the accumulation of problems between himself and his sister and brother-in-law. Essentially, Mrs. Tripp alone managed the hotel and casino facility. She was strong-willed and did not delegate authority. As will be examined in more detail later, her single-handed management methods caused numerous and substantial deficiencies in the operation of the Ponderosa. The applicant had confronted Mr. and Mrs. Tripp individually and jointly with regard to his observations of deficiencies which he believed had a negative effect upon the Ponderosa. The result was

serious family disputes. The applicant resigned his position because of his frustration due to his inability to secure progressive changes in the operations of the Ponderosa.

From August 24, 1977 until April 16, 1978, Mr. Koliastasis was employed at the King's Inn Hotel and Casino in Reno, Nevada, as a craps and blackjack dealer. He was promoted to shift manager.

In April 1978, the applicant became employed at the MGM Grand as a blackjack dealer.

In August 1978, Mr. Koliastasis was requested by Mr. and Mrs. Tripp to return to the Ponderosa as Casino Manager. Apparently, the pit operations had suffered losses since his departure. The applicant agreed to return upon the condition that the deficiencies and problems he had encountered previously would be cured. This condition was met.

At some point within several months after his return to the Ponderosa, Mr. Koliastasis again experienced the same problems he had encountered previously. He decided to look for a position elsewhere. During late 1978 or early 1979, the applicant communicated with the Penthouse Hotel and Casino, which was under construction in Atlantic City, New Jersey, and secured a commitment for employment. The applicant remained at the Ponderosa, pending notification by Penthouse of its opening.

On January 10, 1979, an incident occurred at the Ponderosa in which Mr. Koliastasis was involved. Previously, on January 4, 1979, Janice Freeman and Robert Sobsey, Public Health Environmentalists for Washoe County, Nevada, inspected the coffee shop facility at the Ponderosa. As a result of the inspection, 40 demerits were recorded and the coffee shop's rating was reduced from an "A" grade to a "C" grade. A reinspection was scheduled for January 10, 1979. On January 10, 1979, Mr. Koliastasis, after having worked the previous night until 4:00 a.m., was called by the front desk to report to the Ponderosa because of an emergency. Because of a snow, rain and wind storm, there was extensive damage to the roof over the coffee shop facility. This caused severe water leakage, and a portion of the ceiling had fallen down in the kitchen area. He attempted to assist other employees in the cleanup of the kitchen. The applicant then encountered Ms. Freeman and Mr. Sobsey, who were in the process of conducting the reinspection. A disagreement, which will be discussed in greater detail, infra, followed.

The applicant was angry, called Ms. Freeman a "nitpicker" and asked if she needed a white glove. Further, upon being informed by Ms. Freeman that she had finished the inspection, he ordered her to leave the Ponderosa (P-14, P-15 and P-16). Apparently, the inspection had not been completed. Ms. Freeman and Mr. Sobsey also had an unpleasant meeting with Mrs. Tripp, which was separate and apart from the incident with Mr. Koliastasis.

As a result of the incident, Ms. Freeman filed criminal complaints against Mrs. Tripp and Mr. Koliastasis, individually, which alleged that they had obstructed and interfered with a public officer in violation of N.R.S. 199.180, N.R.S. 446.885 and N.R.S. 446.945, misdemeanors. More specifically, the complaint contended that the applicant had interfered with and obstructed the health inspection at the Ponderosa (P-17). Although the applicant contended that he was not personally served with the summons, he together with his sister did appear in the Justice's Court of Reno Township on February 26, 1979, to answer the complaint. Mr. Koliastasis pled guilty to the charges and was fined $100 (P-17 and P-19).

The applicant stipulated that the conviction was not disclosed either in response to Question No. 52 on his P.H.D.F. - 2 or to Question 66 on his P.H.D.F. - 1. However, the applicant contended that he was not barred from licensure by operation of Section 86b of the act.

On June 12, 1979, the Nevada State Gaming Control Board (Board) filed an action entitled: State Gaming Control Board v. Ponderosa Hotel and Casino, Inc., d/b/a Ponderosa Hotel and Casino; Lawrence E. Tripp; Katherine D. Tripp; and Peter Koliastasis, Case No. 79-6, with the Nevada Gaming Commission (Gaming Commission) (P-3). The applicant was a named respondent because of his status as a Key Licensee on the Ponderosa's license. The complaint alleged numerous violations of statutes, Gaming Commission regulations and the provisions of the Ponderosa's System of Internal Control. The System of Internal Control was the Ponderosa's written policies and procedures governing its operations. Alleged violations included permitting employees to work without possession of the required work card; failure to maintain complete, accurate and legible accounting records; various violations of the System of Internal Control, including control of keys for drop boxes and drop box storage areas; faulty financial and gaming record keeping; violations of count procedures; and failure to notify the Board or the Gaming Commission of loans to the Ponderosa. On June 29, 1979, a "Notice of Defense" was filed on behalf of the respondents (P-4). In addition to a request for a hearing, the

allegations contained in the complaint were denied. More specifically, it was contended that full and complete accounting records were maintained; that Mrs. Tripp personally maintained control of keys to the locked gate drop box storage area; that all gaming records had been properly maintained and that modifications to the System of Internal Control were being implemented; that there were no casino operation violations; that financial statements were properly prepared; and that all loans to the Ponderosa were proper in all respects. On August 20, 1979, the Board filed an amended complaint with the Commission, which set forth a substantial number of allegations covering the operations of the Ponderosa for the period from October 1, 1975 to March 31, 1979. Alleged were additional financial statement and accounting violations, numerous gaming regulation violations, failures to maintain adequate records, failures to produce records upon request, additional violations of the System of Internal Control, maintaining accounting and internal control documents outside the State of Nevada and a general failure to meet the standards of performance established by the Gaming Commission. On October 22, 1979, an additional "Notice of Defense" was filed on behalf of the respondents with the Gaming Commission (P-6). All of the new allegations were denied; although the notice appeared to acknowledge certain of the allegations, the Ponderosa contended that any violations were beyond its control.

The Board's complaint was heard by the Gaming Commission on the afternoon of October 18, 1979 (R-4). Although the respondents had collectively been represented by a single counsel prior to the hearing, Mr. Koliastasis was represented at the hearing by counsel separate from the Ponderosa and Mr. and Mrs. Tripp. However, Mr. Koliastasis had not met his counsel until only two days prior to the hearing.

At the hearing, the respondents stipulated to all of the allegations in both the complaint and amended complaint. Testimony of various witnesses was taken which concerned only accounting matters. Essentially, it was conceded that the Ponderosa's accounting department and records were inadequate; however, with the retention of a new accountant, matters were being brought under control. Of specific interest was that the Board's own auditors found no indication of skimming, cheating or stealing at the Ponderosa (R-4, p. 37).

The attention of counsel for the respondent, including counsel for Mr. Koliastasis, was directed toward enabling the Ponderosa to maintain its licensed status with a commitment to improve its accounting department and financial documenta-

tion. At the conclusion of the hearing, counsel for the respondents essentially negotiated the decision with the Gaming Commission. Although the Gaming Commission recognized that the matter before them was a complex case, a decision was reached immediately following the hearing. It was ordered that the Ponderosa be fined in the amount of $30,000; respondents Mr. and Mrs. Tripp "as sole shareholders, directors, officers and principal managers of respondent Ponderosa Hotel and Casino" were individually fined in the amount of $20,000; Mr. Koliastasis was fined in the amount of $2,000; the Ponderosa's gaming license was limited until June 1980 and was conditioned upon demonstration of the completion of required corrective auditing measures and the maintenance of appropriate financial record keeping; and the Ponderosa was assessed costs in an amount not to exceed $25,000 (R-4). The "Findings of Fact, Conclusions of Law and Order," prepared by the Board, was entered by the Gaming Commission on November 15, 1979 (P-7).

It is interesting to note that although Mr. Koliastasis was held responsible and fined by the Gaming Commission, several of its members were of the opinion that his fine should be minimal because of his lack of authority and responsibility for the violations:

> CHAIRMAN REID: I think—I just don't know what we should do. I think we should fine him $1,000 or something. I think he got the message, what power does he have there to go in and hire auditors or something. $10,000 to him is just--that's not right.
>
> . . . . . .
>
> COMMISSIONER SWARTS: I didn't say. I would say if we put that requirement in and have the other part I would also be in favor of reducing Mr. Koliastasis's fine because I don't think he was directly responsible for a lot of this. I think the ultimate responsibility of this goes back to the Tripps. And so I would be in favor of reducing his fine to maybe $1,500 or $2,000.
>
> CHAIRMAN REID: So pick one of them.
>
> COMMISSIONER SWARTS: Well, say $2,000.
>
> CHAIRMAN REID: Okay.
>
> [R-4, pp. 123 and 125).

Following the Gaming Commission's order, all fines were paid. Mrs. Tripp paid Mr. Koliastasis' fine.

On September 26, 1979, Mr. Koliastasis filed his P.H.D.F. - 2 with the Commission, in which he sought licensure as a casino employee (R-2).

On January 15, 1980, Mr. Koliastasis filed his P.H.D.F. - 1 with the Commission, in which he sought licensure as a casino key employee (R-1).

Following the July 4, 1980 weekend, Mr. Koliastasis left his position with the Ponderosa. He commenced employment with the Greate Bay Hotel and Casino in Atlantic City, New Jersey. Subsequently, in December 1980 it was necessary for him to resign this position because of the Division's objection to his licensure.

On July 10, 1980, the Gaming Commission issued an "Amendment to Findings of Fact, Conclusions of Law and Order" (P-8). At this point, all of the respondents, collectively, were represented by single counsel, Mr. Schreck, who had represented Mr. Koliastasis at the prior hearing. The Gaming Commission determined that the respondents had failed to comply with its Order of November 15, 1979, in that independent audits of the Ponderosa's gaming operations, related financial control procedures and records, and internal control systems for the quarterly periods ending February 1, 1980, and May 1, 1980, were not made, and that the audit submitted on June 19, 1980, was qualified and contained a disclaimer by the CPA firm offering the report. The Commission extended the Ponderosa's license until October 1980 and directed it to file the required independent audit report forthwith.

Mr. Koliastasis was also a named defendant in a civil action entitled: Paul Yun v. Ponderosa Hotel and Casino, Inc., Lawrence E. Tripp, Katherine Tripp, Gus Koliastasis, Peter Koliastasis, Second Judicial District Court for the State of Nevada, County of Washoe, Docket No. 278213, filed May 23, 1972 (R-24). The applicant acknowledged that he had been served. On June 19, 1973, an Order was entered dismissing the complaint without prejudice. The complaint concerned an incident which occurred on April 15, 1972, in which the plaintiff had been in a fight with Mr. Koliastasis' brother Gus. The applicant did not disclose this civil action in response to Question 77 on his P.H.D.F. - 1 or to Question 51 of his P.H.D.F. - 2 (R-1 and R-2).

Mr. Koliastasis was a craps dealer for several years, a boxman and taught craps for three to four years. He also dealt blackjack in excess of three years, was a shift boss and taught blackjack for more than four years. The applicant also dealt roulette for

one and one-half years and was a supervisor. He was licensed in Nevada to teach all games at dealers' school (P-26).

The Division stipulated that Mr. Koliastasis possesses the requisite casino experience for licensure, under Section 89b(3), although his business ability, i.e., integrity, was contested.

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

B. DISPUTED FACTS

1. NONDISCLOSURE OF CIVIL ACTION

Mr. Koliastasis contended that he had not disclosed Yun v. Ponderosa, et als. on either of his P.H.D.F.'s because he had forgotten about the matter. It was established that the incident occurred in 1972, some seven years prior to the submission of his P.H.D.F.'s, and was dismissed in 1973, six years prior to the submission of his applications. The applicant had never been deposed and had never gone to court as a result of the complaint. The only actual involvement of the applicant was that he was served. Further, the applicant testified that shortly after he had been served, the plaintiff spoke with him on the telephone and, upon learning that Mr. Koliastasis had no ownership interest in the Ponderosa, told Mr. Koliastasis to "forget it." The applicant testified that he had no recollection of the incident until a Division investigator brought it to his attention during an interview, at which time his memory was "jogged" by a detailed explanation of the events. The applicant's testimony was supported by the description of the interview contained in the Division's letter of objection (P-2).

The question of Mr. Koliastasis' credibility will be discussed in depth later. However, it is sufficient to state at this time that I found him to be a completely credible and believable witness. Further, his explanation of his lack of recollection of the incident at the times he completed the P.H.D.F.'s was completely plausible. I am persuaded to believe that he did, in fact, forget the incident, which was relatively minor, and did not realize that it was a "civil action."

310.

2. NONDISCLOSURE OF CRIMINAL ACTION

Although Mr. Koliastasis conceded that he had not disclosed either the charges or the conviction for a violation of N.R.S. 199.280, N.R.S. 446.885 and N.R.S. 446.945, he contended that it was his belief that the matter was not criminal in nature and, as such, did not require disclosure.

The applicant claimed, in spite of the affidavit of service which indicated that he had been personally served, that he had not been served with a copy of the summons (P-18). He stated that he first learned of the matter on the day of the hearing, February 26, 1979. He received a telephone call from his sister's secretary with instructions that he had to go to court with Mrs. Tripp. He learned that the court appearance was the result of the health inspection incident from his sister only while en route to the hearing.

Once the applicant had been advised of the cause of the hearing, i.e., the health inspection incident of January 10, 1979, he claimed to believe that the matter involved a "health code violation." This belief was based upon his recollection of the incident and that the Ponderosa had other health code violations which occurred at or about the same time. As far as Mr. Koliastasis' knowledge of the incident, which will be discussed in greater detail later, it is readily apparent that he had every reason to believe that he had not committed a crime and that the inspectors had advised him that the inspection was complete (P-14, P-15 and P-16). The applicant did not disclaim knowledge of the charges; he merely disclaimed knowledge of the criminal nature thereof.

The applicant further contended that he believed the matter was not criminal in nature because he had not been arrested, handcuffed, detained by police authorities, given any Miranda warnings, fingerprinted, had his picture taken, been processed by the police or posted bail; all of which he identified as recognized indicia of involvement in a criminal matter. Further, the applicant testified regarding an incident in which he was involved in 1965. This incident was disclosed in response to Question 45 on his P.H.D.F. - 2 and to Question 65 on his P.H.D.F. - 1 (R-2 and R-1). The applicant had been in a fight with another student. He was apprehended by the police, fingerprinted, had his picture taken and was questioned by police officers. He was fined $2. Mr. Koliastasis compared his experience with the police in the prior matter to the total

absence of any involvement with police authorities as a result of the January 10, 1979 incident.

Mr. Koliastasis also described the events of his appearance in court. He was accompanied by only his sister. Neither Mr. Koliastasis nor his sister was represented by counsel, even though Mr. Tripp was an attorney. He had no prior knowledge of the pending complaint. While waiting for his matter to be called, he was pressured extensively by Mrs. Tripp to plead guilty in order to avoid any further problems for the Ponderosa, which was then under investigation by the Board. Mrs. Tripp expressed a concern that any problems surrounding the Ponderosa might have an adverse impact upon the status of the casino license. The applicant claimed that when his matter was called by the court, he was asked merely what his plea would be, to which he replied "guilty." He received a $100 fine, which was paid by Mrs. Tripp. Although the judgment of conviction (P-19), which was offered by Mr. Koliastasis, indicated that he had waived recitation of the complaint, and had been advised of his rights and of the nature of the proceeding, he testified that no such instructions had been given to him.

Also of note is the absence of any indication that Ms. Freeman, the complainant, was present at the hearing.

During the preparation of his P.H.D.F. - 1, the applicant had occasion to go to the Reno Department of Police to inquire whether he had a criminal history with which he was not familiar. The applicant was advised that the Department's files indicated nothing of a derogatory or subversive nature (P-23). This communication was included in his P.H.D.F. - 1 (R-1). The applicant again made inquiry to the police department and was advised that, other than the 1965 disorderly conduct charge, there was no other entry on his F.B.I. rap sheet (P-23).

The only indication in the record contrary to the testimony of the applicant was the affidavit of personal service of the summons upon him (P-18) and the judgment of conviction (P-19). Again, for reasons which will be set forth hereafter, I am persuaded to believe the applicant's testimony in its entirety. I have no doubt that the summons was not served upon the applicant personally, nor that he knowingly waived a recitation of the charges against him.

I am also persuaded that he did not recognize the proceedings to be criminal in nature. First, he had every reason to believe that the matter was a health code violation because of the nature of the incident. More specifically, he was aware that the incident arose from a health inspection, that there were other health code violations which arose at or about the same time and that, most importantly, he did not believe that he had done anything wrong, let alone criminal. A reading of the affidavits of the two health inspectors clearly established that Mr. Koliastasis believed reasonably that the inspection had been completed at the time he ordered the inspectors to leave the premises. Second, the applicant's testimony that there were no indicia of a criminal action which would trigger a suspicion on his part that the matter was anything other than a health code violation was both reasonable and credible.

Also, it is reasonable to believe that the nature of the court appearance did not alert Mr. Koliastasis to the fact that the matter was criminal in nature. Since he had not seen the summons or complaint prior to his court appearance, he had no notification of the nature of the charges. Further, he appeared before a Justice of the Peace, who need not have been a lawyer - judge (P-19). While he was in court, he was pressured by his sister not to contest the matter. The pressure by Mrs. Tripp consisted of her belief that any factor which might have a negative reflection upon the Ponderosa could adversely affect its casino license, especially in view of the then-existing audit and investigation by the Board. Mr. Koliastasis bowed to this pressure and pleaded guilty. Accepting that the applicant believed the matter to be a health code violation, I am persuaded that he was not cognizant of the nature of the action to which he pled guilty. Therefore, any waiver of a reading of the charges to which he may have agreed does not establish his knowledge of the nature of the charges. Last, since Mrs. Tripp paid the fine, Mr. Koliastasis had no further involvement whatsoever with this action.

It must be noted that the applicant had, at that time, virtually no exposure to court proceedings. It would be unreasonable to assume or infer that his mere appearance at the hearing would cause him to believe that he had been charged with a criminal violation. A layman would have no idea of the nature of such proceedings unless he was advised explicitly and in terms that he understood. That did not happen to Mr. Koliastasis. This point is further emphasized by the lack of any indicia of a criminal matter, as set forth by the applicant during his testimony.

Further, the information Mr. Koliastasis received from the Reno Police Department, that he had no criminal involvements other than the 1965 incident, strongly supported his position.

It is also noted that when confronted by the Division investigator with the nondisclosure, the applicant contended that the matter was not criminal in nature.

3. CREDIBILITY

Initially, Mr. Koliastasis' position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in the proceedings. However, it was obvious both during the hearing and during the review of the record that from my observations of his demeanor, the plausibility of his testimony, the witnesses who corroborated his testimony on numerous key points and my examination of the documentary evidence, i.e., the transcript of the proceedings before the Gaming Commission (R-4), etc., which will be discussed infra, he testified truthfully.

Mr. Koliastasis not only gave the appearance of being credible, but his testimony appeared to be credible in each and every respect. During his three full days of testimony, the applicant responded fully and completely to each and every question asked by his counsel, counsel for the Division and the court. He addressed each question directly. Further, his testimony was plausible in every respect. It comported fully with human experience, was inherently consistent and was corroborated, for the most part, either by witnesses or documents. There was no witness offered to refute any fact to which he testified, including his contentions that he had not violated Section 86b of the act by his failure to disclose the civil and criminal actions. On this factor, his testimony was entirely consistent with the explanation he gave to the Division investigator during his interview, and was reasonable and believable in every respect. No Division investigator was called to testify to contradict the impression of consistency, reasonableness and truthfulness, which was corroborated by the Division's objection letter (P-2). The only apparent problem with the applicant's testimony was his claim that he had not been served with the summons for the criminal matter, which was in conflict with the Affidavit of Service which he offered (P-18). However, his explanation was certainly plausible and when coupled with his clear and convincing credibility, I am persuaded to believe Mr. Koliastasis' version of the incident. In the final analysis, I am persuaded to accept his testimony in all respects.

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In its brief, the Division raised numerous inferences to be drawn against Mr. Koliastesis in an assessment of his credibility. Without addressing each contention individually, it is clear that the applicant fully recognized the nature of each of the objections to licensure raised by the Division. Accordingly, he wisely addressed each of these objections in his direct testimony. He also did not try to avoid the obvious inferences. There was no evidence of deceit on his part.

Although it argued well in its brief, the Division unfairly characterized the testimony and evidence offered by the applicant. The inferences argued by the Division were not based upon the record and my observations and analysis of Mr. Koliastasis' credibility and the truth of his testimony. The fact that he obviously was well prepared for this hearing did not show that his testimony was not truthful. Rather, this was an indication of his sincere desire to establish by clear and convincing evidence, a very heavy burden, that he was qualified for licensure. Were he to have done less, it likely would have been fatal to his chances for licensure. A strong presentation by an applicant should not be correlated to a lack of veracity.

4. SCOPE OF DUTIES AND RESPONSIBILITIES AT THE PONDEROSA

An important factor in this matter is the extent of Mr. Koliastasis' authority as Casino Manager, or otherwise, at the Ponderosa. This is especially significant in consideration of the action before the Gaming Commission.

The applicant contended that as Casino Manager from mid-1975 until July 1977 and again from August 1978 until July 1980, his area of responsibility was limited specifically to the casino pit, and to the blackjack, craps and roulette tables; and, further, that he did not have any authority for the slot, keno, cashier or accounting/auditing departments. Mrs. Tripp, as General Manager of the entire facility, hired separate managers for both the slot and keno departments. The applicant also contended that the cashier and accounting/auditing functions were directly under the control of the Controller and Mrs. Tripp. Accordingly, he had no responsibility or authority for these other departments. As far as the accounting-type operations were concerned, the applicant was not involved in the record keeping, did not have any background for this, nor was he permitted access into those areas of the operation. Also, he worked mostly on the night shift, at which time there were no accounting-type personnel on duty. In essence,

the applicant had no management authority to effect a change in those areas of the Ponderosa's operations.

Mr. Koliastasis acknowledged that he was aware of deficiencies in the accounting auditing/operations and made every reasonable effort to have them corrected. The applicant was aware of the deficiencies in the record keeping because he, as Casino Manager, did not receive adequate records to inform him of the success of the casino operations. However, he believed that the pit made money. Basically, he complained of these deficiencies to Mrs. Tripp and occasionally to Mr. Tripp. Mrs. Tripp merely would tell him to return to the pit area. On the occasions when he discussed the problems with Mr. Tripp, a family argument usually followed. The lack of corrective action by Mrs. Tripp and the inter-family disputes were the reasons the applicant cited for his resignation from the Ponderosa in July 1977.

When asked why he did not report the apparent violations to the Gaming Commission or the Board, Mr. Koliastasis testified that he did not know of the precise detail of the violations and that he was well aware that the Board was investigating the Ponderosa. Further, although he believed that his sister was an incompetent General Manager, he did not believe that she was dishonest.

Mr. Koliastasis' testimony that Mr. Tripp was a mere figurehead at the Ponderosa; that Mrs. Tripp, as the General Manager, ran the entire operation; that she had no business ability whatsoever and did not delegate authority; that Mr. Koliastasis' responsibility was restricted to the pit area, which did not include the keno or slot departments; that the applicant had no authority over the accounting/auditing operations; that the applicant was unable to initiate any changes on his own initiative; that the applicant constantly pressed Mrs. Tripp for constructive changes; and that the applicant left employment with the Ponderosa as a result of his inability to effect changes was corroborated fully by the testimony of Lawrence E. Baxter and George C. Angelis. Mr. Baxter worked with the applicant at the Ponderosa from 1972 until 1977. Mr. Angelis worked at the Ponderosa from early 1976 until mid-1977. Both were very credible witnesses, especially Mr. Baxter.

The only evidence that Mr. Koliastasis' duties and responsibilities may have included more than that to which he testified concerned the incident of January 10, 1979, and his being a named respondent in the Board's case before the Gaming Commission.

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However, I am not persuaded that these matters establish that his duties and responsibilities were in excess of those in the description he set forth in his testimony.

The Division argued that the applicant's involvement in the incident on January 10, 1979, when coupled with the reference in two of the three inspectors' reports to Mr. Koliastasis as the "assistant manager," illustrated that his authority exceeded that which he claimed. However, it is also clear from these reports, especially those of Ms. Freeman and Mr. Sobsey (P-15 and P-16), that Mrs. Tripp was the real authority. It was also further evident, based in part upon the testimony of Messrs. Baxter and Angelis, which was offered on another point, and the applicant's believable testimony, that he reported to the kitchen on the day in question in order to help a "family business" in an emergency, that Mr. Koliastasis' involvement in the kitchen emergency does not establish that he had any authority in excess of that to which he testified, or especially that he had authority over the accounting/auditing, keno and slot operations.

As will be discussed in greater detail, infra, Mr. Koliastasis' involvement as a named respondent in the Board's case against the Ponderosa and the Tripps did not establish that he had any authority beyond that which he described. If anything, the Board's case supported the applicant's testimony regarding his limited authority. Also, in the Ponderosa's first "Notice of Defense," which was submitted by a single counsel for all named respondents and which Mr. Koliastasis contended that he had not seen until he commenced preparation for this matter with New Jersey counsel, the Statement of Defenses, which was geared primarily toward a repudiation of the alleged accounting violations, there were statements which supported the applicant's position. More specifically, in response to an allegation that a named employee of the payroll department improperly participated in a count of funds, the explanatory statement included an assertion that Mrs. Tripp was responsible for the overall management of the casino. This statement can be construed as an admission against Mrs. Tripp's interests. Likewise, by way of legal objection to the complaint, the following was included at page 16:

> D. Respondent Pete Koliastasis is Casino Manager, and is not responsible for any matters mentioned in the Complaint other than the actual running of the Casino itself. Consequently, no allegation pertaining to methods of record keeping, internal auditing, reporting of loans, or any such matters have anything to do with this particular Respondent.

Again, this could be construed as an admission against the interests of the Tripps. Further, and as noted earlier, the Gaming Commission was concerned primarily with the accounting/auditing deficiencies and believed that Mr. Koliastasis had no authority whatsoever over this portion of the operations or over the implementation of any corrective action (R-4).

Therefore, it is abundantly clear that Mr. Koliastasis' scope of authority as the Casino Manager at the Ponderosa included only the supervision of the casino games and did not include the slot, keno, cashier, accounting or auditing departments or functions.

5. JANUARY 10, 1979

Also in dispute was the applicant's actual conduct on January 10, 1979, during the health inspection of the coffee shop at the Ponderosa by Public Health Environmentalists Freeman and Sobsey. The applicant's testimony that he was present in the coffee shop because of severe water leakage from the kitchen ceiling was fully corroborated by the report of Fire Department Inspector Farr (P-14).

Mr. Koliastasis admitted that he was aggressive with the health inspectors, had asked Ms. Freeman if she wanted a pair of white gloves, called her a "nitpicker" and directed both health inspectors to leave the building. However, a review of the health inspectors' reports is most important. Although Mr. Sobsey characterized the applicant's conduct as abusive, this apparently was based solely upon the "white glove" and "nitpicker" comments (P-15). Also based upon these comments, Ms. Freeman characterized the applicant's demeanor as angry. Further, each of the three reports clearly indicated that Mr. Koliastasis asked Ms. Freeman if she had finished the inspection, to which she replied in the affirmative. It was only after her reply that he told the health inspectors to leave the premises. However, the health inspectors apparently were not finished their work in the kitchen; but this was never communicated to the applicant.

Although it is clear that Mr. Koliastasis was angry with the two health inspectors and ordered them to leave the premises, it is equally clear that an emergency existed in the kitchen which he was attempting to fix. Under the circumstances, he could hardly have been expected to be concerned about the coffee shop's rating. Further, and most important, at no time did the health inspectors advise him that they needed to continue their inspection; in fact, he was advised that it was completed. Although the

applicant's tone might have been less angry, he was not abusive. He cannot be faulted for ordering the inspectors from the premises.

What was most evident from the health inspectors' reports was that Mrs. Tripp was abusive and ordered the inspectors to leave the premises with the knowledge that their inspection had not been completed. Further, Mrs. Tripp called the inspectors' supervisor and demanded that new and "more experienced" inspectors be sent to complete the inspection. Mrs. Tripp's conduct was far different and more extreme than that of the applicant. Mr. Koliastasis was not present at the time that Mrs. Tripp confronted the health inspectors. Her conduct cannot be attributed to the applicant.

6. NEVADA GAMING COMMISSION CASE

The Gaming Commission, based upon stipulations by counsel for the respondents, found that the respondents had committed all of the violations alleged in the complaint and amended complaint and imposed a penalty. Further, the Gaming Commission found that the respondents had violated the terms and conditions of its original order and issued an amended order.

Although Mr. Koliastasis was a named respondent, was present at the hearing and was represented by counsel, he denied any responsibility for or knowledge of the majority of the alleged violations. More specifically, he denied responsibility for and knowledge of all non-gaming, keno and slot violations, and denied knowledge of most of the gaming-related violations.

As far as the applicant's participation in the Nevada hearing, he contended that Mrs. Tripp had hired counsel for him and he believed that his interests would be protected. However, he did not see any of the pleadings or any other documents prior to the hearing. He first saw the pleadings on or about May 25, 1981, in preparation for the hearing on his New Jersey application. Further, Mr. Koliastasis did not meet his attorney, Frank Schreck, until several days before the hearing. At that time they had a short conversation in which Mr. Schreck advised the applicant that he would help him. At no time did they discuss preparation for the hearing. Although this lack of communication with counsel seemed most unusual, Mr. Schreck's statements to the Gaming Commission fully corroborated Mr. Koliastasis' testimony (R-4 at p. 111). Therefore, accepting Mr. Koliastasis' description of the degree of representation that he had in the Gaming

Commission matter, it is not difficult to realize that he had a substantial lack of understanding of the entire proceedings.

The course of events at the hearing was also most revealing. There was no attempt by any of the respondents to refute the charged violations or to present seemingly legitimate defenses. As far as Mr. Koliastasis was concerned, neither the fact that he had not worked at the Ponderosa during a portion of the entire period covered by the allegations nor the fact of his limited scope of authority was made known to the Commission. Rather, Mr. Schreck appeared to represent the Ponderosa and made only fleeting reference to "his client," Mr. Koliastasis. I recognize that the priority concern was the continued licensure of the Ponderosa; however, at the very least, Mr. Koliastasis' equitable defenses should have been raised.

The Gaming Commission heard and decided the entire case in one afternoon. The presentation consisted of the testimony of six witnesses and documents. The expeditious conclusion of the matter was achieved despite the Gaming Commission's acknowledgement that the matter before them was difficult and complex. It appeared that participation by the various parties was restricted. Suffice it to say that it is an understatement that the hearing before the Gaming Commission was not comparable to the administrative hearings that exist in New Jersey.

Essentially, the matter before the Gaming Commission turned into a negotiating session between counsel for the respondents and the Gaming Commission members in regard to the continuation of the Ponderosa's license. Counsel for the respondents were totally consumed with the retention of the Ponderosa's license, even to the extent that little effort was made to seek the imposition of small fines. No effort was made to extricate Mr. Koliastasis from culpability. Again, although I fully recognize that the Ponderosa's license was the most significant item at stake, the positions of the individual respondents and, of more specific concern herein, Mr. Koliastasis, were not insignificant, and yet they were ignored.

As far as Mr. Koliastasis' application for licensure in New Jersey is concerned, it is not fair to accept the findings, decision and order of the Gaming Commission on its face. Rather, it is necessary to evaluate the individual allegations in light of the limited scope of authority, duties and responsibilities and other exculpatory testimony of the applicant, which was not before the Gaming Commission.

There were only two allegations in the complaint and amended complaint where Mr. Koliastasis was individually named. In Count VII, paragraph 32, subparagraph d, it was alleged that on June 26, 1979, during a game count, the applicant improperly permitted Nikolas Kombotheklas, who had not been identified to the Board as a participant in the count, to be present in the count room. The applicant testified that Mr. Kombotheklas was a shift boss who had come to the door during the count on an occasion when the applicant was a member of the count team. Mr. Koliastasis advised Mr. Kombotheklas that the applicant could not leave the room and directed Mr. Kombotheklas to enter and watch the count for training purposes, since he would be added to the count team in the future. As soon as the applicant observed the Board's investigators, he directed Mr. Kombotheklas to leave the room. The applicant acknowledged that the incident was a mistake. This subparagraph also alleged that as a result of the Board's audit examination, a game count sheet for January 6, 1979, was discovered, which contained the crossed-out signature of "S. Ratliff" and the counter-signature of Mr. Koliastasis. Further, the name of S. Ratliff had not been submitted to the Board as an authorized count participant. The applicant testified that he knew that S. Ratliff was not authorized to participate in the count and so advised Mrs. Tripp. She stated that the Controller would take care of having S. Ratliff authorized at a later time. However, the applicant crossed off the signature and signed his own name to the sheet because he was authorized to participate in the count. It was the only time that such an incident ever occurred.

In Count XI, paragraph 36, subparagraph a, it was also alleged that the agents of the Board made a request to Mr. Koliastasis for the production of documents, which were not produced. The applicant acknowledged both the oral and written requests for the documents. He had relayed both requests to Mrs. Tripp and/or Controller Hughes. They assured him that the documents would be delivered to the Board. Apparently, there was extreme difficulty finding the documents. The allegations which followed also revealed that the Board's agents pursued their request for the documents with both Mrs. Tripp and Controller Hughes. The maintenance and production of these documents were outside the applicant's control and authority. There was no intent on his part to mislead or not to cooperate with Board investigators.

There was one other allegation in which Mr. Koliastasis conceded that he was personally involved. In Count III, paragraph 12, subparagraph b, it was alleged that the drop boxes were not kept in dual custody while being removed during the 1:30 a.m. drop.

The applicant was not responsible for the security or removal of the drop boxes. However, with this one exception, he contended that the drop boxes were always kept in dual custody of two security people during removal. The one occasion where this did not occur was during an emergency when one security person left to investigate a disturbance. Mr. Koliastasis personally took the absent security officer's place.

The complaint and amended complaint also alleged various violations of the System of Internal Control in the casino pit area at the Ponderosa, which was admittedly under the control and the authority of Mr. Koliastasis. More specifically, in the complaint, Count III, paragraph 10, subparagraph e, it was alleged that marker buttons were not utilized in the table credit procedure. This involved the placement of a marker button next to a player who made a request for credit while the marker was being written up. In subparagraph g, it was alleged that marker stubs were not properly completed at the time of issuance of a marker. In subparagraph h, it was alleged that marker stubs were not deposited in the drop boxes. In subparagraph j, it was alleged that a credit slip was not always deposited in the drop box in connection with the issuance of a marker.

In Count III, paragraph 12, subparagraph a, it was alleged that on several occasions a "Request for Fill" slip was not prepared or inserted in the drop box. In subparagraph c, it was alleged that on two occasions a dealer failed to count the chips delivered to a table game during a fill. In subparagraph d, it was alleged that on six occasions no marker button was used in connection with a credit to a table game. In subparagraph e, it was alleged that on two occasions when credit was granted to a table game, no credit slip was issued.

In the amended complaint, Count VII, paragraph 32, subparagraph a, it was alleged that between April 20 and June 29, 1979, there were no payoff or award schedules posted for craps, twenty-one and roulette games at the respective tables.

Last, in Count X, paragraph 35, subparagraph d, it was alleged that the Ponderosa failed to maintain any records of "shill advances or turn-ins" during the period October 1, 1975 through March 31, 1979.

It is a fact that these alleged violations consist of only a small portion of the complaint and amended complaint. Further, they allege only violations of the System of Internal Control, which are not comparable in the degree of seriousness to other alleged

violations of statutes or regulations, which, as will be seen, were outside the scope of the applicant's control and authority.

Mr. Koliastasis testified in regard to each of the alleged violations of the System of Internal Control in the casino pit area. He testified that he did not observe nor did he know of any incidents of alleged violations. It was noted that although he had 24-hour responsibility for the casino pit, he was almost always on duty during the night shift. However, the applicant did not deny that such violations could have occurred. He stated that such violations were of the type that occur on a not-infrequent basis in all casinos. He also stated that such violations, if any, were very few in number. It was also established by the testimony of the applicant and of Messrs. Baxter and Angelis that Mr. Koliastasis strictly enforced the rules in the casino pit. The applicant stated that on any occasion when he observed a violation of the System of Internal Control, he took immediate corrective action or gave the offending employee further instruction in compliance.

The applicant also presented specific rebuttals to some of the allegations. With regard to the allegation in the complaint, Count III, paragraph 10, subparagraph g, that marker stubs were not properly completed at the time of issuance of a marker, the applicant acknowledged that it was the responsibility of the shift supervisor to sign the marker stub, but it was the responsibility of the cashier to fill in the missing information. With regard to the allegation that a credit slip was not always deposited in the drop box in connection with the issuance of a marker, as alleged in subparagraph j, the applicant testified that there were occasions when a credit slip would properly remain in the cage and would not be deposited in the drop box. With regard to the two occasions that no credit slip was issued when credit was granted to a table game, as alleged in paragraph 12, subparagraph e, the applicant stated that no credit slip would be issued if the marker button were paid off before the transaction was completed.

With regard to the failure to post payoff or award schedules for craps, twenty-one and roulette games at the respective tables, as alleged in the amended complaint, Count VII, paragraph 32, subparagraph a, the applicant contended that although these game tables were under his control and were his responsibility, he was not responsible for the posting of payoff schedules; rather, this function was the responsibility of the Controller. Further, the applicant contended that payoff schedules were posted and that he was unaware of any violation. With regard to the failure to maintain any records of

"shill advances or turn-ins," as alleged in subparagraph d of Count X, Mr. Koliastasis stated that such forms were always completed in the casino pit and that it was the responsibility of the accounting department to maintain the records. Further, he was unaware of the absence of these records.

The remainder of the allegations contained in the complaint and the amended complaint, which were by far the greater majority of the allegations, involved the accounting/auditing, cashier, keno and slot operations at the Ponderosa. The alleged violations were of statutes, regulations and the System of Internal Control.

With regard to the accounting/auditing and cashier functions, it was alleged in Count I of the complaint that certain employees were permitted to work without their required work card. In Count II, it was alleged that there was a failure to maintain adequate records of gross gaming revenue. In Count III, paragraph 10, subparagraph f, it was alleged that the auditing department did not maintain a record of unused fill and credit slips. In subparagraph i, it was alleged that the cashier did not prepare a credit slip with the issuance of each marker. In subparagraph k, it was alleged that a computer drop-and-win report for the table games was not used in the Ponderosa's table game audit procedure. In subparagraph l, it was alleged that the Ponderosa did not use a computer in its slot audit procedure. In subparagraph m, it was alleged that the Ponderosa did not use a computer in accounting for uncollected items. In Count IV, it was alleged that at the Ponderosa the amount not received as a result of bad checks, which originated at the hotel's front desk, was deducted from gross gaming revenue. In Count V, it was alleged that the daily count had been completed earlier than at the authorized time and that the Ponderosa's list of persons authorized to participate in the count had not been submitted to the Board in a timely fashion. In Count VI, it was alleged that the Ponderosa failed to notify the Board of various loans to the Ponderosa. In the amended complaint, Count VII, it was alleged that the Ponderosa failed to file in a timely manner various financial reports with the Board and/or failed to report required information. In Count IX, it was alleged that the Ponderosa conveyed ownership of a parcel of property to Mr. and Mrs. Tripp in satisfaction of certain debts for salaries past due, but without notification to the Board or the Gaming Commission. In Count XI, it was alleged that the Ponderosa failed to maintain adequate and complete accounting records for the operation of its gaming activities. In Count XII, paragraph 37, subparagraphs a through i, it was alleged that the Ponderosa failed to maintain a comprehensive financial management program; more specifically, it failed to maintain complete and adequate financial documentation

with regard to the revenues and resources of its gaming operations; this primarily concerned the slot department. In Count XIII, it was alleged that the Ponderosa permitted certain accounting and internal control documents to be taken from the State of Nevada.

With regard to the slot department, in the amended complaint, Count VII, paragraph 32, subparagraph b, it was alleged that a limit was placed on the jackpot of progressive slot machines without the appropriate sign to notify the gaming public. In subparagraph c, it was alleged that the drop count procedure for the slot department was conducted at times other than as scheduled. In subparagraph d, 105 violations involving personnel not previously identified to the Board as authorized participants in the slot counts for the period from October 1, 1975 through March 31, 1979 were alleged. Count XIV also set forth certain improprieties in regard to the operation of the slot department.

In Count X, paragraph 35, subparagraphs a through c, it was alleged that the Ponderosa understated its keno revenue, improperly used "free play" slot machines and improperly deducted "shill" losses when it computed gross gaming revenues.

In Count III, paragraph 10, of the complaint, violations of the Ponderosa's System of Internal Control were alleged with respect to safekeeping of keys for the locked gate drop box storage area and for the drop boxes. More specifically, it was alleged that the keys were not stored at the hotel desk or in the cashier's cage and were not kept under ledger control. Mr. Koliastasis testified that Mrs. Tripp kept the keys for the locked gate drop box storage area in her office in a locked box. Further, this was one of the areas of frequent dispute between the applicant and his sister. Also, one set of the keys to the drop boxes was kept by Mrs. Tripp in her desk and a second was kept by the controller. The applicant also testified that on the occasions in which he participated in the count, it was necessary for him to sign for the drop box keys at the cashier's cage.

Mr. Koliastasis acknowledged that he had a general understanding that the functions of the accounting/auditing department were not being properly administered. This understanding was based upon deficient reports and other information which he received or did not receive during the course of his functioning as Casino Manager, his knowledge of Mrs. Tripp's incompetence and his knowledge of the Board's investigation. However, he denied knowledge of specific violations of statutes, regulations or the System

of Internal Control. Given the applicant's absence of any responsibilities in the areas outside of the casino pit, his lack of training to manage those areas and the absence of any evidence in the record to support the Division's contention that he was responsible for the operations in the non-casino pit areas, it is clear that he cannot be held responsible for the cited violations in those areas of the operation.

It is abundantly clear from the overwhelming weight of the evidence that Mr. Koliastasis had control over and was responsible for the operation of the table games in the casino pit at the Ponderosa. He had absolutely no control or authority over the operations of the keno, slot or accounting/auditing departments. The accounting/auditing and cashier functions were under the direct supervision of the Controller. The keno and slot operations were under the direct control of their respective managers. The Controller and slot and keno managers reported directly to Mrs. Tripp, not to the applicant. It was further evident that the applicant was unable to control or influence Mrs. Tripp in her day-to-day management of the facility. Also, he had no means to influence or effect proper management of these other departments. Therefore, although he was a named respondent in the matter before the Gaming Commission and was found, apparently, to be responsible for the cited violations, it is unequivocally evident that, aside from a few minor technical violations of the Ponderosa's System of Internal Control, which are not to be equated with violations of statutes or Gaming Commission regulations, he had no relationship whatsoever with the cited violations other than as a named licensee. It is further evident that his position as a named licensee for the Ponderosa did not serve to vest him with any authority or control over any part of the Ponderosa's operations other than the table games.

Similarly, the amended order of the Gaming Commission established that the Ponderosa failed to comply with certain terms and conditions of its original order (P-8). Cited violations involved a failure to have made an independent audit of the gaming operations. Clearly, Mr. Koliastasis had no control or authority over such activities. The only portion of the original order which pertained to the applicant personally was a fine, which was paid by Mrs. Tripp.

7. GOOD CHARACTER, HONESTY AND INTEGRITY

Essentially, the Division has called into contention the applicant's business integrity. This actions on the part of the Division stems from the applicant's involvement

in the matter before the Gaming Commission, in regard to his management of the casino, and his relationship with his sister, Mrs. Tripp, upon whom he placed virtually all of the blame for the violations cited in the matter before the Gaming Commission.

Messrs. Baxter and Angelis testified affirmatively in support of Mr. Koliastasis. Both worked with him at the Ponderosa for substantial periods of time. They held the opinion that the applicant was an honest person in every respect and that he abided by all gaming regulations. Further, as manager of the casino pit at the Ponderosa, he strictly enforced all gaming regulations without waiver. Also, his integrity as Casino Manager was above reproach. Both also testified to the dictatorial manner of Mrs. Tripp in her day-to-day management of the entire facility. It was most evident that she was not a person who was receptive to change or criticism or who could be dealt with easily.

There was no evidence offered to contradict any of the testimony of Messrs. Baxter and Angelis, which fully corroborated that of the applicant.

The Division, however, contended that Mr. Koliastasis lacked business integrity because he permitted violations to occur at the Ponderosa as a result of his submissive relationship with his sister. However, the evidence did not support this argument.

There was no doubt that the applicant had a close family relationship with his sister. She raised him for a portion of his life and provided him with important employment opportunities. That he would feel close to her and have a deep trust in her is clearly understandable. However, it was also evident that he recognized her absolute lack of managerial abilities and confronted her on many occasions in regard to what he believed were instances of improper and/or insufficient management. In fact, the friction that was caused by these confrontations was the primary factor in Mr. Koliastasis' decision to leave the Ponderosa in 1977 and again in 1978 or 1979. Further and most importantly, although the applicant knew that there were severe managerial problems at the Ponderosa caused by Mrs. Tripp, he never believed or thought that there was any illegal activity on her behalf. This belief was fully borne out by the testimony of the Board's investigators (R-4). Although the Division argued that the investigators were unable to determine that there were any illegal activities because of the lack of adequate records, the accurate inference is that there was no evidence or other indication of any

illegal activity whatsoever. This is the reason why the Gaming Commission did not immediately suspend or terminate the Ponderosa's license.

The overwhelming weight of the evidence clearly established that Mr. Koliastasis possesses good character, honesty and integrity in both his personal and business life.

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

1. Mr. Koliastasis failed to disclose the civil suit captioned Yun v. Ponderosa, et als., on his P.H.D.F.'s because he had forgotten the matter.

2. The applicant's failure to recall the Yun v. Ponderosa, et als., matter was reasonable, in view of the passage of six years between the conclusion of incident and the submission of his applications for licensure, because he had never gone to court, and because the plaintiff had advised him to ignore the matter shortly after it commenced.

3. The applicant's recollection of the incident involving Mr. Yun occurred only as a result of his interview with a Division investigator.

4. The applicant was not personally served with a copy of the summons in the matter of State v. Pete Koliastasis, Docket No. 50,163.

5. The applicant first learned of the required court appearance on February 26, 1979, the date of the hearing.

6. The applicant was not arrested, handcuffed, detained by police authorities, given any Miranda warnings, fingerprinted, photographed, or processed by the police, nor was bail posted.

7. The applicant was not represented by an attorney at his court proceeding.

8. Because the incident evolved from a health inspection, the applicant knew of health code violations, and because of his belief that he had done nothing wrong, the applicant reasonably believed that the matter involved another health code violation.

9. Based upon his belief that the matter was a health code violation and that any obstacle in resolving it could cause the Ponderosa difficulties with its gaming license, the applicant pled guilty.

10. The court appearance did not indicate that the matter was criminal in nature.

11. The applicant did not understand that the charges to which he pled guilty were criminal in nature.

12. The applicant's belief that the matter was non-criminal and involved only a health code violation was reasonable.

13. The applicant made inquiry to the Reno Police Department during the preparation of his P.H.D.F. - 1 and was advised only of the 1965 disorderly conduct charge, which was disclosed.

14. The applicant failed to disclose State v. Koliastasis because he did not know that it was criminal in nature.

15. Mr. Koliastasis appeared to be credible, and his testimony was credible.

16. The applicant's responsibilities as Casino Manager at the Ponderosa were limited specifically to the casino pit area; more specifically, he had authority only over the blackjack, craps and roulette tables.

17. There were separate slot and keno department managers at the Ponderosa.

18. There was a Controller in charge of the accounting/auditing functions. Although the cashier's cage was located in the casino area, the Cashier reported directly to the Controller.

19. The applicant, as the Casino Manager, along with the Slot Manager, the Keno Manager, and the Controller each reported directly to Mrs. Tripp, the General Manager of the Ponderosa.

20. The applicant had no supervisory or managerial responsibility or authority over the slot, keno, cashier and accounting/auditing functions at the Ponderosa or over their respective managers.

21. The applicant was aware generally of deficiencies in the accounting/auditing operations at the Ponderosa.

22. He complained of these deficiencies to Mr. and Mrs. Tripp, individually and jointly.

23. The applicant was unable to effect any correction of the deficiencies in the accounting/auditing operations at the Ponderosa.

24. The applicant was aware of an ongoing investigation by Board agents into the deficiencies of the accounting/auditing operations at the Ponderosa.

25. On January 10, 1979, the applicant arrived early at the Ponderosa in response to an emergency which involved severe water leakage from the kitchen ceiling; at that time, a health inspection was in progress.

26. The applicant was involved in a confrontation with Public Health Environmentalists Freeman and Sobsey.

27. The applicant was critical of the nature of the inspection.

28. The applicant was not abusive toward the inspectors.

29. Believing that the inspection was concluded, which belief was reasonable, the applicant ordered the inspectors to leave the premises.

30. The great majority of the allegations made by the Board against the Ponderosa, Mr. and Mrs. Tripp, and the applicant, which ultimately became Findings of Fact, were concerned with the failure to maintain proper and adequate financial records of the gaming operations.

31. The Controller and Mrs. Tripp, as General Manager, were responsible for the maintenance and production of the financial records at the Ponderosa.

32. The applicant had no responsibility, control or authority over the accounting/auditing functions at the Ponderosa.

33. In regard to those portions of the allegations which dealt with the slot machine and keno operations, the applicant had no responsibility, control or authority over those operations.

34. A minimal portion of the allegations involved violations of the Ponderosa's System of Internal Control in regard to casino pit operations.

35. The operations of the casino pit were the responsibility and under the control of the applicant, as Casino Manager.

36. These alleged violations were technical in nature and were relatively inconsequential.

37. The applicant credibly disclaimed knowledge of most of the technical violations.

38. Whenever the applicant was aware of a violation in the casino pit, he took immediate corrective action.

39. The legal representation of the applicant in the matter before the Gaming Commission was inadequate.

40. The findings and conclusions of the Gaming Commission are not entitled to full weight and consideration in this proceeding.

41. The applicant has a reputation for good character, honesty and integrity, both in his personal life and in his business activities.

42. The applicant is a person of good character, honesty and integrity, both in his personal life and in his business activities.

43. As Casino Manager, the applicant strictly enforced all statutory, regulatory and System of Internal Control requirements.

44. The applicant trusted his sister, Kathy Tripp.

45. The applicant fully recognized Mrs. Tripp's managerial and supervisory deficiencies.

46. The applicant frequently confronted Mrs. Tripp in regard to deficiencies in the operations at the Ponderosa.

47. The applicant had no reason to believe that there were any illegal activities at the Ponderosa.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succinctly described the purposes for the inclusion of Section 86b within the act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at page 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information

> concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80(a), (b) and (c); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

An applicant is required to provide all material facts when his application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes the mere failure to provide any fact material to qualification. The materiality, weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his qualifications to

the satisfaction of the Commission. There is no doubt that convictions of crimes are facts material to qualification.

In regard to the Yun v. Ponderosa, et als. matter, the applicant argued that the civil action was not material to licensure and, as such, did not require disclosure. The argued nonmateriality was based upon the age of the action, that the applicant was not a principal defendant and that the matter was dismissed without a settlement.

I am not persuaded that the civil action was not material. The passage of eight years is not sufficient in and of itself to establish nonmateriality. Further, it was not evident on the face of the complaint alone that the applicant was not a principal defendant, although that was the believable substance of his testimony. Also, the fact that it was dismissed without settlement is not necessarily indicative of its materiality. All of the factors cited by the applicant in his argument are factors which, if the matter were disclosed, the Division, this trier and the Commission could objectively evaluate, pursuant to the respective burdens of the applicant and the Division. However, the fact that an item of information may not prohibit licensure does not automatically render it nonmaterial.

Mr. Koliastasis failed to disclose the civil suit because he had forgotten it. The nature of the incident, the age of the action, its short duration, the absence of a finding of liability and of a court appearance are all factors which justifiably support the applicant's lack of recollection of the incident. The applicant did not recall the incident until confronted by the Division investigator, at which time he stated that he had forgotten the incident. This lack of recollection is reasonable and believable.

The applicant's involvement in the so-called criminal matter is far more complex. There was not any extensive passage of time between the incident and the filing of the P.H.D.F.'s, and there was a court appearance and fine. The sole reason for nondisclosure was that the applicant believed that the matter was noncriminal in nature.

The applicant compared his one prior criminal-type incident with the incident in issue. In 1965, he was involved in a minor fracas. The applicant was taken into police custody, fingerprinted, had his picture taken, was questioned by the police and paid a fine. In the matter at issue, there was no involvement with any authorities whatsoever prior to the hearing. Further, Mr. Koliastasis, upon being advised by his sister, knew that the

proceedings resulted from the health inspection. Because he believed, and reasonably so, that he had done nothing wrong, he had no idea that the matter was criminal. Rather, he believed the matter involved a health code violation.

The applicant also contended that he had no knowledge of the offense prior to his court appearance and, further, that his sole exposure to the matter in the court proceeding was to plead guilty without understanding that the matter was criminal. Given the fact that Mrs. Tripp paid the applicant's fine and given his description of the brief proceeding, his claimed lack of understanding was entirely reasonable.

Given the circumstances and the applicant's lack of exposure to the criminal or civil justice systems, it is easily understandable that he had no conception that the matter was criminal in nature. Aside from his court appearance, which was extremely brief, there was no reason for him to know that he was faced with criminal charges. Further, it has not been sufficiently established that the court appearance would cause the applicant to realize that the nature of the proceedings was criminal, especially in light of his credible and convincing testimony to the contrary.

The applicant first learned that the matter was criminal during his interview with a Division investigator. At that time he maintained steadfastly that the matter was not criminal in nature.

I CONCLUDE that the failure of Mr. Koliastasis to disclose both the civil and criminal actions in which he was involved on his P.H.D.F.'s was the result of ignorance and does not constitute a violation of the provisions of N.J.S.A. 5:12-86b.

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

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

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

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

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

The Division contended that the applicant's conduct on January 10, 1979, which led to his conviction, and in his capacity as a key licensee at the Ponderosa, in light of the findings and conclusions of the Gaming Commission and the noncompliance with the original order, establish that licensure would be inimical to the policies of the act. I do not agree.

In regard to the incident of January 10, 1979, it was established, especially by the reports of the two health inspectors and the fire department inspector, that Mr. Koliastasis was not abusive and did not knowingly obstruct the inspection. Rather, under extremely difficult circumstances, the applicant was understandably upset. That he may have shown anger and may have been abrupt in his demeanor does not establish that he hindered government employees from the performance of their duties. Similarly, at the time he ordered the inspectors from the premises, he had every reason to believe that the inspection had been completed. The real culprit was clearly Mrs. Tripp. Her conduct, as set forth in the reports, was specifically intended to obstruct the inspection. However, Mrs. Tripp's conduct is not in any respect attributable to the applicant. Further, there is no indication that the applicant has been involved in any other similar conduct at any time. In fact, from the matter before the Gaming Commission, it was clear that the applicant cooperated, within the scope of his authority, with Board investigators at all

times. There has been no justifiable reason set forth which would indicate that licensure of Mr. Koliastasis would disturb the public confidence in the integrity of the regulatory process or otherwise compromise the integrity of the gaming industry.

The Division also contended that in his position as Casino Manager and as a Key Licensee of the Ponderosa, the applicant should be held individually responsible for the numerous violations cited by the Board in the case before the Gaming Commission and responsible for the Ponderosa's failure to comply with the original order, which render licensure inimical. It is abundantly clear that the applicant had no authority or control whatsoever over any of the Ponderosa's operations other than those in the casino pit. The unrefuted and unchallenged evidence on this issue totally supported the applicant's testimony. His status as a Key Licensee of the Ponderosa provided him with no additional authority or control and merely entitled him to the unfortunate distinction of being a named respondent in the Board's complaint.

Mr. Koliastasis' actual responsibility, where alleged violations were cited in the complaint and amended complaint, was solely concerned with the System of Internal Control. These violations involved the failure to use marker buttons in the table credit procedure (P-3 at p. 4); failure to complete marker stubs properly (P-3 at p. 4); failure of a dealer on two occasions to count chips which were delivered to a table (P-3 at p. 5); failure on six occasions to use a marker button when credit was issued (P-3 at p. 6); failure on two occasions to use a credit slip when credit was issued (P-3 at p. 6); failure to post payoff or award schedules for table games between April 20 and June 29, 1979 (R-6 at p. 5); and the applicant's permitting an unauthorized person to be in the count room during a count, and his crossing out of a signature and replacing it with his signature on a game count sheet for January 6, 1979 (R-6 at p. 6). Although these violations are not without some significance, they are clearly not of the magnitude of the other violations for which Mrs. Tripp, the Controller, and/or the slot or keno managers were responsible. Mr. Koliastasis not only had no control or authority over the other departments at the Ponderosa, but he did not have the knowledge or ability to manage those functions. To hold him responsible for those violations under the circumstances which are evident from the testimony and documents in this case would be unconscionable.

With regard to the specific violations for which the applicant can be held responsible, because of his control and authority as Casino Manager of the pit on a 24-hour basis, it has not been established that licensure would be inimical to the policies of

the act. Again, although I do not ignore the fact that these violations occurred, it is clearly evident that they were technical in nature and of the type which the applicant would not tolerate if he had knowledge of them. It must be noted that aside from his supervisory responsibility, there was no evidence that the applicant had known of or knowingly tolerated the offenses. Further, it was evident that such violations were not serious and were of the type which occur infrequently in other casinos. In addition, there was ample evidence to indicate that Mr. Koliastasis was a competent, effective and strict Casino Manager, and did not tolerate any violations of statutes, rules or the System of Internal Control. As far as the incidents which involved Mr. Kombotheklas and the applicant's signing the count sheet after he had crossed-off another signature, the applicant's explanatory testimony completely voided even the appearance of any wrongdoing.

It was also clearly evident that Mr. Koliastasis had no control or authority to direct the Ponderosa's compliance with the original order of the Gaming Commission. The failure to produce a proper audit, as ordered, was solely the responsibility of Mr. and Mrs. Tripp, and more specifically of Mrs. Tripp. The applicant cannot be held responsible for the noncompliance.

Therefore, Mr. Koliastasis' involvement in the matter before the Gaming Commission does not establish that his licensure would be inimical to the policies of the act.

I CONCLUDE that in regard to his involvement in the incident of January 10, 1979 and his involvement in the matter before the Gaming Commission, the potential licensure of Mr. Koliastasis has not been established by the preponderance of the credible evidence to be inimical to the policies of the act.

(C) N.J.S.A. 5:12-89(b2)

Under Section 89b(2) of the act, Mr. Koliastasis was required to establish by clear and convincing evidence his "reputation for good character, honesty and integrity." Resorts, supra, at p. 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, and attributes of good character, honesty and integrity are the key. The reverse must also be

said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In the Matter of the Application of Boardwalk Regency Corporation for a Casino License, ___ N.J. Super. ___ (App. Div. 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 p. 5.

The proofs established that Mr. Koliastasis enjoys a favorable reputation for good character, honesty and integrity in the casino industry and in the community in which he lives. He is held in very high esteem. However, it is necessary to examine the applicant's conduct in light of the objections raised by the Division.

The Commission has also held that the disqualification criterion found in Section 86 cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under Section 89b(2). William Gonzales, supra, at p. 8. The fact that Mr. Koliastasis failed to disclose in his two P.H.D.F.'s his involvement in a civil matter and his criminal conviction would be a bar to licensure, but for the conclusion that the nondisclosures were the result of ignorance. Therefore, the nondisclosures are of no effect.

The applicant's involvement in the incident of January 10, 1979, is also in issue. However, as has been recited previously in this decision, his actions in this isolated incident in his lifetime were far from criminal in nature. Certainly, this incident casts no aspersions upon the applicant's character.

The Division also questioned the applicant's character because of the findings and conclusions reached by the Gaming Commission and its determination that the "respondents" failed to comply with the terms of its original order. However, as was evident not only from the testimony in this matter, but from the documented testimony before the Gaming Commission, the applicant's degree of culpability was limited only to the operations of the casino pit; and, further, the violations in the pit were relatively inconsequential. Likewise, the applicant had no control or authority to direct the Ponderosa toward compliance with the terms of the original order of the Gaming Commission, which was the sole responsibility of Mrs. Tripp. This cannot be held against

the applicant. The findings and conclusions of the Gaming Commission against Mr. Koliastasis are not based upon sufficient evidence or of such a nature as to establish any negative inference to be drawn against his personal and business character, honesty or integrity. Even the nature of the violations which are directly attributable to him do not indicate any lack of good character, honesty or integrity.

There is no question, however, that Mr. Koliastasis' involvement in the incident of January 10, 1979, and in the Gaming Commission matter is not affirmative evidence of his good character, honesty and integrity. However, an examination of the "whole man" clearly and convincingly establishes that Mr. Koliastasis is a person of good character, honesty and integrity and is entirely suitable for licensure to conduct gaming activities in this State. Boardwalk Regency Corporation, Casino Control Commission, supra, at pp. 51, 52.

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

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

Under Section 89b(3) of the act, Mr. Koliastasis was "required to establish by clear and convincing evidence that the applicant has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency in the particular position involved." He has applied for licensure as a casino key employee (pit boss in craps, blackjack and big six) and as a casino employee (floorperson). Both positions demand a knowledge of, ability to perform and supervisory responsibilities over gaming activities. They do not include duties and responsibilities for accounting, auditing or slot machine functions. The Division conceded that the applicant had sufficient casino experience to be qualified for licensure. However, the Division contended strenuously that he lacked sufficient business integrity for licensure. I do not agree.

The unrefuted and, except for documentary evidence, unchallenged evidence established that Mr. Koliastasis not only possessed personal good character, honesty and integrity, but equally possessed good character, honesty and integrity in his business life. The applicant, as established by the testimony of co-workers at the Ponderosa, at all times conducted himself and the operations under his control in strict compliance with all regulatory requirements. There was no evidence offered in opposition to this most

compelling testimony. The fact that some violations of the System of Internal Control did occur, which violations can, for the most part, be characterized as inadvertent, does not establish, in any respect, that the applicant lacked business integrity. Rather and by example, his integrity was evident from the fact that he expeditiously attempted to correct any and all violations of which he had knowledge. The evidence before the Gaming Commission did not establish that the applicant had any knowledge of or that he was the cause of any but two of the violations in the casino pit. Further, the violations with which he was involved did not indicate a lack of integrity, but the opposite.

As far as the non-casino-pit-related violations in the matter before the Gaming Commission, no inference can be drawn against the applicant's business integrity. It was clearly evident that he was not the cause of any of the violations. He had no control or authority over accounting/auditing, keno, slot or cashier functions. He was the servant of Mrs. Tripp, the General Manager, and his authority was specifically and strictly limited. Nevertheless, he registered persistent objections to Mrs. Tripp concerning matters of which he had general knowledge and where he believed improper management and work performance existed. Further, he left employment at the Ponderosa in 1977 and again in 1980 because of his dissatisfaction with the manner in which the Ponderosa was managed.

The Division has argued that his continued employment at the Ponderosa from late 1978 until mid-1980 indicated an unreasonable tolerance or tacit approval of continued violations. However, this argument is not supported by the evidence. In addition to lacking any control or authority over the non-pit activities at the Ponderosa, Mr. Koliastasis was fully aware that the Board was conducting an audit and an investigation of gaming activities at the Ponderosa. Second, it was clear that he remained at the Ponderosa because of his family relationship and his reasonable expectations of imminent employment in New Jersey.

The incident of January 10, 1979, does not reflect adversely upon Mr. Koliastasis' business integrity. It must first be noted that he attempted to help out in the kitchen, a non-gaming area and not under his control or authority. Second, his conduct did not reflect that he possessed any propensity not to cooperate with governmental representatives. Rather, it was evidenced from the documents related to the Gaming Commission matter that Mr. Koliastasis attempted at all times to cooperate with governmental investigators.

Although the Division's brief effectively and strenuously stated its position, in the final analysis, its characterization of Mr. Koliastasis' character, integrity and honesty and his conduct, was totally unfair, as clearly and convincingly established by the overwhelming weight of the evidence. I am firmly convinced and conclude without hesitation that the applicant possesses the requisite degree of business integrity and is fully qualified for licensure in each and every respect.

I CONCLUDE that the applicant has proven, by clear and convincing evidence, his business ability and casino experience to establish the reasonable likelihood of success and efficiency in the positions of pit boss and floorperson.

DISPOSITION

Therefore, I ORDER that the applications of Pete Koliastasis for licensure as a casino key employee (pit boss in craps, blackjack and roulette) and as a casino employee (floorperson) be GRANTED.

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

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

August 31, 1981
DATE

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

Receipt Acknowledged:

September 1, 1981
DATE

Nancy O. Liebl
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Sept 3, 1981
DATE

Ronald I. Parker Jr
OFFICE OF ADMINISTRATIVE LAW

ms

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

P-2 Letter to the Honorable Joseph P. Lordi, Chairman, from Mary Jo Flaherty, Deputy Attorney General, October 20, 1980 (7 pages)

P-3 State Gaming Control Board v. Ponderosa Hotel and Casino, Inc., d/b/a Ponderosa Hotel and Casino; Lawrence E. Tripp; Katherine D. Tripp; and Pete Koliastasis, Nevada Gaming Commission, Case No. 79-6, Complaint (10 pages)

P-4 State v. Ponderosa Hotel and Casino, Inc., et als, Case No. 79-6, Notice of Defense (16 pages)

P-6 State v. Ponderosa Hotel and Casino, Inc., et als, Case No. 79-6, Notice of Defense (10 pages)

P-7 State v. Ponderosa Hotel and Casino, Inc., et als., Case No. 79-6, Findings of Fact, Conclusions of Law, and Order, November 15, 1979 (10 pages)

P-8 State v. Ponderosa Hotel and Casino, Inc., et als., Case No. 79-6, Amendment to Findings of Fact, Conclusions of Law and Order, July 10, 1980 (4 pages)

P-10 Affidavit of Jess Harper, May 20, 1981 (4 pages)

P-14 Reno Fire Department, Miscellaneous Report by Investigating Officer Larry S. Farr, January 10, 1979 (6 pages)

P-15 Washoe County, District Health Department, Report by Robert Sobsey, Public Health Environmentalist, January 22, 1979 (2 pages)

P-16 Washoe County, District Health Department, Report by Janice Freeman, Public Health Environmentalist, January 22, 1979 (2 pages)

P-17 State of Nevada v. Kathy Tripp and Pete Koliastasis, January 18, 1979, and Notice of Disposition, February 26, 1979 (2 pages)

P-18 Summons and Affidavit of Service, Kathy Tripp and Pete Koliastasis (4 pages)

P-19 Certified copy of Judgment of Conviction, State v. Kathy Tripp and Pete Koliastasis, Justice's Court of Reno Township, County of Washoe, State of Nevada, February 26, 1979

P-23 Letter from Lieutenant C.N. Saulnier, Superintendent, Identification Division, Reno Department of Police, November 20, 1979, and letter to Mr. Pete Koliastasis from Lieutenant Charles N. Saulnier, Superintendent, Bureau of Identification, October 16, 1980 (2 pages)

P-24 Paul Yun v. Ponderosa Hotel and Casino, Inc., Lawrence E. Tripp, Katherine Tripp, Gus Koliastasis, Peter Koliastasis, Second Judicial District Court of the State of Nevada, Washoe County, Docket No. 278213, Notice of Entry of Judgment and portion of Complaint (5 pages)

P-26 Nevada Teacher's Certificate No. 14367, Peter Koliastasis, January 1, 1975, January 1, 1977 (2 pages)

R-1 Personal History Disclosure Form - 1, Pete Koliastasis, filed January 15, 1980 (119 pages)

R-2 Personal History Disclosure Form - 2, Pete Koliastasis, filed September 26, 1979 (33 pages)

R-4 Transcript of Proceedings Before the Nevada Gaming Commission, State v. Ponderosa Hotel and Casino, Inc., et als., Case No. 79-6, October 18, 1979 (139 pages)

R-6 State v. Ponderosa Hotel and Casino, Inc., et als., Case No. 79-6, Amended Complaint, August 16, 1979 (36 pages)

EXHIBITS NOT ADMITTED INTO EVIDENCE

P-1 I.D. Voter Registration Card, Peter Koliastasis

P-5 I.D. Withdrawn

P-9 I.D. Letter to Alfred E. Bennington, Jr., Esq., from Deputy Attorney General Jane Lafferty, April 8, 1981

P-11 I.D. Excerpts from Transcript of Proceedings Before the Nevada Gaming Commission, State v. Ponderosa Hotel and Casino, Inc., et als., Case No. 79-6

P-12 I.D. Withdrawn

P-13 I.D. Withdrawn

P-20 I.D. Withdrawn

P-21 I.D. Letter from Kathryn Tripp to Gene Clock, January 16, 1979

P-22 I.D. Letter from Kathryn Tripp to Bruno Menicucci, Mayor of Reno, January 16, 1979

P-25 I.D. Appointment and Commission as a Notary, Peter Koliastasis, June 13, 1980

R-3 I.D. Certified copy of Judgment of Conviction, Kathy Tripp and Pete Koliastasis

R-5 I.D. Yun v. Ponderosa Hotel and Casino, et als., Complaint

R-7 I.D. Letter to Robert W. Marshall, Esq., from Irene Morros, July 9, 1980

R-8 I.D. Letter to Ponderosa Hotel and Casino from Irene Morros, July 15, 1980

WITNESSES

FOR PETER KOLIASTASIS:

George C. Angelis
Lawrence E. Baxter
Peter Koliastasis
Nancy K. Quinn

FOR THE DIVISION OF GAMING ENFORCEMENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-233
OAL DOCKET NO. CCC 7461-80
APP. NO. 14712-21

IN THE MATTER OF THE APPLICATION :	
OF BARBARA LICHT FOR LICENSURE :	FINAL ORDER
AS A CASINO EMPLOYEE :	
(FLOORPERSON) :	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein filed July 20, 1981, recommending denial of the application; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed by the parties; and the Commission having resolved at its public meeting on September 9, 1981, to affirm and adopt the said Initial Decision subject to the modification noted below, and to deny the application for licensure,

IT IS on this 11th day of September 1981, ORDERED that the Initial Decision of the Office of Administrative Law, be modified in the following particular:

(1) At page 4 of the Initial Decision, the reference to "N.J.S.A. 2C:37-2" is an apparent clerical error and is hereby corrected to read: "N.J.S.A. 2C:28-3"; and

IT IS FURTHER ORDERED that the said Initial Decision as modified be and hereby is AFFIRMED and ADOPTED by the Commission; and

IT IS FURTHER ORDERED that the application of Barbara Licht for licensure as a casino employee be and hereby is DENIED based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 11, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7461-80

AGENCY DKT. NO. 80-EA-233

IN THE MATTER OF:

BARBARA J. LICHT,
Applicant

v.

DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Record Closed: June 4, 1981
Received by Agency: July 20, 1981

Decided: July 20, 1981
Mailed to Parties: July 23, 1981

APPEARANCES:

Scott H. Marcus, Esq., (Weber, Viniar and Marcus, attorneys) for Applicant

John A. Mennite, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for Respondent

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

STATEMENT OF THE CASE

This matter concerns the application of Barbara J. Licht to the Casino Control Commission for licensure to work in a casino as a floorperson. The Division of Gaming Enforcement has objected to licensure of the applicant. At issue is whether the applicant has demonstrated her rehabilitation, thereby overcoming the disqualification from licensure which otherwise would result from her failure to report income from tips on her

federal income tax returns for 1975 through 1979, and from the misrepresentation of her occupation on her income tax returns for 1972 through 1979. Also at issue is whether the applicant has sustained her affirmative burden of establishing by clear and convincing evidence her reputation for good character, honesty and integrity.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the applicant by letter report to the Casino Control Commission, dated October 16, 1980. The applicant was advised by letter from the Casino Control Commission, dated November 14, 1980, that there was a "substantial possibility" that the Commission would deny her application. The applicant requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The applicant is a 53-year-old resident of Manahawkin, New Jersey, who was employed in the Nevada casino industry as a cashier from 1969 until 1972, and as a blackjack dealer from 1972 until 1979. The applicant moved to New Jersey on June 1, 1980, after accepting an offer of employment from the Brighton Hotel and Casino in Atlantic City, New Jersey.

It is undisputed that the applicant listed her occupation as "cashier" on her federal income tax returns for the years 1972 through 1979, even though she had actually been employed as a blackjack dealer during those years. It is also undisputed that the applicant failed to report on her federal income tax returns $200.00 income from tips for the year 1975, and approximately $400.00 income from tips for each of the years 1976 through 1979.

The applicant explained that she continued to list her occupation as cashier on her income tax returns, even though she became a blackjack dealer in 1972, in order to avoid having to report income from tips which she had received while working as a dealer, and in order to avoid being audited by the Internal Revenue Service.

The applicant believed it to be a common practice among Nevada casino employees receiving tips to list on their federal income tax returns an occupation which would not routinely receive tips (Exhibits P-2 and P-3). The applicant's husband testified that he had been employed by many Nevada casinos since 1964, and that approximately 1/2 the bartenders and 1/2 the dealers would list occupations on their income tax returns which would not disclose their receipt of tips. It was the applicant's testimony that she had not experienced any sleepless nights over having listed her occupation as cashier on her income tax returns, and she felt that she could have continued this practice without a problem if she had stayed in Nevada. The applicant clearly revealed her attitude concerning the misrepresentations on her income tax returns in her statement taken under oath by the Division of Gaming Enforcement on September 22, 1980 (Exhibit J-1, pages 20 and 22). At that time, the applicant stated, "Well, I knew that according to the I.R.S. I was doing the wrong thing. Even though in my mind I felt I was doing the right thing for me. . . . I lied on my income tax which most people do."

When the applicant was visited by Division of Gaming Enforcement Investigator Dennis Furlong in January 1980, she volunteered to him the information that she had listed her occupation on her income tax returns as cashier, rather than as dealer. However, her motivation was not to disclose that she had failed to report her income from tips on her tax return. Rather, the applicant wanted to be sure that all of the time she was actually employed as a dealer would be accounted for, so that she could satisfy the experience requirements for licensure in New Jersey as a floorperson.

While the credible evidence in the record concerning false statements by Nevada casino employees on their federal income tax returns is insufficient to permit a finding as to the extent of that practice, the credible evidence does establish that it was the applicant's belief that such a practice was widespread. This and the remainder of the preceding evidence is essentially undisputed and believable and is, thus, FOUND AS FACT.

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the Act also incorporates the disqualification criteria of section 86. Pursuant to section 86c(4) of

the Casino Control Act, the Commission shall deny a casino employee license to any applicant who is disqualified from licensure on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the Act and to casino operations. While it is undisputed that the applicant failed to report income from tips and misrepresented her occupation on her income tax returns, she has not been prosecuted or convicted on these or any other offenses. However, section 86g of the Act provides that licensure shall be denied the applicant on the basis of the commission by the applicant of any act which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

The appellant's conduct involved falsely stating her occupation on her income tax returns for eight successive years, and failing to report income from tips on her income tax returns for five successive years. Although not prosecuted, this conduct would constitute the disorderly persons offense of "unsworn falsification to authorities," as defined by N.J.S.A. 2C:37-2. In addition, the applicant committed a felony, in violation of 26 U.S.C.A. section 7206(1), when she signed her income tax returns knowing them to contain intentionally false statements. It is apparent from the applicant's fraudulent conduct, repeated on her income tax returns from 1972 until 1979, that her licensure would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, the applicant's repeated fraudulent statements constitute a criminal offense which indicates that licensure of the applicant would be inimical to the policy of the Casino Control Act.

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

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

2. The nature and seriousness of the offense;

3. The circumstances under which the events occurred;

4. The date of the offense;

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

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

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

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

The applicant failed to report approximately $1,800.00 income from tips on her income tax returns from 1975 until 1979. She also falsely stated her occupation as cashier on her income tax returns from 1972 until 1979. The applicant was a mature woman employed in the Nevada gambling industry during the entire eight-year period in which these fraudulent acts were committed. Because the applicant seeks the position of floorperson, which entails supervisory responsibility for other casino employees, it is significant that the applicant has attempted to mitigate the seriousness of her conduct by relying upon her perception that the falsification of income tax returns is a prevalent practice among Nevada casino employees. The applicant's admitted willingness to repeatedly conform her own conduct to the alleged illegal conduct of other casino employees reflects adversely upon the applicant's good character, honesty and integrity. The record is devoid of any evidence contrary to this adverse reflection. Consequently, the applicant has not affirmatively demonstrated her rehabilitation, and cannot overcome her commission of a disqualifying offense, under section 86c(4) of the Act.

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

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises. . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the applicant is disqualified from receiving a casino employee license due to her commission of an offense which indicates that licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(4) of the Act. I further **CONCLUDE** that the applicant is unable to overcome this disqualification from licensure due to her failure to demonstrate by clear and convincing evidence her rehabilitation, within the meaning of section 90h of the Act. I further **CONCLUDE** that the applicant is disqualified from licensure based upon her failure to prove by clear and convincing evidence her qualifications for licensure, within the meaning of section 86a of the Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the applicantion of Barbara Licht for licensure as a casino employee be **DENIED.**

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

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

July 20, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

July 20, 1981
DATE

Henry O. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 23, 1981
DATE

Elizabeth J. Farmer Cg
OFFICE OF ADMINISTRATIVE LAW

ms

INVENTORY OF EXHIBITS

JOINT EXHIBIT J-1 Transcript of Interview, dated September 22, 1980

FOR THE APPLICANT:

P-1 Handwritten note
P-2 Motion, brief and affidavits
P-3 Newspaper article

FOR THE DIVISION OF GAMING ENFORCEMENT:

None

WITNESSES

FOR THE APPLICANT:

Barbara J. Licht
Lyle Licht

FOR THE DIVISION OF GAMING ENFORCEMENT:

Dennis Furlong

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 81-CL-2

IN THE MATTER OF THE	:	
APPLICATION OF MARINA	:	OPINION
ASSOCIATES FOR A CASINO	:	
LICENSE	:	

New Jersey Casino Control Commission:

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

Appearances:

For Marina Associates:

Howard A. Goldberg, Esq.
John Walker Daniels, Esq.
Nicholas Casiello, Jr., Esq.

For the Division of Gaming Enforcement:

James F. Flanagan, Deputy Attorney General
L. Michael Lee, Deputy Attorney General
Guy S. Michael, Assistant Attorney General

For the Casino Control Commission:

Robert J. Genatt, General Counsel
David Arrajj, Special Counsel for Licensing
Thomas N. Auriemma, Deputy Director/Legal Division
Ted Rosenberg, Assistant Counsel
Scott N Silver, Assistant Counsel

I. INTRODUCTION

This matter has been brought before the Commission pursuant to the application of Marina Associates ("Marina") for a casino license. The history of Marina's application, its acquisition of a Temporary Casino Permit in November 1980, and the qualification criteria pertinent to this plenary casino license proceeding are set forth in the Chairman's Instruction to the Commission and need not be repeated at length here. That Instruction has been given to the Commissioners, made part of the record of the casino license hearing, and is incorporated by reference in this Opinion.

This Opinion concerns itself only with those areas which were the subject of significant attention at the hearing in this case. Detailed findings with regard to other licensing criteria are contained in a separate proposed Resolution.

The investigative report of the Division of Gaming Enforcement ("Division"), which, as modified, has been stipulated and admitted into evidence as J-1,* outlined several areas of concern. After exposition of the evidence at the hearing, the Division indicated in summation the following areas of concern: 1) certain credit accounts due to Harrah's, an intermediary company of Marina, were settled by payment to A.I.R. Corporation, a subsidiary of Harrah's; 2) the corporate practice of Harrah's whereby company funds were expended for prostitutes for the benefit of certain preferred casino

* During the course of this hearing, numerous exhibits were admitted into evidence. J - refers to joint exhibits; A- refers to Marina and Harrah's exhibits; and A-HII refers to Holiday Inns, Inc., exhibits.

patrons; 3) certain political contributions made by Mr. William P. Harrah, the founder of the company, with company funds; 4) litigation between Harrah's and the Nevada Gaming Control Board involving license fees, taxes, and interest due the State of Nevada from sports wagering at Harrah's casinos in that State; and 5) certain "sensitive" payments made to various government officials and agents in foreign jurisdictions by Holiday Inns, Inc. ("HII"), the parent company of Marina, and the failure of HII to fully disclose the extent of such payments.

At the conclusion of the hearing, in which all of the foregoing areas were fully explored, the Division stated its view that the sensitive payments issue involving HII was the major issue in the case and that the Commission should not issue a casino license to Marina "unless and until [the] Commissioners are convinced by clear and convincing evidence that this type of conduct is not continuing in Mexico or anywhere else and that it will not continue in the future." (8T 1156-20 to 24)* No objection to the issuance of a casino license, however, was made. Obviously, as the Division has recognized, it is the Commission's responsibility to independently evaluate the entire record and determine the qualifications of the business entities and natural persons who must qualify. This has been done by each Commissioner. The relevant issues may now be addressed.

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* The following transcript references are used throughout this Opinion.
  1T - Transcript of October 14, 1981
  2T - Transcript of October 15, 1981
  3T - Transcript of October 16, 1981
  4T - Transcript of October 19, 1981
  5T - Transcript of October 21, 1981
  6T - Transcript of October 26, 1981
  7T - Transcript of October 28, 1981
  8T - Transcript of October 29, 1981

A review of the testimony and documentary exhibits clearly indicates that this case turns upon the qualifications of Harrah's, an intermediary company of Marina, and HII, a holding company of Marina. Accordingly, the qualifications of each of these corporate entities will be dealt with separately.

II. THE QUALIFICATIONS OF HARRAH'S

By way of historical background, Harrah's was founded by the late William F. Harrah in 1937. Initially, the main thrust of the business was the operation of a bingo game in Reno, Nevada. Thereafter, Mr. Harrah entered the hotel/casino business through the purchase of contiguous properties in downtown Reno. From humble beginnings, this business enterprise has emerged as a dominant force in the Nevada gaming industry. In addition to its interest in Marina Associates, Harrah's currently operates major gaming and resort facilities in Reno and Lake Tahoe, Nevada. Various Harrah's subsidiaries are engaged in auxiliary business projects.

The ownership structure of Harrah's has undergone a substantial transformation since the business started operations in 1937. From 1937 until 1971, Mr. Harrah was the sole owner of Harrah's and its subsidiary companies. On October 27, 1971, Harrah's became a publicly traded corporation. Until his death on June 30, 1978, Mr. Harrah maintained majority control of Harrah's. Thereafter, Mead Dixon was appointed executor of the estate of Mr. Harrah. Mr. Dixon was also elected Chairman of the Board of Directors of Harrah's in July 1978 and continues to serve in such capacity.

On February 28, 1980, HII, a Tennessee corporation, directly acquired two-thirds and HISUB-1 Corp., its wholly-owned subsidiary, acquired one-third of the outstanding stock of

Harrah's. HISUB-1 Corp. was an intermediary company incorporated in Nevada on January 21, 1980, exclusively to acquire and hold Harrah's stock for tax purposes. Thus, Harrah's is essentially a wholly-owned subsidiary of HII.

A. THE ISSUE OF GAMBLING DEBTS OWED TO HARRAH'S BEING PAID THROUGH A.I.R. CORPORATION.

An area of concern identified in the Division's investigative report (J-1) is the infrequent Harrah's practice of accepting payments on gaming receivables due Harrah's by means of negotiable instruments made payable to A.I.R. Corporation. Incorporated on June 21, 1973, A.I.R. Corporation is a wholly-owned subsidiary of Harrah's Club which, in turn, is wholly-owned by Harrah's. Principally engaged in the business of providing advertising, insurance, and resale services to Harrah's and its other subsidiaries, A.I.R. Corporation is a viable business entity with total taxable income in excess of $4 million since its incorporation. (A-75)

Prompted by a Nevada Gaming Board investigation of a Harrah's junket representative and by the Division's licensing investigation, Harrah's internal audit department prepared a report on the gaming receivables that were paid through A.I.R. Corporation. (A-74) Although this practice apparently can be traced to 1973, Harrah's internal audit department and the Division's investigators could only uncover records of such payments since 1976. From October 14, 1976, to August 31, 1979, the company's documentation reveals thirteen of these indirect payments having been made by five individuals in amounts totalling $35,500.

Since the subsidiary's inception, A.I.R. Corporation officials have handled these transactions by utilizing two different procedures. Initially, the negotiable instruments made payable to A.I.R. Corporation were deposited in A.I.R. Corporation's bank accounts and thereafter checks were drawn on A.I.R. Corporation's account and made payable to Harrah's Club. The more recently adopted procedure has been to simply deposit the negotiable instruments made payable to A.I.R. Corporation directly into the Harrah's Club account. (2T 275-21 to 2T 276-4 George Aker, Chairman of the Board and Chief Executive Officer of the Nevada National Bank, testified that the latter type of procedure would be acceptable from a banking viewpoint, so long as a proper relationship existed between the two corporate entities involved. (5T 807-12 to 23)

During the hearing before the Commission, the issue first arose as to whether Harrah's had violated Nevada gaming regulation Number Six, dealing with the redemption of markers, by failing to fully disclose the A.I.R. Corporation indirect payment procedure in its Regulation Six Submission to the gaming authorities in that State. (2T 231-9 to 14) John G. Hewitt, Director of Internal Audit for Harrah's and the individual primarily responsible for these filings, convincingly testified that there had been no violation of the aforementioned Nevada Regulation by Harrah's. His incontroverted testimony was that Regulation Six does not specify to whom gaming debts should be made payable. Rather, the focus of the regulation is on how funds received in payment of gaming debts should be properly recorded and handled for accounting and tax purposes. (2T 275-10 to 16)

Based upon the investigative report of the Division (J-1) and that of the Internal Audit Department of Harrah's (A-74), we are satisfied that all marker payments that were paid via A.I.R. Corporation were ultimately properly accounted for on the books of Harrah's and that all appropriate taxes were paid. Nevertheless, the asserted justification for the existence of this indirect payment mechanism requires brief comment. It was suggested that the reason for such a payment procedure was because certain patrons desired anonymity in paying their gambling debts. However, allowing gaming patrons to pay their debts anonymously, without disclosure to spouses or creditors, could be achieved without any involvement on the part of Harrah's. The utilization of cashier's checks or money orders to pay such obligations would clearly preserve the debtors anonymity. Significantly, no concrete evidence pertinent to this issue was presented during this hearing to suggest any wrongful involvement or motivation on the part of any Harrah's official.

Moreover, no charges have resulted from the Nevada Gaming Board's investigation of the Harrah's junket representative and his involvement with A.I.R. Corporation. Although Harrah's officials have vouched for the legality of this aforementioned practice and have expressed no intention to cease such activity in Nevada, it is clear from the testimony of Harrah's General Counsel, Philip Satre, that Harrah's officials are aware that this practice is not permitted in New Jersey. (2T 233-11 to 22).

Finally, testimony revealed that Harrah's Nevada operations allow certain customers to pay gaming debts with checks made payable to individual employees of Harrah's, typically to a shift manager or a casino manager. (2T 301-1 to 7). The normal practice is for the Harrah's employee to then endorse the check and forward it to a cashier in the casino. Mr. Hewitt acknowledged that this practice also would not be permitted under New Jersey law. (2T 302-3 to 5). Without expressing an opinion on the foregoing Nevada practice, we are particularly cognizant of the inherent risks associated with this type of procedure.

Nevertheless, so long as Harrah's officials are aware that neither the A.I.R. Corporation type payment procedure nor the payment of gambling debts through checks made payable to individual casino employees will be tolerated in New Jersey, we are satisfied that the Harrah's practices discussed above do not adversely reflect on Harrah's honesty, integrity, business ability, or qualifications in New Jersey.

B. THE ISSUE OF PROSTITUTION FOR PREFERRED GAMING PATRONS

In its investigative report (J-1) to the Commission, the Division identified Harrah's corporate involvement with certain prostitution activities as an area of concern. The testimony of various witnesses and the documentary evidence introduced have revealed that in the mid-1960's, the late William F. Harrah, the founder of the company, determined that it was competitively necessary for the company to provide certain preferred customers with the services of prostitutes. More particularly, during the period from 1972 to 1975, Harrah's Reno operation appears to have expended $65,600 for such activity, while the Lake Tahoe operation spent $50,500. (A-15).

The foregoing corporate practice continued unchecked until 1975. On March 20, 1975, however, the Chairman of the Nevada Gaming Control Board, Philip Hannifin, sent a letter to Harrah's former President, M. F. Shepherd, wherein he voiced concern over certain cash withdrawals at Harrah's that were not a true reflection of their usage. Mr. Hannifin also sought assurances that the foregoing practices would be immediately terminated. (A-24). In retrospect, it is clear that the subject matter of this letter concerned prostitution activities.

In response to Mr. Hannifin's letter and to information disclosed at a subsequent meeting attended by Mr. Hannifin, Mr. Shepherd, and Mead Dixon, whose law firm at that time was

counsel to Harrah's, the senior management of Harrah's disseminated specific instructions to discontinue payments to prostitutes. From the evidence presented to us, we find that Harrah's terminated the practice of providing prostitutes for preferred gaming patrons in April 1975. Since that date there has been only one instance of a payment by Harrah's to a prostitute. This occurred in 1977, and the Harrah's employee who had authorized such payment was severely admonished and was required to reimburse the company. This incident appears to be of an isolated nature, or as the Division notes "an aberration." (8T 1111-6). The Commission is therefore, convinced that any authorized payments to prostitutes ceased, as noted earlier, in 1975. As such, this 1977 incident does not negatively impact upon Harrah's or Marina's qualifications.

During the hearing, testimonial and documentary evidence was introduced regarding the legality of these corporate payments to prostitutes. At the time these payments were made, it appears that the Nevada Revised Statutes did not contain any express proscription against prostitution or its related activities. Moreover, an opinion letter from the Chief Deputy District Attorney of Douglas County states that during the 1972-1975 period prostitution was not unlawful within Douglas County, Nevada (Lake Tahoe area). (A-103). The relevant Reno ordinance at that time, however, did proscribe prostitution and solicitation for the purpose of prostitution. It appears that a violation of this ordinance was nonetheless a disorderly persons offense, as testified to by Mead Dixon. (3T 413-8 to

3T 414-8). Moreover, no prosecutions against Harrah's or any of its employees were ever instituted by the State of Nevada or its political subdivisions.

Additionally, the Internal Revenue Service ("I.R.S."), in a 1975 audit of Harrah's prior tax returns questioned the deductibility of these payments for tax purposes. As a result of its investigation, the I.R.S. disallowed certain tax deductions taken by Harrah's for payments relating to prostitution. Harrah's ultimately agreed with this disallowance. (A-15). Thereafter, in 1977, disclosure of these payments was also made to the Securities and Exchange Commission ("S.E.C."). (A-15).

Presently, Harrah's has a clear policy of neither condoning nor tolerating activity involving prostitution. Richard J. Goeglin, who became Harrah's President and Chief Executive Officer within the last two years, has unequivocally stated that the company aggressively ferrets out prostitution and vigorously pursues a policy of ridding its casinos of it. Illustrative of this new attitude is the frank admission by Mead Dixon, the current Chairman of the Board of Directors of Harrah's, that the company had made a mistake by participating in the practice of providing prostitutes for preferred gaming patrons. (3T 404-21 to 24).

Furthermore, letters from the Douglas County Sheriff's Office (A-16) and the City of Reno Police Department (A-17) reflect Harrah's continuing vigilance in this area and confirm its commitment to an anti-prostitution policy.

In its summation, the Division noted that "there has been a good faith effort on the part of Harrah's and on their management to eliminate this problem." (8T 1111-11 to 14). Accordingly, the Division has concluded that the prostitution question is "essentially a dead issue in this case." (8T 1110-16 to 17).

We are in agreement with the Division that the foregoing does not negatively impact upon the qualifications of Marina since we are clearly convinced that the practice stopped years ago and does not in any way, reflect adversely upon the character or integrity of Harrah's present corporate management.

C. THE ISSUE OF HARRAH'S CAMPAIGN CONTRIBUTIONS

The political campaign contributions made by Harrah's between February and October 1972 were also identified as an area of concern in the Division's investigative report. (J-1). As a result of the Federal Election Campaign Act of 1971, 18 U.S.C.A. §610, certain well-established corporate practices in the United States were made illegal. Specifically, after the effective date of that Act, publicly traded companies could no longer make direct political contributions to candidates campaigning for federal elective office.

Prior to Harrah's becoming a publicly held company on October 27, 1971, the late William F. Harrah owned a 100% equity interest in the company. Through its officers responsible for public affairs, Harrah's had regularly made campaign contributions to candidates for local, state, and federal elective office on behalf of Mr. Harrah. These corporate contributions made for the personal purposes of Mr. Harrah were not subject to challenge since there were no minority shareholders of the company. (A-46).

After the company became publicly traded in October 1971, Harrah's campaign contribution practices were not modified to conform to the legal compliance standards required of public companies. Thus, corporate monies were expended by Harrah's for contributions to the campaigns of various candidates for federal

elective office. From February to October 1972, the newly formed public corporation made political contributions to eight congressional candidates and to one presidential candidate in amounts totalling $17,600. Since these 1972 payments, Harrah's has ceased making campaign contributions from corporate funds to candidates for federal elective office. (A-46).

In the wake of the Watergate revelations, the United States Department of Justice in 1973 requested all United States corporations to voluntarily disclose any past contributions to candidates for federal office, and specifically any contributions to President Nixon's Committee to Re-Elect the President. (A-46). During this time, Mead Dixon, then outside counsel to Harrah's, advised William F. Harrah that the company's campaign contribution practice was in violation of applicable federal law and that all future contributions would have to be made by Mr. Harrah personally. (2T 333-20 to 2T 334-7). Pursuant to this advice, on July 23, 1973, Mr. Harrah reimbursed the company in the amount of $17,600, the total amount of the prior campaign contributions. (2T 334-24 to 25). (A-46). Two days thereafter, Harrah's officials met with representatives of the Special Prosecution Force of the United States Department of Justice in Washington, D.C. for the purpose of fully disclosing all the 1972 corporate contributions made by Harrah's to candidates for federal elective office.

Although it appears that Harrah's and certain of its corporate officials may have possibly violated the Federal Election Campaign Act of 1971, no prosecutions have ever occurred. Insight into the decision not to prosecute is

provided by a memorandum from Thomas F. McBribe, Associate Special Prosecutor, to Archibald Cox, Watergate Special Prosecutor, dated August 24, 1973. (A-66). Militating factors in the decision not to prosecute included Harrah's early voluntary disclosure, the relatively insignificant amounts of money involved, and the absence of any evidence to indicate willful violations. This last conclusion was buttressed by the fact that all of the violations occurred within one year of Harrah's becoming a publicly traded company. We find plausible the explanation that the Harrah's officials involved in these practices were simply not aware of certain legal consequences pertaining to campaign financing that resulted from the company's newly acquired public status.

Moreover, without claiming any deduction for income tax purposes, Harrah's fully disclosed to the I.R.S. the special account that it maintained for purposes of political contributions. Similarly, all required disclosures and filings reflecting the existence of these political contributions were made with the S.E.C. (A-46). Further, Harrah's fully disclosed these contributions in the Business Entity Disclosure Form that was filed with the Commission with regard to Marina's application for a casino license. (A-47).

As indicated by Richard J. Goeglin, President and Chief Executive Officer of Harrah's, in his testimony before this Commission, the company has instituted a comprehensive policy as reflected in the September 16, 1976, resolution adopted by Harrah's Board of Directors concerning political expenditures and activities. (1T 117-1 to 18) (A-98). Initially, two

political action committees were created, one for each major political party. For administrative purposes, Harrah's has maintained and administered a single political action committee since March 1979. (A-50).

Based upon the present policy of Harrah's (A-98), we are satisfied that an appropriate internal compliance mechanism has been established to prevent a recurrence of these practices. The individual principally responsible for the political campaign contributions made during 1972 is now deceased. The Division, in its summation, has referred to this area of concern as "a passing fancy in the Harrah's history." (8T 1113-24 to 8T 1114-2). In view of all of the evidence presented to the Commission, we find that the political campaign contributions made by Harrah's during 1972 do not adversely reflect on the character, integrity, honesty, or business ability of Harrah's present corporate management.

D. THE ISSUE OF TAXES DUE TO THE STATE OF NEVADA ON RACE AND SPORTS BOOK WAGERS.

Although included in the Division's investigative report (J-1) as an area of concern, the dispute between Harrah's and the Nevada gaming authorities over the proper amount of taxes due that State on certain race and sports book wagers does not raise issues pertinent to the instant licensing proceeding.

A controversy between Harrah's and the Nevada gaming authorities arose as a result of the adoption of a new procedure for the collection of race and sports wagers at the Harrah's Club facilities. Harrah's Club, a wholly-owned subsidiary of Harrah's, operates two state licensed race and sports book facilities in Nevada.

Pursuant to 26 U.S.C.A. §4401, a two percent Federal Wagering Tax is imposed on all race and sports wagers. Prior to the second quarter of 1977, Harrah's Club collected the Federal Wagering Tax separately from the patron's wager. Commencing with the second quarter of 1977, Harrah's Club discontinued this collection procedure and began to include the two percent Federal Wagering Tax as part of the total amount paid by the patron, and, for accounting purposes, factored out the tax which was then remitted directly to the I.R.S. (A-67).

As a result of a routine audit by the Audit Division of the Nevada Gaming Control Board for the period July 1, 1974, through June 30, 1978, Harrah's Club on March 18, 1980, was presented with a deficiency assessment in the amount of $17,693.48. The Audit Division's position was that the Nevada gross revenue license fee should be calculated based on the total amount of money bet, including that amount collected in payment of the Federal Wagering Tax. Harrah's asserted that the Nevada gross revenue license fee should be calculated on only the amount of the wager "at risk" and the state tax should not be imposed on any amount collected in payment of the federal tax. (A-67).

The Nevada Gaming Commission has rendered a final decision against Harrah's regarding this matter. Harrah's has paid the State of Nevada the full amount of the assessment allegedly due plus interest. Pending a final resolution of the underlying legal question by a court of law, Harrah's is paying under protest other sums allegedly due Nevada. (1T 172-8 to 13). Presently, this matter is awaiting a determination by the Second Judicial Court of the State of Nevada.

In an affidavit admitted into evidence (A-69), Patricia Becker, the Chief Deputy Attorney General of the Gaming Division for the State of Nevada, attested to the fact that there is currently no amount of the assessment underlying the litigation that is due and owing. Furthermore, she expressed the opinion that "this litigation represents a good faith effort on the part of a Nevada licensee to resolve a difference of opinion with

the Nevada gaming authorities..." In its summation, moreover, the Division conceded that this ongoing litigation is "not really a matter of any great moment in this hearing." (8T 1113-18 to 21).

Without expressing any opinion regarding the merits of the Nevada litigation, we find that the fact of its existence does not, in any way, negatively impact upon Marina's or Harrah's qualifications for licensure. We conclude, therefore, that such legal dispute can be appropriately resolved in a Nevada forum.

III. THE QUALIFICATIONS OF HII

Founded by Kemmons Wilson, HII has achieved truly remarkable growth since its first hotel was opened outside Memphis, Tennessee, in 1952. Mr. Wilson remained Chairman of the Board of Directors until his retirement in 1979. Initially incorporated in 1954 as a Tennessee corporation, the company underwent two name changes before the presently designated name was adopted on May 22, 1969.

Although principally engaged in the lodging and hospitality field, HII is currently a diversified multinational corporation with total 1980 revenues in excess of $1.5 billion. The HII system consists of approximately 240 company owned or managed hotels and 1,515 franchised properties, making the company the largest hotel business in the world. Perkins' Cake and Steak, Inc., the company's restaurant subsidiary, owns or franchises 375 family restaurants in 30 states. The company's transportation interest, Delta Steamship Lines, Inc., is the leading U.S. flag line serving South America, the Caribbean, and West Africa.

The entry of HII into the casino/hotel business marked a dramatic change in corporate philosophy. Although presented with various opportunities both domestically and abroad throughout the early 1970's, HII officials continued to reaffirm the longstanding corporate policy of avoiding association with gaming interests. However, on September 9, 1977, the HII

Board of Directors chose to change the corporation's policy concerning gaming. At that time, the Board of Directors of HII adopted a policy that permitted corporate officials to investigate business opportunities in the hotel/casino field in domestic jurisdictions where casino gaming had been legalized for a minimum of ten consecutive years as well as in areas outside the U.S. where gaming was legal. The ten-year limitation with respect to domestic jurisdictions was removed by a HII Board of Directors decision rendered on September 8, 1978.

Thereafter, on September 29, 1978, the Board gave its approval for HII's participation in the Marina Associates casino/hotel project in Atlantic City. By virtue of its acquisition of Harrah's and several other transactions, HII currently has approximately a 99% equity interest in the Marina limited partnership. Additionally, in April 1979, HII acquired a 40% interest in Riverboat, Inc., a casino operated in conjunction with the Holiday Inn Strip Hotel in Las Vegas, Nevada. As a result of its February 1980 acquisition of Harrah's, HII now has an interest in all four major U.S. gaming centers: Las Vegas, Reno, Lake Tahoe, and Atlantic City.

A. THE ISSUE OF SENSITIVE PAYMENTS MADE BY HII

Although only one area of concern was identified in the Division's investigative report (J-1) pertaining to HII, this topic accounted for the most substantial portion of testimony presented during the Marina licensure hearing. Indeed, the Division in its summation characterized the "sensitive payments" issue as the major one in this case. (8T 1114-22 to 24). The Division's report alleged that during the period 1969 through 1980, HII had participated in the making of certain "sensitive payments" which were questionable or illegal in both domestic and foreign jurisdictions. Partially adopting language of an internal HII memorandum (A-HII-143), the Division indicated in its report that the term "sensitive payments" generally refers to (a) payments to government officials or employees, (b) commercial bribes or kickbacks, (c) rebates or refunds received from a third party, (d) political contributions, or (e) commissions or fees for goods or services, all or part of which are paid by the recipient to a government official or employee.

HII's involvement with sensitive payments began to surface in 1976 as a result of certain inquiries from the S.E.C. and the I.R.S. By letter dated August 25, 1975, (A-HII-196)

the S.E.C., as part of its investigation of the Joseph Schlitz Brewing Company, served a subpoena duces tecum on HII to produce, among other things, records of any kickbacks, rebates, or payments of money or things of value to HII by the Schlitz Company or any of its affiliates. On March 18, 1976, the S.E.C. requested additional information regarding this matter from L. M. Clymer, then President of HII. During this same period of time, the I.R.S., as part of a routine audit for the tax years 1972 and 1973, questioned certain HII officials regarding the existence of corporate slush funds and political reimbursement funds. (A-HII-228).

As a result of the above governmental inquiries and the then prevailing public interest concerning such matters, HII on April 26, 1976, adopted a formal corporate policy regarding sensitive payments. (A-HII-100). In conjunction with the adoption of this policy, the company forwarded a questionnaire to approximately 122 of its corporate executives worldwide requesting written responses to three questions concerning sensitive transactions. From the responses obtained from this and subsequent inquiries, the Division compiled its sensitive transaction review contained in J-1, listing about $700,000 in "questionable payments."

The testimony of Craig Norville, Vice-President and Associate General Counsel of HII, reflected his analysis of the corporate books and records in the possession of the company relating to the various sensitive payments alleged by the Division. Since Mr. Norville was not in the employ of HII at

the time that these payments were made, his conclusions, which were based on the data contained within these corporate books and records, were persistently challenged by the Division. Despite the Division's contention that Mr. Norville was but a corporate historian, his testimony was forthright and credible. Although vigorously cross-examined by the Division, Mr. Norville's testimony was essentially incontroverted. Dividing the sensitive payments into three general categories, Mr. Norville explained the various concerns noted by the Division. (3T 482-17 to 3T 485-13). The Commission in rendering this Opinion has adopted this classification scheme.

Within his first category Mr. Norville placed payments, amounting to approximately one-half of the total noted by the Division, which he classified as entirely legitimate business expenditures. For example, a $200,000 item listed by the Division as a questionable payment was, according to Mr. Norville, an accrual of commissions due to a travel agent for room reservations. These commissions remain unpaid, however, because of a dispute between the local management of the company's facility in the United Arab Emirates and the travel agency over the amount of the commissions due. (3T 485-19 to 3T 486-7). In light of the explanation given, this transaction appears innocent. Moreover, nothing in the record suggests that any of the remaining items in this category are anything other than innocent and we so find.

Mr. Norville's second category lumps together those payments listed by the Division that amount to mere rumors of potential impropriety by HII. As is true with all of the other

entries listed by the Division on its sensitive transactions review (J-1), these rumors were elicited in response to the company's own sensitive payments questionnaires. Further internal investigation by HII officials has proven certain of these rumors false. Other rumors remain unsubstantiated due to the passage of time and the changes made in corporate personnel. Of the approximately $700,000 listed in the Division's report (J-1) as sensitive payments, this second category accounts for approximately $170,000. (3T 483-10 to 21). Certain fees paid by HII to Lebanese and Mexican attorneys for professional services rendered fall within this category and will be discussed below.

HII payments to various low-level foreign governmental officials and to foreign union employees constitute the final category under the Norville analysis. The testimony of Mr. Norville indicated that these expenditures were made for the purpose of assuring that the individuals involved would perform their official duties properly. (3T 483-22 to 3T-484-19). The payments were not made to bribe foreign officials to commit illegal acts, but rather to encourage recalcitrant officials to perform their legally mandated duties in an expeditious fashion. Such payments are commonly referred to as "facilitating" or "grease" payments. The payments in this category amount to approximately $170,000 of the $700,000 total listed in the Division's report (J-1). It is important to note that absolutely no evidence was presented during this hearing to

indicate that any similar payments were made by HII to any United States government officials or union officials.

Even though most of the category three payments were made before the passage of the Foreign Corrupt Practices Act of 1977, 15 U.S.C.A. §§78m, 78 dd-1, 78 dd-2 and 78 ff (Supp. II. 1978), (the "F.C.P.A.") and were therefore not subject to its proscriptions, the F.C.P.A. must be considered in order to ascertain whether the more recent HII payments have violated U.S. law. Containing two components, the F.C.P.A. prohibits certain payments by American businesses to foreign government officials and also specifies various internal accounting and management control requirements designed to prevent concealment of such payments. Only the prohibitions relating to payments by American businesses to foreign government officials are relevant to the issues under consideration by the Commission.

The anti-bribery provisions of the F.C.P.A. contain specific limitations which curtail the scope of the Act. For instance, only payments made, directly or indirectly, to foreign government officials are prohibited. Consequently, the payments made by Delta Steamship Lines, Inc., a HII subsidiary, to foreign union officials in Argentina are not violative of the F.C.P.A. Another limitation is that the proscribed payments must be made for the purpose of obtaining or retaining business. Additionally, the Act encompasses only those payments made with a corrupt purpose.

The following excerpt from Senate Report No. 95-114, a report of the Senate Banking, Housing and Urban Affairs Committee dated May 2, 1977, describes the intended scope of the Act:

> The statute covers payments made to foreign officials for the purposes of obtaining business or influencing legislation or regulation. The statute does not, therefore, cover so-called "grease payments" such as payments for expediting shipments through customs or placing a transatlantic telephone call, securing required permits, or obtaining adequate police protection, transactions which may involve even the proper performance of duties.
>
> The word "corruptly" is used in order to make clear that the offer, payment, promise, or gift must be intended to induce the recipient to misuse his official position in order to wrongfully direct business to the payor or to his client, or to obtain preferential legislation or a favorable regulation. The word "corruptly" connotes an evil motive or purpose, an intent to wrongfully influence the recipient.

The Senate Report quoted above accompanied a proposed version of the bill which is not identical to the version ultimately adopted. However, the version proposed in the Report is essentially the same as that ultimately adopted with respect to the provisions in question here.

An example of a facilitating or grease payment made by HII to a low-level foreign government official occurred in the Far East during 1978. From his review of the company's books and records, Mr. Norville testified that the local HII hotel had paid all of the requisite duties on certain imported goods. Nonetheless, the Customs inspector refused to perform his official duties unless he was given money. (4T 557-21 to

4T 558-4) Faced with a most difficult decision, the company paid the inspector $1,850 during 1978 in order for the goods to be released to the hotel.

During the course of this hearing, expert witnesses testified regarding the F.C.P.A. and the exception relating to "grease" payments. Rodney S. Dayan, a partner in the Wall Street law firm of Cadwalader, Wickersham and Taft, which was outside counsel to HII during the S.E.C. investigation of the company, testified that facilitating payments made by U.S. corporations to low-level foreign officials would not be a violation of the F.C.P.A. (5T 872-13 to 18) Another highly qualified expert witness, Lloyd N. Cutler, a partner in the Washington, D.C. law firm of Wilmer, Cutler, and Pickering, and a participant in the drafting of the F.C.P.A., indicated that his firm had been retained for the purpose of providing expert testimony at this hearing. Based upon his review of the Division's report (J-1) and various HII source documents, he concluded that even if the F.C.P.A. had been in effect at the time that all of the payments were made, there still would have been no violations of the Act. (6T 909-13 to 6T 910-3).

After having carefully considered all of the documentary evidence and the testimony of Messrs. Norville, Dayan, and Cutler, we find that the payments grouped in Mr. Norville's category three consisted of facilitating or grease payments that are clearly within the confines of United States law. This conclusion does not, however, reflect tacit approval of such practices.

Although the Commission has thoroughly scrutinized all of the payments made by HII, two particular areas merit closer examination. These involve HII payments to Lebanese and Mexican attorneys for certain professional services rendered. An internal I.R.S. memorandum (A-HII-235) obtained by the Division reveals that during 1975 payments were filtered through G. Moarbes, a Lebanese attorney, to unknown parties for the purpose of reducing municipal taxes on certain HII properties in Lebanon. Due to a lack of substantiation as to where the money ultimately went, the I.R.S. disallowed the approximately $51,000 payment as a tax deduction. Similarly, the evidence suggests that an HII affiliate in Mexico may have utilized local attorneys as intermediaries to facilitate settlement of rate increases, union wage negotiations, and social security problems. The testimony of Jose Torres, the Division's only witness during these proceedings and the individual formerly in charge of HII's Mexican operations, indicated that the payments made in Mexico were both customary and necessary in order to protect HII's financial investment in that country. (7T 1052-8 to 14).

Based upon the record before the Commission, we are satisfied that the above transactions were not in violation of the laws of the United States. We do not condone these practices. However, the policies that define standards of business conduct have been altered dramatically over the last

decade. After reviewing all the evidence, we find that the HII payments to the Lebanese and Mexican attorneys do not impact so negatively upon the qualifications of HII as to impede licensing.

HII's current corporate policy on sensitive payments was adopted by its Executive Committee on April 26, 1976. (A-HII-143) Under the guidelines announced in this policy, sensitive transactions which violate either the letter or the intent of the law of the applicable jurisdiction are expressly prohibited. For those sensitive transactions that do not violate the letter or intent of the law, advance approval must be obtained from the General Counsel of HII prior to the participation by any employee or official. Noncompliance with this policy may warrant dismissal.

Michael D. Rose, who became President of HII in 1979, testified that with the exception of a few isolated instances, the corporate policy on sensitive payments has been effectively implemented. (6T 950-5 to 10) HII's internal audit department has been given the responsibility of assuring compliance with this corporate policy. Sensitive payments questionnaires are annually distributed to supervisory personnel employed by HII. The General Counsel's office monitors these responses and seeks additional information where appropriate. Finally, any violations of this corporate policy are forwarded to the Audit Committee of the Board of Directors of HII. (4T 579-7 to 23)

We are satisfied from the evidence presented to us that HII is vigorously seeking to enforce its prophylactic corporate policy on sensitive payments. We expect that HII's senior management will closely monitor all of its business operations to assure continuing compliance with its announced corporate policy.

In conclusion, none of the "sensitive payments" made by HII appear to have violated the laws of the United States. In view of, and in the context of all of the evidence presented, the sensitive payments area of concern does not reflect adversely on the good character, honesty, or integrity of HII or its present management.

B. THE ISSUE OF DISCLOSURE BY HII TO VARIOUS GOVERNMENTAL AGENCIES

As part of the sensitive payments area of concern, the Division in its investigative report (J-1) questioned the adequacy of the disclosures made by HII to the I.R.S., S.E.C., and to this Commission. The sufficiency of the disclosures made to each of these governmental agencies will be separately addressed.

By early 1976, the I.R.S. had adopted a general policy that provided for the routine interrogation of senior corporate officials regarding the existence of any sensitive transaction matters. (A-HII-149). Pursuant to this policy, I.R.S. agents during a customary audit of HII's tax returns, met with L. M. Clymer, the then President of HII in March 1976. Since this meeting preceded by a full month HII's adoption of a sensitive payments policy and the mailing of its sensitive payments questionnaires, Mr. Clymer's response, which indicated that the company had no knowledge of any improper transactions, does not appear to be misleading or evasive. Thereafter, the I.R.S. modified its policy and required its examining agents to obtain sworn, written responses to its inquiries on any sensitive transactions problem.

Accordingly, on April 18, 1976, HII received what is now commonly referred to as the I.R.S. "Eleven Questions." (A-HII-240). By affidavit dated July 30, 1976, Mr. Clymer

formally replied to this I.R.S. inquiry. (A-HII-224). Included therein was a disclosure of certain nominal payments made by HII to foreign governmental and union officials as an inducement for those persons to more promptly perform their normal, customary duties. Mr. Norville, in his testimony before this Commission, explained that the I.R.S. instructions that accompanied the "Eleven Questions" specifically directed the affiant to answer the questions based upon personal knowledge. (4T 583-24 to 4T 584-5). We are satisfied that as of July 30, 1976, Mr. Clymer's affidavit fully and truthfully disclosed all the information requested by the I.R.S. that was within his personal knowledge.

Since 1976, HII has continued to fully cooperate with the I.R.S. by providing appropriate information upon request. None of the various I.R.S. internal memoranda that have been admitted into evidence during this hearing suggest that HII has concealed pertinent information or has failed to cooperate fully in the comprehensive I.R.S. audits of these sensitive transactions. We conclude that HII's disclosures to the I.R.S. do not adversely reflect on its character, honesty, or integrity.

Approximately three months after the I.R.S. had received Mr. Clymer's responses to its "Eleven Questions", an attorney from the Division of Enforcement of the S.E.C. sent a letter dated November 8, 1976, to HII. (A-HII-190). In this communication, the S.E.C. requested that HII prepare a written report summarizing, among other things, any HII payments to foreign governmental officials and any illegal or questionably

illegal transactions involving HII. As part of the ongoing internal corporate investigation of the sensitive payments problem, Charles Collins, then Senior Vice President and General Counsel of HII, submitted a report dated December 3, 1976, to the Audit Committee of the company. (A-HII-149). This report summarized the results of the company's internal investigation of the sensitive payments situation.

In compliance with the S.E.C.'s request, the report prepared by Mr. Collins for the HII Audit Comittee was submitted to the S.E.C.'s Enforcement Division on December 16. 1976. Accompanying this report was a cover letter in which additional disclosures were made. (A-HII-188). On December 29, 1976, Mr. Collins and Mr. Dayan, the attorney from Cadwalader, Wickersham and Taft who had been retained by HII to assist the company's internal investigation, met with attorneys from the Division of Enforcement of the S.E.C. The S.E.C. staff was primarily interested in ascertaining whether HII had participated in certain rebate practices sponsored by the Schlitz Brewing Company. Although the subject of HII's sensitive payments was discussed, Mr. Dayan recalled that the S.E.C. staff did not show "any substantial interest in these transactions." (5T 823-11 to 13).

The Securities and Exchange Act of 1934, 15 U.S.C.A. §§78a, et seq., and the related S.E.C. rules and regulations require publicly traded companies to make public disclosures of "material" information. HII did not disclose any sensitive payments in its filings with the S.E.C. During the course of

this hearing, an issue arose as to whether HII was obligated under the applicable securities laws to publicly disclose any or all of the sensitive transactions that it had discovered through its internal investigations. We have heard testimony from three experts in the field of securities law. Messrs. Norville, Dayan, and Cutler all agreed that no public disclosure was required in this case.

Moreover, by letter dated April 28, 1980, the S.E.C. has indicated that there is "no concrete prospect of law enforcement activity by the Government based upon the materials it has obtained concerning Holiday Inns, Inc." (A-HII-59). The Division in its summation has conceded that the "issue of the S.E.C. in this case is basically a phantom issue and one which does not really have much relevancy to whether or not Holiday Inns should be licensed." (8T 1116-2 to 5). Based upon all the evidence presented to this Commission, we find that HII's disclosures to the S.E.C. do not negatively impact upon its character, honesty, or integrity.

The final disclosure issue raised by the Division concerns Item 39 of the Business Entity Disclosure Form ("B.E.D.F.") filed by HII with this Commission on July 23, 1979, in connection with its application for licensure. Item 39 of the B.E.D.F. asks the applicant to furnish information relating to corporate bribes, kickbacks, and political contributions made within the prior ten year period. Although HII's responses to the questions contained within Item 39 reflect no corporate

involvement in any of these practices, a reference was made to Schedule 22 which was enclosed along with HII's B.E D.F. (J-1, Appendices 10 and 11).

Schedule 22 explains how HII interpeted the questions contained within Item 39. HII apparently assumed that the Item 39 questions should be answered in a similar manner to inquiries it had received from the I.R.S. and the S.E.C. The prior inquiries had been answered only with verified information and in light of S.E.C. materiality standards and the FCPA. Schedule 22 also explicitly refers to the Audit Committee report on sensitive transactions, the "Eleven Questions" affidavit submitted to the I.R.S., and the responses obtained from HII's sensitive payments questionnaires. Since these source documents contain a full disclosure of all sensitive payments transactions involving HII, we are convinced that there was no deliberate attempt on the part of HII to conceal or withhold information in this case. Additionally, the record reflects that HII has been most cooperative with the Division in providing relevant information for this hearing. Accordingly, we conclude that HII's answer to Item 39 of the B.E.D.F. does not negatively reflect upon its qualifications.

CONCLUSION

In light of all of the foregoing facts and conclusions, this Commission is satisfied that Marina, Harrah's, and HII have established by clear and convincing evidence their qualifications. Accordingly, a casino license will issue to Marina subject to the conditions contained in the Resolution

regarding this matter which is numbered 81-823.

NEW JERSEY CASINO CONTROL COMMISSION

Martin B. Danziger, Acting Chairman

Madeline H. McWhinney, Commissioner

Don M. Thomas, Commissioner

Carl Zeitz, Commissioner

Dated: December 7 , 1981

New Jersey Casino Control Commission

Resolution

No. 81-823

RESOLUTION CONCERNING THE APPLICATION OF MARINA ASSOCIATES ISSUING A PLENARY CASINO LICENSE AND CONTAINING FINDINGS, CONDITIONS AND EFFECTIVE DATE

WHEREAS, MARINA ASSOCIATES, a New Jersey Limited Partnership trading as Harrah's Marina Hotel Casino (hereinafter; "Applicant") holds a Temporary Casino Permit ("Permit") pursuant to N.J.S.A. 5:12-95.1 et. seq. which was issued on October 31, 1980, became effective on November 23, 1980, was renewed in accordance with N.J.S.A. 5:12-95.7 and which will expire on November 23, 1981 or upon the issuance of a Plenary Casino License; and,

WHEREAS, the Applicant has made application for a Plenary Casino License in accordance with the provisions of N.J.S.A. 5:12-80 et. seq.; and,

WHEREAS, the Division of Gaming Enforcement (hereinafter; "Division") on October 1, 1981, filed its report regarding this application as required by N.J.S.A. 5:12-76; and,

WHEREAS, on October 1, October 9, and October 13, 1981 prehearing conferences were conducted, attended by representatives of the Applicant, the Division and Commission staff; and,

WHEREAS, the Commission on October 14, 15, 16, 19, 21, 26, 28 and 29, and November 19, 1981, conducted a hearing,

received all information, considered the evidence and took final action on said application for a Plenary Casino License; and,

WHEREAS, the Commission has found by the affirmative vote of four of its members that, except as otherwise noted herein, the Applicant has complied with all requirements of the Casino Control Act for the issuance of a Plenary Casino License;

NOW, THEREFORE BE IT RESOLVED by the New Jersey Casino Control Commission that MARINA ASSOCIATES, a New Jersey Limited Partnership trading as Harrah's Marina Hotel Casino, is hereby issued a Casino License for its approved hotel located on Brigantine Boulevard at Rhode Island Avenue in Atlantic City, based upon the findings contained in the record of the aforesaid hearing and in this Resolution, for the reasons set forth in the Commission's Opinion dated December 7, 1981, (hereinafter: "Opinion") attached hereto and incorporated herein as part of this Resolution, and specifically subject to the conditions and effective date contained in this Resolution.

FINDINGS

Based upon consideration of the entire record of proceedings and all the evidence presented at the hearing

concerning this Casino License application, the Commission finds:

APPLICATION FOR A CASINO LICENSE

1. That the Applicant filed its application for a Casino License on July 23, 1979,pursuant to N.J.S.A. 5:12-80 et. seq., and paid an initial deposit of $100,000.00 on December 20, 1978 (N.J.A.C. 19:41-9.2(c));

2. That the Applicant has timely paid to the Commission all fees and taxes assessed to date, prior to the issuance of this Plenary Casino License (N.J.A.C. 19:41-9.2(a) and (d));

APPLICANT

3. That Marina Associates is a New Jersey Limited Partnership formed on September 14, 1978;

4. That as originally constituted, the Applicant was wholly owned by Bayfield Enterprises, Inc. and L & M Walter Enterprises, Inc., as equal partners;

5. That on July 2, 1981, L & M Walter Enterprises, Inc. issued to its stock holders a dividend equivalent to a 1% limited partnership interest in Marina Associates;

6. That as presently constituted, the Applicant is owned by general partner Bayfield Enterprises, Inc., which

holds a 50.6832% interest; general partner L & M Walter Enterprises, Inc., which holds a 48.3168% interest; and limited partners Louis Walter, Lance Walter, Manuel Walter, Toni Sue Walter, Harvey Fierstein and Herbert Sturman who collectively hold a 1% interest;

FILING REQUIREMENTS

7. That the Applicant has, through its various filings, satisfied the requirements of N.J.S.A. 5:12-85(a)(1) through (9) pertaining to, among other things, the organization, businesses, personnel, securities and security holders of it and its holding companies;

HOLDING COMPANIES/ENTITY QUALIFIERS

8. That Bayfield Enterprises, Inc., a New Jersey Corporation is wholly owned by Harrah's;

9. That Harrah's, a Nevada Corporation qualified to do business in the State of New Jersey, has issued one class of publicly traded first mortgage bonds, and has issued common stock of which 33 1/3% is owned by HISUB 1 CORP. and 66 2/3% by Holiday Inns, Inc;

10. That HISUB 1 CORP., a Nevada corporation qualified to do business in the State of New Jersey, is wholly owned by Holiday Inns, Inc.;

11. That L & M Walter Enterprises, Inc. a New Jersey corporation, is wholly owned by Holiday Inns, Inc.;

12. That Holiday Inns, Inc., a Tennessee corporation qualified to do business in the State of New Jersey, is publicly traded and has in excess of 31 million shares of common stock outstanding;

13. That for the purpose of the requirements of N.J.S.A. 5:12-26, -28, -47, -85(b) and -85(d), the Commission deems Marina Associates to be a subsidiary of the following five corporations which the Commission further deems to be holding companies: L & M Walter Enterprises, Inc.; Bayfield Enterprises, Inc.; Harrah's; HISUB 1 Corp.; and Holiday Inns, Inc.;

14. That these five companies are presently the sole entity qualifiers required to register with the Commission in accordance with both N.J.S.A. 5:12-85(b) and (d) and N.J.S.A. 5:12-85(e), and that each company has so registered;

OWNERSHIP, MANAGEMENT AND CONTROL

15. That the Applicant wholly-owns the approved hotel building and the land thereunder having acquired the real property in fee simple through three deeds dated February 13, 1980, September 14, 1978, and September 15, 1978 and

through Atlantic City Ordinance No. 92 of 1979 effective January 21, 1980, as required by N.J.S.A. 5:12-82(b)(1) and -82(c);

16. That the Applicant manages its own casino (N.J.S.A. 5:12-82(b)(4));

ELIGIBILITY

17. That N.J.S.A. 5:12-82(d)(1) through (8) shall be applied to the Applicant Partnership to the extent possible;

18. That the Applicant meets the formation, on-site office, state law compliance, ownership ledger, operating bank accounts, and partnership purpose requirements of N.J.S.A. 5:12-82(d)(1) through (6);

TRANSFERS OF INTEREST IN THE APPLICANT AND ITS HOLDING COMPANIES

19. That the Applicant Partnership, Marina Associates, has adopted provisions in its Partnership Agreement which establish the right of the Commission to prior approval of all transfers of interest in the Applicant Partnership as required by N.J.S.A. 5:12-82(d)(7) and the absolute right of the Applicant Partnership to repurchase at the lesser of market or purchase price any interest in the applicant Partnership the transfer of which has been disapproved by the Commission as required by N.J.S.A. 5:12-82(d)(8);

20. That the non-publicly traded holding companies, L & M Walter Enterprises, Inc., Bayfield Enterprises, Inc., and HISUB 1 CORP., each have adopted by-law provisions which establish the right of the Commission to prior approval of all transfers of securities, shares and other interests in each respective corporation, as required by N.J.S.A. 5:12-82(d)(7), and the absolute right of each corporation to repurchase at the lesser of market or purchase price any security, share, or other interest therein, the transfer of which has been disapproved by the Commission, as required by N.J.S.A. 5:12-82(d)(8);

21. That holding company, Harrah's, except as to its publicly held first mortgage bonds, is deemed to be a non-publicly traded company for the purposes of N.J.S.A. 5:12-82(d)(7) and (8) only, since none of its other securities, shares, or interests are publicly traded, and it has adopted by-law provisions which establish the right of the Commission to prior approval of all transfers of securities, shares, and other interests in the corporation, other than the first mortgage bonds, as required by N.J.S.A. 5:12-82(d)(7), and the absolute right of the corporation to repurchase at the lesser of market or purchase price, any security, share or other interest therein, other than the first mortgage bonds, the transfer of which has been

disapproved by the Commission, as required by N.J.S.A. 5:12-82(d)(8);

22. That publicly traded holding company, Holiday Inns, Inc., on October 30, 1981, satisfied the requirement of N.J.S.A. 5:12-82(d)(7) relative to publicly traded holding companies by including in its by-laws a provision establishing that its actual voting securities are held subject to the condition that if a holder thereof is found to be disqualified by the Commission, such holder shall dispose of his interest in the corporation;

23. That the publicly traded first mortgage bonds of Harrah's and the various publicly traded debt instruments of Holiday Inns, Inc. do not give the holders thereof any actual or potential voting rights in the respective corporations, are not "voting securities" and are not subject to the transferability restriction requirements of N.J.S.A. 5:12-82(d)(7);

LIMIT OF THREE CASINO LICENSES

24. That the Applicant neither holds nor has been issued a casino license and thereby meets the requirement of N.J.S.A. 5:12-82(e), limiting to three the number of casino licenses a person may hold, but that Harrah's Atlantic City, a New Jersey Corporation, and a subsidiary of three of

Applicant's holding companies, has applied for a casino license with respect to its proposed Harrah's Boardwalk Hotel Casino to be located on the Boardwalk at North Carolina Avenue;

QUALIFIERS (NATURAL PERSONS)

25. That the thirty-three (33) natural persons listed below are qualifiers as defined by both N.J.S.A. 5:12-85(d)(1) and N.J.S.A. 5:12-85(e):

KEY: MA: Marina Associates; HRR: Harrah's; SUB: HISUB I, Corp.;
BEI: Bayfield Enterprises, Inc.; HII: Holiday Inns, Inc.;
LMW: L & M Walter Enterprises, Inc.

NAME	ID	DOB	RS	POSITION(S)
ndreotti, Romano	015A-01	06-15-23	NV	HRR-Executive VP (Operations) BEI-Director LMW-Director
llan, John	012-03 1831-11	09-19-26	NJ	MA-Vice President & General Manager
roadhurst, Jerome A.	012C-22	02-04-45	TN	HII-Secretary HRR-Ass't. Secretary BEI-Ass't. Secretary LMW-Ass't. Secretary
inn, Wallace R.	012C-16	10-26-22	AL	HII-Outside Director
arr, Thomas			NV	HRR-VP & Controller
larke, William N.	012C-17	08-23-17	NY	HII-Outside Director
ixon, L. Mead	012C-05	09-09-19	NV	HRR-Chairman of Board HII-Director BEI-Director LMW-Director (Executor - Harrah Estate)
vans, Nicholas M.	012C-18	05-22-30	OH	HII-Outside Director
ierstein, Harvey	012B-07	09-15-23	CA	MA-Limited Partner
rancis, Joe F.	015A-07	12-25-29	NV	HRR-Senior VP (Special Casino Programs)

NAME	ID	DOB	RS	POSITION(S)
Goeglein, Richard	012A-09	08-23-34	NV	HRR-President, Chief Executive Officer & Director HII-Executive VP, Director LMW-President, Director BEI-President, Director SUB-President, Director
Hendricksen, Holmes G.	015A-09	04-22-33	NV	HRR-Executive VP (Entertainment)
Lenczycki, Ronald	015A-29	03-23-43	NV	HRR-Senior VP Chief Financial Officer
Lile, R. A.	012-19	09-14-08	AK	HII-Outside Director
Luery, Darrell	012C-09	09-21-40	NV	HRR-Senior VP (Marketing)
McClure, Archibald	012C-15	08-19-22	IL	HII-Outside Director
*Posey, R. Edward	012-04 2126-11	12-07-38	NV	MA-VP Operations
Rose, Michael	012-01	03-02-42	TN	HII-President, Chief Executive Officer & Director HRR-Director SUB-Director & VP
Salmon, Walter J.	012C-20	11-16-30	MS	HII-Outside Director
Satre, Philip G.	015A-15	04-30-49	NV	HRR-VP, General Counsel & Secretary BEI-Secretary & Treasurer LMW-Secretary & Treasurer
Schorr, James	012C-11	05-14-42	TN	HII-Executive VP & Director HRR-Director
Smith, Arthur M., Jr.	012C-14	05-02-22	NV	HII-Outside Director
Smith, Donald N.	012C-23	09-12-40	CT	HII-Outside Director
Smith, Frederick W.	012C-21	08-11-44	TN	HII-Outside Director

NAME	ID	DOB	RS	POSITION(S)
lomonson, Charles M.	012C-07	11-15-30	TN	HII-Senior VP, Chief Financial Officer, Director HRR-Director & VP BEI-Director & VP LMW-Director & VP SUB-Director, Secretary & Treasurer
urman, Herbert	012B-01	09-22-36	CA	MA-Limited Partner
rry, Ronald	012C-13	12-05-30	TN	HII-Outside Director
lter, Lance	012A-11	10-11-51	CA	MA-Limited Partner
lter, Louis	012A-12	08-23-21	CA	MA-Limited Partner
lter, Manuel	012A-13	10-10-23	CA	MA-Limited Partner
lter, Toni Sue	012A-14	09-02-58	CA	MA-Limited Partner
lls, Richard	012C-10	06-24-40	NV	HRR-Senior VP (Planning & Administration)
negardner, Roy	012A-08	11-15-20	TN	HII-Chairman of Board HRR-Director

26. That no other officers, principal employees, security holders, or other persons associated with the Applicant or of any of its holding companies are presently deemed to be qualifiers;

27. That with the concurrence of the Director of the Division of Gaming Enforcement, other than persons named in this Resolution as qualifiers, none of the holders of the publicly traded securities of holding company Holiday Inns, Inc., which has issued in excess of 31 million shares of common stock, as well as certain preferred stock and debentures, now has the ability to control Holiday Inns, Inc. or elect one or more of its Directors, and that, therefore, the requirements of N.J.S.A. 5:12-85(d)(1) and (e) that such securities holders be required to be individually qualified are presently hereby waived;

28. That with the concurrence of the Director of the Division of Gaming Enforcement, other than persons named in this Resolution as qualifiers, none of the holders of the publicly traded first mortgage bonds of holding company Harrah's now has the ability to control Harrah's or elect one or more of its Directors and that, therefore, the requirements of N.J.S.A. 5:12-85(d)(1) and (e) that any such securities holders be required to be individually qualified are presently hereby waived;

29. That with the concurrence of the Director of the Division of Gaming Enforcement no officer of publicly traded holding company Holiday Inns, Inc., other than those persons named in this Resolution as qualifiers, is presently significantly involved in the activities of the Applicant and that, therefore, the requirements of N.J.S.A. 5:12-85(d)(1) that such officers be required to be individually qualified is presently hereby waived;

30. That the Division of Gaming Enforcement has not yet filed its report concerning the qualifications of Donald N. Smith, who was appointed to the Board of Directors of Holiday Inns, Inc. on October 30, 1981, and therefore no determination as to his qualifications is made at this time (See the condition contained in Paragraph 90 of this Resolution);

31. That, except as otherwise noted in these findings, each individual listed in Paragraph No. 25 is presently individually qualified for approval as a casino key employee, but for residence, as required by N.J.S.A. 5:12-85(c), -85(d)(1), -85(e), -89, and -94(b), or is actually licensed as a casino key employee;

WILLIAM DOUGALL

32. That prior to October 16, 1981 William Dougall as the holder of a limited partnership interest in the Applicant would have been a person required to be individually qualified in accordance with N.J.S.A. 5:12-85(e);

33. That on October 16, 1981, William Dougall transferred his entire ownership interest in the Applicant to Louis Walter, Manuel Walter, Lance Walter and Toni Sue Walter;

34. That this transfer is hereby approved by the Commission pursuant to N.J.S.A. 5:12-82(d)(7);

35. That William Dougall is at the present time no longer deemed required to be individually qualified pursuant to N.J.S.A. 5:12-85(e);

LESTER PAUL SYPHUS

36. That prior to August 17, 1981, Lester Paul Syphus as the holder of a limited partnership interest in the Applicant would have been a person required to be individually qualified in accordance with N.J.S.A. 5:12-85(e);

37. That on August 17, 1981, Lester Paul Syphus transferred his entire ownership interest in the Applicant

to Louis Walter, Manuel Walter, Lance Walter and Toni Sue Walter;

38. That this transfer is hereby approved by the Commission pursuant to N.J.S.A. 5:12-82(d)(7);

39. That Lester Paul Syphus is at the present time no longer deemed required to be individually qualified pursuant to N.J.S.A. 5:12-85(e);

FINANCIAL SOURCES

40. That the Applicant has identified its present financial sources related to its hotel-casino as follows:

(a) A consortium of ten banks led by Midlantic National Bank and including Central Penn National Bank, The First National Bank of Boston, First Pennsylvania Bank, N.A., Girard Bank, Industrial National Bank of Rhode Island, J. Henry Schroder Bank and Trust Company, The Royal Bank of Canada, Security Pacific National Bank, and United Overseas Bank Limited holding an $89.5 million first mortgage;

(b) Charles Worthington holding an $8.8 million ground mortgage;

(c) Bayfield Enterprises, Inc. holding four unsecured notes totalling $35.8 million;

41. That no other financial sources which bear any relation to the Applicant's casino proposal have been presently identified;

42. That William Dougall and Lester Paul Syphus, having entered into trust and other agreements (Exhibits A-104 through A-110) which are hereby approved, are at the present time no longer deemed financial sources required to be qualified pursuant to N.J.S.A. 5:12-84(b) as they are no longer the holders of evidences of indebtedness bearing any relationship to the Applicant's casino proposal (See, the conditions contained in Paragraphs 109 and 110 of this Resolution);

43. That the Applicant has established by clear and convincing evidence the good reputation for honesty and integrity of the named financial sources and that its financial resources are adequate to complete the casino proposal and to operate the casino as required N.J.S.A. 5:12-84(b);

FINANCIAL STABILITY, INTEGRITY AND RESPONSIBILITY

44. That the Applicant has established by clear and convincing evidence the financial stability, integrity and responsibility of it and of its holding companies as required by N.J.S.A. 5:12-84(a);

REPUTATION FOR HONESTY AND INTEGRITY

45. That the Applicant has established by clear and convincing evidence its reputation for honesty and integrity and that of its holding companies as required by N.J.S.A. 5:12-84(c);

BUSINESS ABILITY AND CASINO EXPERIENCE

46. That the Applicant has established by clear and convincing evidence that it and its holding companies have sufficient business ability and casino experience to demonstrate the likelihood of its creation and maintenance of a successful, efficient casino operation as required by N.J.S.A. 5:12-84(d);

NEVADA GAMING

47. That holding companies Holiday Inns, Inc., HISUB 1 Corp., and Harrah's conduct licensed gaming activities in the State of Nevada and that by order of November 14, 1980, the Nevada Gaming Commission, upon recommendation of the Nevada Gaming Control Board and pursuant to Nevada Revised Statutes 463.700 through 463.720 and the Regulations of the Nevada Gaming Commission and Gaming Control Board concerning foreign gaming, granted approval to Holiday Inns, Inc., HISUB 1 Corp., and Harrah's to continue their gaming operations in Nevada while participating in casino gaming in

the State of New Jersey through the operation of Harrah's Marina Hotel Casino in Atlantic City;

THE CASINO HOTEL FACILITY

48. That the facility is situated on a 14.3 acre tract on Brigantine Boulevard at Rhode Island Avenue in the Marina district of Atlantic City and is an all new convention hotel building;

THE IMPACT

49. That as required by N.J.S.A. 5:12-84(e), the Applicant has established to the satisfaction of the Commission that, subject to certain conditions identified in Paragraphs 95 through 99 of this Resolution, the casino and its related facilities and its location are suitable and neither the Atlantic City patron market nor the overall environment nor its economic, social, demographic, competitive, or natural resource conditions will be adversely affected by the proposal;

IMPACT ON REGIONAL HOUSING STOCK

50. That the Applicant is required by N.J.S.A. 5:12-84(e) to establish to the satisfaction of the Commission that its proposal will not adversely affect

overall environmental conditions in the Atlantic City region including its economic, social, and demographic conditions;

51. That, by virtue of the fact that the Applicant employs at the approved hotel facility approximately 3800 persons, its proposal will affect the overall environment in the Atlantic City region, including its economic, social and demographic conditions, and will as a practical matter particularly affect the limited residential housing stock available in the Atlantic City region;

52. That the Commission has maintained a continuing dialogue with all operating casinos as to the extent and nature of their participation in, and as to a requirement that, they participate in the dissipation of any adverse impact their Atlantic City employees may have on available residential housing stock in the region; and that more particularly, such dialogue has been maintained with Boardwalk Regency Corporation since the June, 1979 issuance of its Temporary Casino Permit; with Bally's Park Place, Inc. since the December, 1979 issuance of its Temporary Casino Permit; with Resorts International Hotel, Inc. since the February, 1980 renewal of its Casino License; with Greate Bay Hotel & Casino, Inc. since the August, 1980 issuance of its Temporary Casino Permit; with G.N.A.C. Corp. since the December, 1980 issuance of its Temporary Casino

Permit; with Playboy Elsinore Associates since the April, 1981 issuance of its Temporary Casino Permit; with Claridge Limited since the July, 1981 issuance of its Temporary Casino Permit; and with the Applicant since the November, 1980 issuance of its Temporary Casino Permit;

53. That during the period from January to November, 1980, the Commission, through its Chairman and staff, undertook an investigative analysis of, among other things, the condition of available housing stock in the Atlantic City region, and has conducted six public hearings; and that in July, 1981, in response to a petition filed by the New Jersey Department of the Public Advocate, the Commission determined to conduct a detailed analysis of the housing supply and demand issue facing Atlantic City to assist in developing its policy concerning the role of hotel-casino operators in housing;

54. That as a condition of its Permit, the Applicant is required to cooperate with the Commission in finding solutions to alleviate the apparent housing shortage problem in the Atlantic City region (See, the condition contained in Paragraph 100 of Resolution No. 80-438);

55. That this obligation is a continuing one and is reincorporated, as modified by Paragraph 96 of this Resolution, as a condition of this Casino License;

QUALIFYING SPACE

56. That the approved hotel contains a total of 102,064 square feet of qualifying space including 58,225 square feet of qualifying dining, entertainment and sports space, 23,026 square feet of qualifying meeting and exhibition space, and 20,813 square feet of qualifying kitchen support facilities and thereby exceeds the minimum qualifying space requirements set forth in N.J.S.A. 5:12-83(b) and (c);

57. That Applicant's hotel-casino facility does not meet the spatial "mix" requirement of N.J.S.A. 5:12-83(e), in that it contains less than 25,000 square feet of qualifying meeting and exhibition space, and that, for good cause established by Applicant, a waiver of this requirement is hereby granted;

QUALIFYING SLEEPING UNITS

58. That the approved hotel contains 502 qualifying sleeping units of a typical size of 400 square feet and an average size of 425 square feet and thereby exceeds the minimum qualifying sleeping unit requirements set forth in N.J.S.A. 5:12-27 and 83(a);

CASINO ROOM

59. That the approved hotel contains a single casino room of 44,090 square feet which does not exceed the maximum square foot limitations set forth in N.J.S.A. 5:12-83(d);

CASINO DOMINANCE

60. That, in accordance with the Atlantic City Master Plan, Applicant's parking garage is required to be located at its present site; that the bridge from the parking garage is directly and solely connected to the casino room through a vestibule, is one of three public entrances into Applicant's approved hotel and is the only connection between the garage and hotel building; that the bridge is located in its present position to accomodate pedestrian and driver safety and the Master Plan concept of skyway connections; and that subject to the conditions of Paragraphs 100 and 101 of this Resolution, the bridge connection does not cause the casino room to unduly dominate the approved hotel complex;

61. That subject to the condition contained in Paragraph 102 of this Resolution, the walless open northern boundary of the casino room does not cause that room to impermissibly dominate the approved hotel complex;

62. That subject to the conditions contained in Paragraphs 100, 101, 102 and 103 of this Resolution, the casino room does not impermissibly dominate Applicant's hotel-casino facility;

CASINO VISIBILITY

63. That to the extent there is visibility into the casino room through the windows along the promenade, such visibility does not violate N.J.S.A. 5:12-98(b)(4) as the casino room is visible only from areas owned and controlled by the applicant and constituting part of the casino hotel facility, and not from public pedestrian thoroughfares;

64. That the condition contained in Paragraph 94 of Resolution No. 80-438, issuing the Applicant's Permit, is hereby removed;

FULFILLMENT OF CONDITIONS PERTAINING TO THE FACILITY

65. That the Applicant has fulfilled the conditions contained in Paragraphs 85, 86, 98 and 99 of the Resolution issuing its Permit (See Resolution No. 80-438); and, the conditions contained in Paragraphs 21 and 22 of the April 22, 1981 Resolution amending its Permit (See Resolution No. 81-338);

APPROVED HOTEL

66. That based on the findings contained in Paragraphs 48 and 56 through 64 of this Resolution, and subject to the conditions contained in Paragraphs 91, 92, 94, 95 and 100 through 103 of this Resolution, Applicant's facility is found to be an "approved hotel" in accordance with N.J.S.A. 5:12-83;

EQUAL EMPLOYMENT OPPORTUNITY - OPERATIONS

67. That the Applicant has filed guarantees that it will afford equal employment opportunity to all prospective and actual employees and has filed an affirmative action program designed to afford equal employment opportunity to persons qualified for licensure in all employment categories; has filed documents in support of its position that it has made a good faith effort to afford an equal employment opportunity to all prospective and actual employees and to abide by its program; and has made all equal employment opportunity filings pertaining to operations in a timely manner, as required by N.J.S.A. 5:12-134(b) and (c);

68. That the Applicant on May 12, 1980 appointed Lathan Pridgen as its operations and construction affirmative action officer pursuant to N.J.S.A. 5:12-135(f);

69. That the Applicant as of September 5, 1980 employed approximately 3,815 individuals;

70. That the Applicant presently meets the protected class employment goals of twenty percent for minorities and forty-three percent for females set forth in N.J.A.C. 19:53-1.5(e) with respect to its present 3,815 employee workforce, which consists of 22.8% minority and 45.6% female individuals but presently fails to meet these goals in the indicated categories as required by N.J.A.C. 19:53-1.5(a)(2) and (f):

Category	Positions	Minority Employees	Female Employees
*Executives	15	3(20%)	0(0%)
*Managers	59	7(12%)	13(22%)
*Asst. Managers	106	15(14%)	16(15%)
*Supervisors	472	84(18%)	194(41%)
*Professionals	659	129(20%)	240(36%)
*Technicians	74	7(10%)	23(31%)
Sales Workers	2	0(0%)	0(0%)
Office & Clerical	590	116(20%)	466(79%)
*Craftpersons	33	4(12%)	0(0%)
*Operatives	135	36(27%)	44(33%)
*Laborers	408	180(44%)	121(30%)
Service Workers	1262	288(23%)	622(49%)

71. That the Applicant has made good faith efforts in seeking to achieve the protected class employment goals at all levels of its workforce;

EQUAL EMPLOYMENT OPPORTUNITY - CONSTRUCTION

72. That the construction of Applicant's approved hotel facility commenced in October, 1979;

73. That Applicant, on August 28, 1979, filed a written guarantee that it would require its contractors and subcontractors to afford equal employment opportunity to all employees in connection with the construction of its approved hotel; that it filed documents in support of its position that it has made a good faith effort to afford an equal employment opportunity to such employees as required by N.J.S.A. 5:12-134(a); and that it has made all construction equal employment opportunity submissions on a timely basis;

74. That the Applicant on August 20, 1979 appointed Al Humphers, its Director of Personnel and Industrial Relations, and Rick Bodge of the Perini Corporation as its Affirmative Action Officers for construction pursuant to N.J.S.A. 5:12-135(f);

75. That the Applicant's construction workforce from the commencement of construction through September 30, 1980

contained 11% minority journeyworkers, 18% minority apprentices, and 44% minority laborers, as more fully set forth in Paragraphs 72 and 73 of Commission Resolution No. 80-438, which is incorporated herein as part of this Resolution;

76. That Applicant's construction workforce from October 1, 1980 to July 7, 1981, which represents approximately 25% of the total construction workforce, contained the following proportions of protected class individuals:

JOURNEYWORKERS (NO FEMALES EMPLOYED)

TRADE	TOTAL WORKER WEEKS	MINORITY WORKER WEEKS	%
Bricklayer	83	16	19%
Iron worker	168	31	18%
Glazier	50	9	18%
Plumbers	226	38	17%
Painter	256	17	7%
Floor Coverer	229	16	7%
Operating Engineer	151	11	7%
Cement Mason	201	11	5%
Carpenter	1,293	47	4%
Roofer	57	1	2%
Sheetmetal Worker	40	0	0%
TOTAL	2,754	197	7%

APPRENTICES

TRADE	TOTAL WORKER WEEKS	MINORITY WORKER WEEKS	%	FEMALE WORKER WEEKS	%
Painter	15	15	100%	12	80%
Carpenter	73	42	58%	0	0%
Glazier	4	2	50%	0	0%
Ironworker	29	12	36%	0	0%
Cement Mason	9	2	22%	0	0%
Floor Coverer	230	17	7%	0	0%
Plumber	20	0	0%	0	0%
Bricklayer	20	0	0%	0	0%
Sheetmetal Worker	15	0	0%	0	0%
TOTAL	415	90	22%	12	2.9%

LABORERS

TOTAL	MINORITY	%	FEMALE	%
953	577	61%	60	6.3%

77. That during the period October, 1979 to September, 1980, and the period October, 1980 to July, 1981, the Applicant failed to achieve the percentage employment goals of twenty percent minority and 6.9% female journey workers

and apprentices by trade (N.J.A.C. 19:53-1.5(c) and -1.14(a));

78. That resolution of the question of whether the Applicant has made good faith efforts to achieve percentage goals by trade involves, among other things, an analysis of the efforts of the Applicant, as well as the efforts of its construction manager Perini Corporation, contractors, and represented trade unions; a comparison of those efforts and achievements with those contemporaneously made and achieved at the Sands (formerly Brighton), the Golden Nugget, and the Playboy casino hotel construction projects; and a determination as to what further effort may have reasonably been made by the Applicant to achieve its percentage goals within its construction workforce;

79. That on January 16, 1981, the Applicant made a voluntary contribution of $12,500. to the Atlantic Construction Training Program, Inc., a non-profit corporation recently formed to develop apprentice training programs;

80. That a final determination as to whether the Applicant has demonstrated that it has made good faith efforts to achieve its equal employment opportunity goals in its construction workforce as required by N.J.S.A. 5:12-134(a) and N.J.A.C. 19:53-1, et. seq. is deferred;

81. That such final determination will be made following the receipt of a report from the Division of Gaming Enforcement as to its further investigation, review, and analysis of the facts relating to the four construction projects of the Applicant, the Sands (formerly Brighton), Golden Nugget, and Playboy, following receipt of a further report of Commission staff relating to the four projects and following, if necessary, a hearing as to those aspects of the question left unresolved by such reports (See the condition contained in Paragraph 108 of this Resolution);

CONDITIONS

Based upon the evidence presented at the hearing and the findings contained herein, this plenary Casino License is issued, subject to the following conditions:

BURDEN OF ESTABLISHING COMPLIANCE

82. That the Applicant shall have the continuing affirmative burden of establishing to the satisfaction of the Commission its compliance with all conditions of this plenary Casino License and its Certificate of Operation as amended, all provisions of the Casino Control Act, the regulations promulgated thereunder and Commission directives or good cause for its failure or inability to so comply;

HOLDING COMPANY COOPERATION

83. That holding companies Bayfield Enterprises, Inc.; L & M Walter Enterprises, Inc; Harrahs; HISUB 1; and Holiday Inns, Inc. adhere to all conditions imposed upon the Applicant by both this plenary Casino License and its Certificate of Operation, and take all action necessary and appropriate to enable the Applicant to comply with such conditions and all provisions of the Casino Control Act, the regulations promulgated thereunder and Commission directives;

SECURITY HOLDERS

84. That holding companies Harrah's and Holiday Inns, Inc. make available upon request of the Commission or Division a listing of all record holders of any and all of its publicly-traded securities;

85. That the Applicant immediately notify the Commission and Division if any security holders of it or its holding companies obtains the ability to control Marina Associates or any of its holding companies or elect one or more directors thereof;

86. That the Applicant itself not issue or transfer any securities or interest in the partnership of any kind without the express, prior written approval of the

Commission, which approval shall expressly consider the provisions of N.J.S.A. 5:12-82(d)(7) and (8), 85(c), 105, 39 and 44;

ADDITIONAL QUALIFIERS

87. That the Commission reserves the right to require at any future time the qualification of any person or entity that it deems appropriate for qualification;

REPLACEMENT OF DIRECTORS AND CORPORATE OFFICERS

88. That the Applicant's holding companies Bayfield Enterprises, Inc., L & M Walter Enterprises, Inc., Harrah's, HISUB 1 Corporation and Holiday Inns, Inc., report promptly in writing to the Commission and the Division the election of any new member of their respective Boards of Directors or the appointment of any new Corporate Officer; and that any new Director or Corporate Officer of any such company shall submit to individual qualification as required by N.J.S.A. 5:12-85(c) and (d)(1) by filing any required application forms prior to the assumption of any and all duties and responsibilities relating to such position;

89. That any individual required to qualify pursuant to N.J.S.A. 5:12-85(e) by virtue of his position with the Applicant not perform any duties or exercise any powers

relating to such position until qualified by the Commission in accordance with N.J.S.A. 5:12-105(g);

90. That Donald Smith shall not exercise any powers or perform any duties as a Director of holding company Holiday Inns, Inc. until first qualified for approval as a key employee except for residence as required by N.J.S.A. 5:12-85(d)(1) and 85(e);

FIRST CLASS QUALITY

91. That the Applicant maintain and operate its approved hotel complex as a facility of superior, exceptional, first-class, five star and deluxe quality in accordance with N.J.A.C. 19:41-2.7;

ALTERATION OF QUALIFYING SPACE

92. That the Applicant shall not alter or limit the use of any qualifying space or sleeping units within the approved hotel without the express, prior written approval of the Commission (See N.J.S.A. 5:12-27 and 83);

CONTINUING COMPLIANCE AND MODIFICATIONS

93. That, in the context of N.J.S.A. 5:12-80(a) and (d), the Applicant prepare and submit to the Facilities Review Section information as to qualifying square footages and related facility data, which submission shall be made on

the forms developed and provided to the Applicant by the said Facilities Review Section, and shall be made according to a bimonthly schedule or such other periodic schedule as may be determined;

CERTIFICATES OF OCCUPANCY

94. That pursuant to N.J.S.A. 5:12-84(e) and N.J.S.A. 52:27D-119 et seq., the Applicant obtain from the Local Construction Official of Atlantic City appropriate Certificates of Occupancy with respect to all qualifying indoor public spaces and/or additional qualifying sleeping units as may be added to the approved facility during the term of this Plenary Casino License; and that the Applicant maintain at all times such valid Certificates of Occupancy;

OTHER AGENCY APPROVALS

95. That the Applicant comply with all conditions appended to facilities approvals received from the Atlantic City Planning Board, the New Jersey Department of Environmental Protection and all other agencies of government;

HOUSING

96. That in consideration of Paragraphs 50 through 55 of this Resolution, the Applicant cooperate with the

Commission toward finding solutions to alleviate the apparent housing problem in the Atlantic City area, and, if so required, participate further in providing a reasonable share of the housing construction requirements for the Atlantic City area, with the specific nature and extent of such participation to be determined by the Commission at a later date pursuant to N.J.S.A. 5:12-84(e) and the Atlantic City Planning Board resolution dated December 6, 1978; and that initial implementation of these conditions will occur through the housing study presently being conducted by the Commission (formerly, in part, Paragraph 100 of Resolution No. 80-438);

INTERCEPT PARKING

97. That the Applicant cooperate with and participate in the development of appropriate employee and patron intercept parking facilities and make every reasonable effort to develop an efficient employee transportation system in cooperation and consultation with the Atlantic City Planning Department and the New Jersey Department of Environmental Protection and to the satisfaction of the Commission; (formerly, Paragraph 106 of Resolution No. 80-438);

GUIDEWAY TRANSIT AND SKYWAY CONNECTION SYSTEM

98. That the Applicant cooperate with and contribute toward the development of a municipal guideway transit system and skyway linkage system as envisioned by the Atlantic City Master Plan (formerly, Paragraph 107 of Resolution No. 80-438);

TRAFFIC AND ROAD IMPROVEMENTS

99. That the Applicant shall make every reasonable effort to monitor and maintain an efficient flow of traffic within the general ingress and egress routes of the casino hotel complex in cooperation and consultation with the Atlantic City Department of Public Safety and the New Jersey Department of Environmental Protection and to the satisfaction of the Commission; and that if so required by the Commission and pursuant to N.J.S.A. 5:12-84(e), the Applicant on a reasonable basis and together with other major developers in the Marina area, shall contribute to the cost of such road improvements as may be necessary to mitigate the impact of additional traffic on Atlantic-Brigantine Boulevard, which is the sole access route to the City of Brigantine, Huron Avenue and the Marina area generally (formerly Paragraphs 101 and 102 of Resolution No. 80-438);

CASINO DOMINANCE

100. That in the context of the declared policies of N.J.S.A. 5:12-1(b)(4) and (5), the Applicant shall continue to work toward establishing alternatives to the existing location of non-hotel guest valet parking in order to mitigate impingement upon the statutory policy against undue casino dominance, and periodically advise Commission staff of its progress (formerly, in part, Paragraph No. 14 of Resolution No. 81-727);

101. That the Applicant shall further mitigate such undue casino dominance by providing a method by which persons confined to wheelchairs, children, and guests not seeking to enter the casino may safely cross Brigantine Boulevard from the garage and shall, in conjunction with the City Traffic Engineer and as soon as is reasonably possible, install at street level a traffic control device to permit garage patrons to safely cross Brigantine Boulevard at all times; and until such time as said traffic device is installed, shall cause a traffic officer to be appropriately stationed at all times to assure that patrons may safely cross Brigantine Boulevard (formerly, Paragraph 96 of Resolution No. 80-438);

NORTHERN CASINO ROOM BOUNDARY

102. That, in the context of the declared policies of N.J.S.A. 5:12-1(b)(4), and in conjunction with resolution of the external casino room visibility issue, the Applicant shall by December 15, 1981, replace the existing plantings at the northern casino room boundary with plantings of a greater height and density so as to more effectively segregate and define the casino room from the adjacent areas, and shall discuss with Commission staff the type and nature of plantings to be used (Cf. Paragraph 97 of Resolution No. 80-438);

MASTER SIGNAGE REVIEW

103. That the Applicant shall cooperate with the Commission staff in its master signage review, designed to determine if the signage at its and all other approved hotels, is adequate for the purposes of the Casino Control Act, (formerly, Paragraph 95, in part, of Resolution No. 80-438, and Paragraph 15 of Resolution No. 81-727);

EQUAL EMPLOYMENT OPPORTUNITY - OPERATIONS

104. That the Applicant submit on a continuing basis and in a timely manner data and information relating to its

compliance with equal employment goals in the form and manner prescribed by Commission staff;

105. That for all positions with salaries in excess of $25,000 the Applicant exert good faith efforts to improve protected class representation in those positions, and fully document those efforts, including the use of referral and employment agencies and community based organizations, numbers of persons interviewed per position, allotted time for filling positions, reasons for not hiring protected class persons, and other relevant information deemed appropriate by the Commission staff;

106. That the Applicant continue to exert good faith efforts to increase protected class representation in all job categories in which it presently does not meet equal employment opportunity goals and maintain goal compliance where presently achieved;

107. That the Applicant implement within sixty days its Upward Mobility Program; and that concurrent with that date the Applicant submit to the Commission appropriate data containing: (a) number of participants, (b) race and sex, (c) methods of recruitment, (d) criteria used for selection inclusive of tests if applicable, and (e) identification of participants' present EEO job titles; and that the Applicant participate with Commission staff in an interim review and

assessment of its Upward Mobility Program complete with the preparation and submission of progress reports documenting efforts of the Upward Mobility Program, said review to commence by June 1, 1982;

EQUAL EMPLOYMENT OPPORTUNITY - CONSTRUCTION

108. That the Applicant cooperate with the Division and Commission staff in the preparation of reports and, if necessary, a hearing relating to a final determination by the Commission on the question of whether the Applicant has demonstrated that it has made good faith efforts to meet the equal employment opportunity goals in its construction workforce (formerly Paragraph 108 of Resolution No. 80-438);

LESTER PAUL SYPHUS AND WILLIAM DOUGALL

109. That no modification to the trust agreements, notes and letters of credit concerning Lester Paul Syphus and William Dougall entered into in conjunction with the sale of L & M Walter Enterprises, Inc. to Holiday Inns, Inc., and in conjunction with the sale of their respective remaining interests to Louis Walter, Manuel Walter, Lance Walter and Toni Sue Walter, shall be made until first approved in writing by the Commission (See Exhibits A-104 through A-110 and Paragraph 42 of this Resolution);

110. That no alternative arrangement to the letters of credit issued for the benefit of Lester Paul Syphus and William Dougall, respectively, in conjunction with the sale of their remaining interests in L & M Walter Enterprises, Inc. to Louis Walter, Manuel Walter, Lance Walter and Toni Sue Walter, shall be made until first approved in writing by the Commission.

EFFECTIVE DATE

This Casino License issued November 19, 1981, shall become effective at 12:01 a.m. local time on November 23, 1981 and shall expire one year thereafter in accordance with N.J.S.A. 5:12-87(e).

Martin B. Danziger
Acting Chairman

Don M. Thomas
Commissioner

Carl Zeitz
Commissioner

Madeline H. McWhinney
Commissioner

I hereby certify that this document is a true and correct copy of Resolution No. 81-823 of the New Jersey Casino Control Commission.

Theron G. Schmidt
Executive Secretary

Meeting of November 19, 1981
Vote Taken on Pages 21 & 22

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-125
OAL DOCKET NO. CCC 5843-80

IN THE MATTER OF THE APPLICATION	:	
OF HECTOR RIVERA MELENDEZ FOR	:	FINAL
LICENSURE AS A CASINO EMPLOYEE	:	ORDER
(FLOORPERSON)	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law herein dated May 7, 1981; and the Commission having considered the entire record of these proceedings and the Initial Decision, the exceptions filed by the Applicant and the reply to those exceptions filed by the Division of Gaming Enforcement; and the Commission having resolved at its public meeting on June 17, 1981 to affirm and adopt the said Initial Decision, as modified, and to deny the application for licensure,

IT IS on this 2nd day of July 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is ADOPTED by the Commission as modified herein; and

IT IS FURTHER ORDERED that the portion of the Initial Decision finding that the Applicant's conduct in working as a blackjack dealer in an illegal casino constitutes a disqualifying offense under N.J.S.A. 5:12-86(c)(1), i.e., "promoting gambling"

as a third or fourth degree offense as defined by N.J.S.A. 2C:37-2, be and hereby is REJECTED by the Commission; and

IT IS FURTHER ORDERED that the license application of Hector Rivera Melendez be and hereby is DENIED based upon the reasons set forth in the Initial Decision, as modified herein, which is incorporated herein be reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

MARTIN B. DANZIGER,
ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 2, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5843-80

AGENCY DKT. NO. 80-EA-125

IN THE MATTER OF:

HECTOR RIVERA MELENDEZ,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: March 23, 1981

Received by Agency: 5/7/81

Decided: May 7, 1981

Mailed to Parties: 5/11/81

APPEARANCES:

Bruce W. Lerner, Esq., for Applicant

Stephen D. Schrier, Deputy Attorney General, for Respondent (James R. Zazzali, Attorney General of New Jersey, Attorney)

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

This matter concerns the application of Hector Rivera Melendez to the Casino Control Commission for licensure to work in a Casino as a blackjack and craps floorperson. By letter report to the Casino Control Commission dated June 25, 1980, the Division of Gaming Enforcement objected to the licensure of the applicant as a casino employee. The applicant requested a hearing on his license application and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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

1. Whether the applicant for licensure as a casino employee has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of section 89b(2), as incorporated in section 90b of the Casino Control Act.

2. Whether the applicant, with specific reference to questions Nos. 16, 31, 33 and 46 of his personal history disclosure form, which requires disclosure of his addresses, employments and terminations, and arrests and convictions, has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the Casino Control Act.

3. Whether the applicant, with specific reference to his arrest and conviction record as set forth in the Division of Gaming Enforcement's letter of objection dated June 25, 1980, has been convicted of or has committed any offense which is an enumerated statutory disqualifier within the meaning of section 86c of the Act, or which would indicate under section 86c(4) that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct had not been or may not be prosecuted under the criminal laws of this State, within the meaning of section 86g of the Casino Control Act.

4. Whether the applicant is identified as a member of a career offender cartel or an associate of a career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of the Casino Control Act and to gaming operations, within the meaning of section 86f of the Casino Control Act.

5. Whether the applicant, notwithstanding his conviction of any offense enumerated in the Casino Control Act as an automatic disqualifier, has demonstrated his rehabilitation pursuant to section 90h of the Casino Control Act.

The applicant is a 44 year old resident of New Jersey who has satisfied the experiential requirement for licensure as a blackjack and craps floorperson as a result of the experience he gained from many years of casino employment in Puerto Rico. For a little over a year, the applicant has been employed as a project director in manpower training for Mobicentrics, Inc., which is located in New York City. Dr. Gaspar Garcia, a vice president of Mobicentrics, Inc., testified that he would give the applicant his highest recommendation. According to Dr. Garcia, the applicant is highly regarded, and his good character, honesty and integrity are not in question. Although the applicant had been hired initially in a temporary capacity, he was retained by the company due to the quality of his performance.

Also testifying concerning the applicant's good character was William Rubenstein, who is Executive Vice President of Stevens Industries. According to Mr. Rubenstein, he has known the applicant for approximately ten years, and he considers the applicant to be an extremely conscientious individual of high moral character. In addition to the testimony of Dr. Garcia and Mr. Rubenstein, many letters of recommendation from persons in both the public and private sectors were admitted into evidence on behalf of the applicant (Exhibits P-2 through P-11).

N.J.S.A. 5:12-86b provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. The possibility of disqualification from licensure pursuant to section 86b of the Act arises in part from the applicant's 1977 arrest in New York City for promotion of gambling and possession of gambling paraphernalia. It is undisputed that the applicant was convicted upon a plea of guilty on the charge of possession of gambling paraphernalia. However, the applicant omitted any mention of this arrest and conviction in his answer to question No. 46 of his Personal History Disclosure Form filed with the Casino Control Commission on Feburary 12, 1979 (Exhibit R-1). Question No. 46 requires complete disclosure of an applicant's criminal and disorderly persons arrest and conviction record.

The applicant's conviction resulted from a raid on an illegal casino being operated at the Kips Bay Rifle Club in New York City, where the applicant worked as a blackjack dealer on a nightly basis for approximately four months in 1977. According to the applicant, he expressed to some of the other people who had been arrested with him

that he was concerned that his arrest would hurt his chances of getting a casino employee license in New Jersey. It was the testimony of the applicant that someone then mentioned the arrest and conviction records would be sealed after six months. When specifically asked to explain the omission of his 1977 arrest and conviction, the applicant stated that he thought the record would not appear.

In order to properly assess the applicant's explanation for his failure to disclose on his personal history disclosure form his arrest and conviction in 1977 for possession of gambling paraphernalia, it is necessary to examine his responses to questions Nos. 16 and 31, which require disclosure of his addresses and employments. In response to question No. 16, the applicant failed to disclose that he had been residing in New York at the time of his 1977 arrest. In response to question No. 31, the applicant failed to disclose that he had been employed at the Kips Bay Rifle Club, dealing blackjack, for a period of three to four months in 1977. When reviewed together with the applicant's failure to disclose any reference to his 1977 gambling arrest and conviction, it is apparent that these omissions were not inadvertent. Rather, they were intentional omissions, motivated by the applicant's fear that disclosure of his involvement in illegal gambling would hurt his chances of obtaining a casino employee license in New Jersey. Thus, the applicant's assertion that he thought the record of his 1977 arrest and conviction had been sealed is an explanation for his failure to disclose which is not worthy of credit.

Pursuant to section 86c(4) of the Casino Control Act, the Commission shall deny a casino employee license to any applicant who is disqualified from licensure on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the Act and to casino operations. It is undisputed that the applicant was convicted, on December 3, 1974, upon his plea of guilty to the felony charge of attempted possession of a weapon. According to the applicant, the offense which led to this conviction occurred in 1972, when he was in the New York City area collecting casino debts for the Puerto Rico Sheraton Hotel. The applicant testified that he made approximately four collection trips to the New York City area during a six month period in 1972. On these trips, he would collect between $50,000 and $100,000 from patrons of the Puerto Rico Sheraton Casino. On one of these collection trips, the applicant was in possession of a pistol provided by the Director of Security at the New York Sheraton Hotel. The applicant sought directions from a policeman and he was placed under arrest when the policeman observed the pistol sticking out of the applicant's belt. The applicant denied that he had used the weapon in any way to assist in the collection of casino debts.

Rather, the applicant testified that the pistol had been carried as a security measure, due to the large sums of money which were being collected.

In order to determine whether licensure of the applicant would be inimical to the policy of the Act and to casino operations on the basis of his conviction for attempted possession of a weapon, it is necessary to consider the nature of his conduct and the circumstances surrounding it, as well as his conduct since the conviction. It is clear that the applicant's conduct involved the gaming industry, and more specifically, the possible threat of deadly force while in the process of collecting gambling debts. When examining the applicant's subsequent conduct, it is significant that he was convicted in 1977 of another offense directly related to the gambling industry. As noted earlier, this was the applicant's conviction for possession of gambling paraphernalia arising out of his employment as a blackjack dealer in an illegal casino in New York City. It is apparent from the applicant's subsequent conduct, involving illegal gambling, that his licensure would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. The applicant's earlier conviction for a weapons offense occuring while collecting gambling debts would, therefore, indicate that licensure would be inimical to the policy of the Casino Control Act.

N.J.A.C. 5:12-86c provides that the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. Pursuant to section 86g of the Act, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. It is undisputed that the applicant was arrested in 1977 on charges of promoting gambling and possession of gambling paraphernalia. The applicant pled guilty to the charge of possession of gambling paraphernalia, and the charge of promoting gambling was not prosecuted. However, the applicant admitted that he was a blackjack dealer in the illegal casino where he was arrested. Under section 86c of the Act, the applicant's conviction of possession of gambling paraphernalia constitutes an enumerated statutory disqualifier from licensure. The applicant's conduct at the illegal casino also constitutes the offense of "promoting gambling", as defined by N.J.S.A. 2C:37-2. This offense is an enumerated disqualifier pursuant to section 86c of the Act. Although the applicant was not prosecuted for promoting gambling, his commission of that offense requires disqualification from licensure within the meaning of section 86g of the Act.

An applicant shall not be denied a casino employee license on the basis of his conviction of a disqualifying offense, provided he has affirmatively demonstrated his rehabilitation pursuant to section 90h of the Act. In determining whether the applicant has affirmatively demonstrated his rehabilitation, the following factors should be considered:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the events occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

The credible evidence in the entire record establishes that the applicant has a present reputation for good character, honesty and integrity. He has received his present employer's highest recommendation. However, his most recent criminal conviction occurred in 1977, and this conviction was for an offense which directly involved the applicant in illegal gambling. The applicant was 36 years old at the time of that offense, and it occurred after many years of experience in the casino industry in Puerto Rico. Because the applicant seeks the position of floorperson, which entails supervisory responsibility for other casino employees, it is significant that the applicant voluntarily chose to work as a blackjack dealer in an establishment he knew to be an illegal gambling operation.

The candor and credibility of the applicant within the context of his application for licensure must also be examined in order to determine whether he had sustained his burden of demonstrating his rehabilitation. When the applicant prepared his personal history disclosure form, he failed to disclose his 1977 arrest and conviction involving illegal gambling. Furthermore, he failed to disclose his address at the time of this offense, and failed to disclose his employment at the Kips Bay Rifle Club, where he was arrested. Although the applicant revealed the arrest and conviction to Division of Gaming Enforcement Investigator James Conover when he was interviewed by the detective in August 1979, the applicant was not forthcoming with any details concerning the offense, claiming that his memory was vague. The omission of any information in his personal history disclosure form which would reflect his involvement in illegal gambling at the Kips Bay Rifle Club evidences an intentional failure to disclose facts material to his qualifications for licensure. The applicant's intentional failure to disclose material information is itself a cause for disqualification from licensure, pursuant to section 86b of the Act, and such conduct prevents the applicant from affirmatively demonstrating his rehabilitation. Consequently, the applicant cannot overcome his conviction of a disqualifying offense under section 86c(3) of the Act.

Pursuant to N.J.A.C. 5:12-86f, an applicant may be disqualified from licensure if he is identified as a career offender or a member of a career offender cartel or an associate of a career offender cartel. To be disqualified, the association must be in a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of the Casino Control Act and to casino operations. A career offender is defined as "any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State." Occupational manner or context is defined as "the systematic planning, administration, management, or execution of an activity for financial gain."

Detectives Thomas Fitzgerald and Harold Sakin, of the New York City Police Department Organized Crime Control Bureau, testified concerning their involvement in the investigation of the Kips Bay Rifle Club, where the applicant was arrested in 1977 for promotion of gambling and possession of gambling paraphernalia. Although Detective Fitzgerald characterized the illegal gaming at the Kips Bay Rifle Club as a large scale operation, he was unable to characterize the people who ran the operation as members of organized crime. In particular, he had no knowledge of the applicant having been involved

with organized crime. Detective Sakin also had no information which would connect the applicant with organized crime, although it was his opinion that the gambling operation itself could probably be tied to organized crime in New York City. The competent evidence in the record suggests that the applicant was involved in the illegal gambling activity at the Kips Bay Rifle Club simply as an employee for no more than four months. This illegal activity was an isolated incident in the applicant's working life, of relatively short duration compared to his many years of legal employment in the casino industry. Therefore, his involvement did not constitute illegal behavior pursued in an occupational manner or context, within the meaning of section 86f of the Act. Nevertheless, this involvement in an illegal gambling activity does reflect adversely upon the applicant's good character, honesty and integrity.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter (see the attached Inventory of Exhibits), and having observed the demeanor of the witnesses and assessed their credibility, I **FIND:**

1. The applicant has applied for a license to permit him to work in a casino as a blackjack and craps floorperson.

2. The applicant possess the requisite experience for licensure pursuant to section 90b of the Casino Control Act.

3. The applicant failed to disclose in his personal history disclosure form any information concerning his 1977 arrest in New York City for promotion of gambling and possession of gambling paraphernalia. The applicant failed to disclose his conviction upon a plea of guilty to the charge of possession of gambling paraphernalia.

4. The applicant failed to disclose on his personal history disclosure form his residence in the New York City area in 1977. The applicant also failed to disclose on his personal history disclosure form his employment for a period of approximately four months in 1977 as a blackjack dealer in the Kips Bay Rifle Club in New York City.

5. The criminal record information which the applicant failed to disclose on his personal history disclosure form was material to the evaluation of his

qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

6. The employment and residence history which the applicant failed to disclose on his personal history disclosure form was material to the evaluation of his qualifications for licensure, within the meaning of the disqualification criteria of section 86b of the Casino Control Act.

7. The applicant's failure to disclose the aforementioned material information was intentional, rather than inadvertent.

8. On December 3, 1974, the applicant was convicted upon his plea of guilty to the felony charge of attempted possession of a weapon, arising from his 1972 arrest in New York City for possession of a weapon. This arrest occurred while the applicant was in the New York City area collecting casino debts for the Puerto Rico Sheraton Hotel.

9. The applicant's conviction of attempted possession of a weapon indicates that his licensure would justifiably undermine public confidence in the integrity of the regulatory process.

10. As a result of an undercover investigation of the Kips Bay Rifle Club in New York City, the applicant was arrested and charged with promoting gambling and possession of gambling paraphernalia, in September 1977. The applicant was convicted upon his plea of guilty to the charge of possession of gambling paraphernalia.

11. Under section 86c of the Casino Control Act, the applicant's conviction of possession of gambling paraphernalia constitutes an enumerated statutory disqualifier from licensure. The applicant's participation as a blackjack dealer in the illegal casino also constitutes the offense of "promoting gambling", as defined by N.J.S.A. 2C:37-2. This offense is also an enumerated disqualifier pursuant to section 86c of the Casino Control Act.

12. The applicant has failed to demonstrate his rehabilitation pursuant to section 90h of the Act by clear and convincing evidence and has therefore failed to overcome his disqualification from licensure on the basis of his conviction and commission of offenses enumerated under section 86c of the Act.

13. Despite a present reputation for good character, honesty and integrity, the applicant has not demonstrated by clear and convincing evidence that he actually possesses the degree of character, honesty and integrity requisite for licensure as a casino employee.

The Legislature has included in the Casino Control Act an express declaration of public policy. N.J.S.A. 5:121b(6) provides in part:

> An integral and essential element of the regulation and control of such casino facilities by the State rests in public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and association related to the operation of licensed casino enterprises and all related service industries as herein provided.

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the applicant is disqualified from receiving a casino employee license due to his conviction and commission of offenses which are enumerated disqualifiers from licensure, pursuant to N.J.S.A. 5:12-86c. I further **CONCLUDE** that the applicant is disqualified from receiving a casino employee license due to his conviction of an offense which indicates that licensure of the applicant would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(4) of the Act. I further **CONCLUDE** that the applicant is unable to overcome these disqualifications from licensure due to his failure to demonstrate by clear and convincing evidence his rehabilitation, within the meaning of section 90h of the Act.

I further **CONCLUDE** that the applicant is disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b, and based upon his failure to prove by clear and convincing evidence his qualifications for licensure within the meaning of N.J.S.A. 5:12-86a. It is,

therefore, **ORDERED** that the application of Hector Rivera Melendez for licensure as a casino employee by **DENIED.**

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

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

May 7, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

May 7, 1981
DATE

CASINO CONTROL COMMISSION
Senior Assistant Counsel

Mailed to Parties:

May 11, 1981
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

INVENTORY OF EXHIBITS

FOR THE APPLICANT:

P-1	Certificate of Relief from Disabilities
P-2 - P-11	Ten letters of recommendation
P-12	Good conduct certificate

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1	Personal History Disclosure Form
R-2	Newspaper article
R-3	1972 conviction record
R-4	1977 arrest report
R-6	1977 certification of disposition

WITNESSES

FOR THE APPLICANT:

Hector Rivera Melendez
Dr. Gaspar Garcia
William Rubenstein

FOR THE DIVISION OF GAMING ENFORCEMENT:

James H. Cononver
Thomas Fitzgerald
Harold Sakin

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 81-EA-20
OAL DOCKET NO. CCC 1305-81

IN THE MATTER OF THE APPLICATION OF GEORGE MOLLINEAUX FOR LICENSURE AS A CASINO KEY EMPLOYEE (SLOT SHIFT MANAGER)

FINAL ORDER

This matter having been opened to the Casino Control Commission at its public meeting on August 19, 1981; and the Commission having fully considered the entire record of the proceedings, the statement of stipulated facts and the Summary Initial Decision of the Administrative Law Judge, no exceptions or objections having been filed by the parties; and the Commission having resolved to adopt the Summary Initial Decision of the Administrative Law Judge and to deny George Mollineaux's application for licensure,

IT IS on this 26th day of August 1981, ORDERED that the Summary Initial Decision of the Administrative Law Judge be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the application of George Mollineaux for licensure as a casino key employee be and hereby is denied for the reasons stated in the statement of stipulated facts and the Summary Initial Decision which are incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION

DON M. THOMAS, ACTING CHAIRMAN

BY: _____
Robert J. Genatt
General Counsel

DATED: August 26, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

SUMMARY INITIAL DECISION

OAL DKT. NO. CCC 1305-81

AGENCY DKT. NO. 81-EA-20

IN THE MATTER OF:

GEORGE MOLLINEAUX,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Record Closed: July 2, 1981
Received by Agency:

Decided: July 27, 1981
Mailed to Parties:

BEFORE NORMAN D. SMITH, ALJ:

The Division of Gaming Enforcement objected to the petitioner's application to the Casino Control Commission for licensure as a casino key employee. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The Division brings this motion for summary decision to deny the petitioner's application for licensure. A Statement of Stipulated Facts has been prepared by both counsel. That statement is annexed to this decision and constitutes my Findings of Fact for the purposes of this motion.

Based upon the Statement of Stipulated Facts, I **CONCLUDE** that the petitioner's 1975 conviction of possession with intent to distribute a controlled dangerous substance (marijuana), in violation of N.J.S.A. 24:21-19a, constitutes a mandatory disqualification, pursuant to N.J.S.A. 5:12-86c (3). The instruction contained in that

statute is mandatory: "the Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria: ... .c (3). Any high misdemeanor under section 19 of P.L. 1970, c. 226 (C. 24:21-19). . . ." [Emphasis supplied] The petitioner's conviction does not fall within the amendment to N.J.S.A. 5:12-86c(4), which excepts certain convictions occurring more than ten years prior to the application for licensure.

Although the Division of Gaming Enforcement concedes that the petitioner would meet the rehabilitation standards set forth in N.J.S.A. 5:12-90h, the legislature has determined that applicants for key employee licenses should not have the opportunity to establish rehabilitation. That determination can only be changed by a subsequent act of the legislature.

For the foregoing reasons, it is hereby ORDERED that the petitioner's application for licensure as a key employee be DENIED.

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

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

July 27, 1981
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

July 28, 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 30, 1981
DATE

Ronald I. Parker TAZ
OFFICE OF ADMINISTRATIVE LAW

ij

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-211
OAL DOCKET NO. CCC 3335-81
APP. NO. 719-11

IN THE MATTER OF THE APPLICATION
OF ANTHONY T. PAGLUCCI, JR. FOR LICENSURE
AS A CASINO KEY EMPLOYEE
(SECURITY SUPERVISOR)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission September 7, 1981, recommending that the application of Anthoy T. Paglucci, Jr. for licensure as a casino key employee be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed; and the Commission having resolved at its public meeting on October 20, 1981, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 20th day of October 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino key employee license application of Anthony T. Paglucci, Jr. be and hereby is GRANTED based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 20, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3335-81

AGENCY DKT. NO. 81-EA-211

IN THE MATTER OF:

THE APPLICATION OF
ANTHONY T. PAGLUCCI
FOR LICENSURE AS A
CASINO KEY EMPLOYEE
(SECURITY SUPERVISOR)

Record Closed: August 6, 1981

Received by Agency: 9-4-81

Decided: August 31, 1981

Mailed to Parties: 9-10-81

APPEARANCES:

Anthony T. Paglucci, Pro se

Rosemary Quinn, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey, attorney) for the Division of Gaming Enforcement

BEFORE JEFF S. MASIN, ALJ:

Anthony T. Paglucci seeks licensure as a casino key employee (security supervisor). The Division of Gaming Enforcement, in a letter to the Casino Control Commission, dated April 9, 1981, noted the existence of several matters which, in the Division's opinion, raised "serious questions." The Division's letter does not specifically recommend denial of licensure, yet it does appear, at best, to take no position on the matter. The Commission transferred the matter to the Office of Administrative Law for hearing as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing

conference was held before Administrative Law Judge Jeff S. Masin on June 29, 1981, and a Prehearing Order was issued on July 13, 1981. A hearing was held before Judge Masin on August 6, 1981 at the Ocean County Administration Building in Toms River, New Jersey.

The Division raised questions concerning three matters. The first of these, around which the majority of testimony at the hearing revolved, concerned the Division's questions about the applicant's actions during a criminal matter involving Mr. Paglucci's father, Anthony T. Paglucci, Sr., a police officer in Orange, New Jersey, who was indicted in 1975 by the Essex County Grand Jury on charges of extortion, obstruction of justice and malfeasance in office. Apparently, a chief state's witness against Mr. Paglucci, Sr. was one Gerard Festa. The Division of Gaming Enforcement initially noted, in its letter of April 9, that during the pendency of this matter, while Festa was under the protection of the Federal Witness Protection Program and in the custody of the Pennsylvania State Police, the applicant, who was at that time also a police officer for the City of Orange, had contacted the Pennsylvania State Police "in an attempt to gain information about Festa." At the prehearing, the Division listed as an issue for consideration by the court and the Commission whether any acts of Mr. Paglucci, Jr. would constitute violation of N.J.S.A. 2C:28-5, tampering with a witness.

Mr. Paglucci testified, during the hearing, that he had been asked by his father's attorney, Thomas E. Durkin, Jr., Esq., to try to obtain a record of criminal arrests and convictions (rap sheet) on Mr. Festa. At the time, the Essex County prosecutor's office was purportedly advising Mr. Durkin that it did not have a rap sheet for Festa in its possession. Because Durkin knew that Paglucci, Jr., a police officer, might have easy and speedy access to Festa's rap sheet, Durkin asked Paglucci to attempt to obtain the record. Paglucci contacted the Pennsylvania State Police for the document, because he knew from testimony given by Festa in the Essex County Grand Jury that Festa was living in Pennsylvania. Paglucci testified that he never received the rap sheet and has never seen it to this day.

An affidavit of Thomas E. Durkin, Jr., Esq., was introduced into evidence by Mr. Paglucci. It indicates that Durkin had asked Paglucci, Jr. to do certain tasks related to gathering information and speaking to witnesses. It does not specifically mention a rap sheet.

Testimony from the applicant's brother, James Paglucci, a police officer in Brick Township, supported the applicant's statements concerning the Festa incident. James Paglucci noted that the specific reason for attempting to obtain the rap sheet was to determine whether Festa was incarcerated anywhere at any of the times that he mentioned in the Grand Jury testimony as being significant dates in his relationship with Paglucci, Sr. James imagined that Anthony, Jr. had received the rap sheet, but did not know this for certain. According to James, neither he nor Anthony knew Festa.

Detective Joseph Sarnecky of the New Jersey State Police, assigned to the Division of Gaming Enforcement, testified that he had investigated Paglucci's application for licensure. Sarnecky had no other information to report as to any activities of Paglucci relating to the Festa matter, except as regarded the contact with the Pennsylvania State Police seeking the rap sheet. Sarnecky had no information indicating that Paglucci had ever had any contact whatsoever with Festa or that he had ever received the rap sheet.

In addition to the Festa matter, the Division raised questions about a sign which purportedly contained Mr. Paglucci's name and which hung in Vito Polite's Tavern, an establishment in Orange. The Division's letter of April 9 claims that the sign was seized as evidence during the investigation of Paglucci, Sr., by the Essex County prosecutor's office. The sign was not produced at the hearing and no one could supply the wording thereon. Nevertheless, the Division contends that the presence of the name of Paglucci, Jr., an Orange police officer, on this sign, in a bar and in the vicinity of the pool table therein, gave a false impression that the poolroom was a private one.

Dominick Patuto, a friend of Paglucci's for 20-25 years, testified that the sign was put up by Vito Polite in approximately 1964. Patuto claimed to have been present when the sign was put up and stated that Paglucci, Jr. was not present at that time. Paglucci was then 15-16 years old. The sign was put up as "a matter of friendship." The sign was put up "to keep people from hogging the table."

James Paglucci testified that Polite had put up the sign in 1965 or 1966. At the time, James and his friend, Ronald Sauer, were in the service. They were home on leave on some weekends. Paglucci, Sr. would take them to the pool table at Vito's to shoot pool. Vito Polite was a veteran and was very "high on veterans." As a gesture to Ronald Sauer and James Paglucci, Vito Polite put up the sign, which notified others to allow the boys to use the table. Because Anthony, Jr., who was then under age, would often come to the bar

to watch and play at the table with Anthony, Sr., James and Sauer, his name was also included on the sign. This was done so that he would not feel "left out." James Paglucci testified that he was not associated with Vito in any real sense.

The applicant testified that the sign was put up when he was 15 or 16 years old. It was put up without his knowledge or consent. He did not know Polite's specific reasons for putting up the sign.

Detective Sarnecky testified that, during an interview which he had with the applicant, Paglucci had explained that the sign had been put up to keep undesirables away from the pool table.

The final matter which was the subject of testimony during the hearing concerned a departmental charge against the applicant, which resulted in a disciplinary loss of five days' vacation. This incident occurred while Paglucci was an Orange police officer in 1972. According to the applicant's description, he was stopping in the Polar Star Lounge one day, in January 1972, when he observed his uncle, Dominick Zuppa, and one Mario Guerreri. These gentlemen became involved in a fight. Paglucci was off-duty at the time. He tried to stop the fight by telling his uncle to leave. He wrote a police report when he went on-duty that afternoon at 4:00 p.m., rather than doing so at the time of the incident, which was about 1:00 p.m. His report was routine in nature. No one had wanted to press any criminal charges. Paglucci testified that under those circumstances, normal police procedure was to attempt to quiet things down, quell the disturbance and send the parties on their way. Because he delayed in making up his report, Paglucci was charged by the department with several departmental violations, and after a hearing, was found guilty of conduct unbecoming an officer. The specific basis for the finding was the delayed filing of the report. The Final Notice of Disciplinary Action, introduced in evidence as R-2, indicates that Paglucci entered a plea of guilty, but the applicant states that this is incorrect and that he did not enter a plea, but was found guilty after a hearing. No one from the Orange Police Department appeared as a witness for either party.

Dominick Zuppa, Sr., the applicant's uncle, who was a participant in the fight, filed a sworn statement, P-5 in evidence, which sets forth Zuppa's recollection of the incident.

DISCUSSION

From a review of the testimony and documentary evidence presented at this hearing, I FIND that the applicant has established his qualifications for licensure as a casino key employee (security supervisor) and I CONCLUDE that a license should be issued to him for that position. As to each of the matters raised by the Division as points of inquiry, I FIND the applicant's evidence establishes that he did nothing wrong which could possibly constitute a basis for denying his licensure.

With respect to the Festa incident, the evidence presented by both sides establishes no more than that, in the course of attempting to help the attorney for his father, Officer Paglucci attempted to obtain a rap sheet for a state's witness. There is absolutely no evidence that Paglucci ever attempted to make contact with Festa in any way, shape or form. While one might criticize Paglucci for making the request, given the circumstances under which the request was made and the total lack of any evidence to indicate that anything further was done with respect to Festa by Paglucci, I can find no basis at all for allowing this incident to serve as a grounds for denying the license which the applicant seeks.

N.J.S.A. 2C:28-5 reads:

> a. Tampering. A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted, he knowingly attempts to induce or otherwise cause a witness or informant to:
>
> (1) Testify or inform falsely;
>
> (2) Withhold any testimony, information, document or thing;
>
> (3) Elude legal process summoning him to testify or supply evidence; or
>
> (4) Absent himself from any proceeding or investigation to which he has been legally summoned.

There is no evidence that the applicant attempted to do any of the things condemned by the above statute. The mere order of a rap sheet does not rise to the level of tampering. The Festa incident provides no basis for a denial of licensure.

464.

The placing of the applicant's name on the sign in Vito Polite's Lounge, from the evidence before me, occurred years before the applicant became a police officer in the City of Orange. The name apparently remained on the sign, and the sign apparently remained in position near the pool table at Polite's for some time after Paglucci, Jr. had stopped visiting there. While the name may have been on the sign at a time when Paglucci was a police officer, there is no evidence that he knowingly acquiesced in this situation, or that there was any attempt by him to use his name and position to influence the actions of others or to give any special protection or favor to Polite. The Division failed to produce even the wording contained on the sign. It is impossible to find anything wrong with the applicant's actions which could constitute a ground for denying his licensure.

Finally, with respect to the disciplinary proceeding, the applicant's explanation stands unchallenged. Apparently, the applicant did nothing wrong in his handling of the incident involving his uncle. The circumstances surrounding the bringing of the charge against him, and the exact nature of the finding of conduct unbecoming an officer, were not explained by any Division witness. The officer's testimony, while perhaps not completely satisfactory as an explanation for why the Orange Police Department felt that disciplinary action was necessary, is sufficient to indicate that the matter cannot have been considered a very serious offense and that, in the context of this licensing proceeding, it cannot rise to a level requiring denial of the license. The penalty of five day's less vacation seems to denote the relatively inconsequential rule violation involved.

On the basis of the testimony and the lack of any evidence to the contrary, giving due consideration both to the individual incidents and the incidents as a group, I CONCLUDE that the applicant has established that he has the requisite character, honesty and integrity required by N.J.S.A. 5:12-89b(2). The applicant served for many years as an Orange Police Officer, accumulating only one disciplinary proceeding against him, and that of a minor nature. The applicant served as a security officer at Resorts International for several years and there is no evidence in the record to indicate that he had any problems there. He has now returned to the Orange Police force and is currently serving as a patrolman. From the evidence, there appears to be nothing to establish anything other than the good character of this officer. Further, the Division has produced nothing which places any cloud on the applicant's character or honesty.

I CONCLUDE that the applicant should be licensed. The Division of Gaming Enforcement, after presumably conducting some investigation into the applicant's background, has produced nothing of any substance whatsoever to show that the applicant does not deserve licensure. The applicant has met the necessary qualifying tests. I ORDER that the applicant be granted his license as a casino key employee (security supervisor).

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

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

August 31, 1981
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

September 4 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Sept 10, 1981
DATE

Ronald I. Parker
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS IN EVIDENCE

On Behalf of Applicant:

P-1 - Sworn statement of Ronald J. Sauer

P-2 - Letter of July 21, 1981 from Thomas E. Durkin, III, Esq., to Rosemary Quinn, Esq., Deputy Attorney General, with attached affidavit of Thomas E. Durkin, Jr.

P-3 - Portion of transcript In The Matter Of The State of New Jersey vs. Anthony Paglucci, Sr., et al, Essex County Court, Law Division-Criminal, Indictment No. 3995-75, Vol. No. 9, January 29, 1976, consisting of caption page, one page index to witnesses, and pages 9-124, 9-129 and 9-130 of the transcript

P-4 - Portion of transcript of Essex County Grand Jury, Reference: Orange Police Department Investigation, dated January 29, 1975, consisting of caption page and page five of transcript

P-4(b) - Cover sheet and first page of indictment - In The Matter Of The State of New Jersey vs. Anthony Paglucci, Sr., a/k/a/ Tony

P-5 - Sworn statement of Dominic Zuppa, Sr.

On Behalf of the Division of Gaming Enforcement:

R-1 - Police report, dated January 17, 1972, signed by Anthony Paglucci, Jr. (one page)

R-2 - Final Notice of Disciplinary Action, dated March 1, 1972

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-CSI-12
OAL DOCKET NO. 909-81
APP. NO. 00384-70

IN THE MATTER OF THE APPLICATION OF PEPSI COLA BOTTLING COMPANY OF ATLANTIC CITY FOR LICENSURE AS A CASINO SERVICE INDUSTRY

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on October 13, 1981, recommending that the Applicant be granted 30 days to supply financial and corporate records requested by the Division of Gaming Enforcement, otherwise, its application for licensure as a casino service industry would be denied; and the Commission having considered the entire record of the proceedings, including information supplied by the Division of Gaming Enforcement that the Applicant had complied with the Initial Decision and supplied the necessary documentation, and the Initial Decision, and no exceptions to the Initial Decision having been filed; and the Commission having resolved at its public meeting on December 1, 1981, to affirm and adopt the said Initial Decision,

IT IS on this 3rd day of December 1981, ORDERED that the Initial Decision in this matter, which is incorporated herein by reference and made a part hereof, be and hereby is affirmed and adopted by the Commission; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANS COUNSEL

DATED: December 3, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 909-81

AGENCY DKT. NO. 80-CSI-12

IN THE MATTER OF:

APPLICATION OF PEPSI COLA
BOTTLING COMPANY OF
ATLANTIC CITY FOR LICENSURE
AS A CASINO SERVICE INDUSTRY

Record Closed: September 28, 1981

Received by Agency: 10-20-81

Decided: October 14, 1981

Mailed to Parties: 10-22-81

APPEARANCES:

Daniel Bell, Jr., Esq., for Applicant, Pepsi Cola Bottling Company
(Kirkman, Mulligan, Bell & Armstrong, attorneys)

Kenneth J. Fortier, Deputy Attorney General, for the Division of
Gaming Enforcement, Department of Law and Public Safety
(James R. Zazzali, Attorney General of New Jersey)

BEFORE R. JACKSON DWYER, ALJ:

Pepsi Cola Bottling Company of Atlantic City (Pepsi Cola), a New Jersey distributor of Pepsi Cola products in the Atlantic City area and the southern portion of

New Jersey, has applied for a casino service industry license under N.J.S.A. 5:12-92c. Pepsi Cola filed the Business Entity Disclosure form; however, the applicant failed to supply its 1977, 1978, 1979 federal tax returns; 1977, 1978, 1979 state tax returns; 1977, 1978, 1979 income statements; and corporate by-laws upon request of the Division of Gaming Enforcement despite numerous requests.

Arthur G. Broll, President of Pepsi Cola, wrote to the Commission on October 30, 1980, stating that he would appear before the Commission and bring whatever financial records that the Commission deemed pertinent; however, he was unwilling to leave such documentation as disclosed by the profit and loss statements and tax returns "which the company regards as confidential information vital to the financial integrity of this company."

The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on July 14, 1981. The record closed on September 28, 1981.

Pepsi Cola's current position is that Mr. Broll will appear before the Commission and bring whatever financial records the Commission deems pertinent or he will allow the records to be examined by a representative of the Commission; however, he will not permit such confidential records to be left on file with the Commission.

The Division of Gaming Enforcement (Division) takes the position that the applicant's conduct is inimicable to the policies and provisions of the Act and seeks to have Pepsi Cola's application for licensure terminated.

A.

IS THE APPLICANT REQUIRED TO SUPPLY FEDERAL TAX RETURNS, STATE TAX RETURNS, INCOME STATEMENTS AND CORPORATE BY-LAWS, PURSUANT TO LICENSURE UNDER N.J.S.A. 5:12-80(a), (b) & (d), N.J.S.A. 5:12-86(a), (b); N.J.S.A. 5:12-92(c), and (d); and N.J.A.C. 19:41-7.2, 19:41-7.3 & 19:43-1.5?

There is no vagueness about the duties imposed upon an applicant for licensure under the statutory scheme. An applicant has the continuing duty to cooperate with the Division and the Commission and supply all requested information during the investigatory stage in the form specified by the Commission. Failure to do so must result in a denial of licensure.

The procedure advanced by the applicant, either to appear personally before the full Commission or to have a representative of the Commission review certain financial information but not to leave that documentation on file with the Commission, runs counter to the ends sought to be advanced by the Legislature. If applicants could control the parameters of the licensing investigation in determining what information and under what circumstances they would supply that information, both public trust and confidence in a highly sensitive industry would be undermined, and the investigatory process would be rendered nugatory.

Apart from anything else, other cogent reasons militate against acceding to the licensee's requested procedure. The investigatory process is now heavily encumbered. There would be a disproportionate burden upon the Commission to accede to the applicant's request. The Commission's experts would not be able to examine the applicant's financial documentation unless such records were left with the Commission for a reasonable period of time.

There also seems to be a basic flaw in the applicant's position that, if the requested information was left on file with the Commission, somehow potential injury or irreparable financial harm would result. Other closely held corporations and business entities similarly circumstanced have forwarded such financial information without objection. Moreover, information given to the Division or Commission during the investigation of an applicant is strictly confidential and unavailable to third parties who would injure the financial integrity of the applicant.

Accordingly, I CONCLUDE after reviewing the aforesaid statutes that I do not have the authority to accede to Pepsi Cola's request that it be allowed to deviate from the established procedures utilized by the Division of Gaming Enforcement to collect and to evaluate necessary documentation of Pepsi Cola for licensure.

B.

IS THE REFUSAL TO COOPERATE AND TURN OVER THE REQUIRED INFORMATION A VIOLATION OF THE AFORESAID STATUTES AND REGULATIONS SUFFICIENT TO DENY LICENSURE?

The Division's position is that a tug-of-war for the requested financial information has occurred over the past ten months. Specifically, the Division requests have included a personal telephone call on December 26, 1979, letters dated February 11, 1980 and March 11, 1980, a personal call on the applicant of April 1980, and a final letter dated July 11, 1980. The Division states there must be finality to this matter and asks that the applicant's licensure be permanently denied.

It is also true that Mr. Arthur Broll, the President of the Company, and the other stockholders have occupied a prominent place in the economic and community life of Atlantic City for many years, and have been involved in numerous community and charitable activities. Their refusal to turn over the requested financial information stemmed from fear of potential injury to the company, rather than from a purposeful unwillingness to cooperate with the Division.

I CONCLUDE that an additional period of time should be allowed the applicant to determine whether it choses to reevaluate its position and supply the financial information requested by the Division.

It is, therefore, **ORDERED** that Pepsi Cola be granted an additional 30 days to supply the requested information to the Division of Gaming Enforcement; otherwise, licensure is to be **DENIED.**

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

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

Oct 13, 1981
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

Oct 20, 1981
DATE

Paul Winn
CASINO CONTROL COMMISSION

Mailed To Parties:

10-22-81
DATE

Ronald I. Parker Jr.
FOR OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-235
OAL DOCKET NO. CCC 705-81
APP. NO. 24220-40

IN THE MATTER OF THE APPLICATION
OF FELIX A. RIVERA FOR LICENSURE
AS A CASINO HOTEL EMPLOYEE
(PLUMBER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission September 24, 1981, recommending that the application of Felix A. Rivera for licensure as a casino hotel employee be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, the exceptions filed by the Division of Gaming Enforcement and the reply to those exceptions filed by the Applicant; and the Commission having resolved at its public meeting on November 4, 1981, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 16th day of November, 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 16, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0705-81

AGENCY DKT. NO. 80-EA-235

IN THE MATTER OF:

THE APPLICATION OF
FELIX A. RIVERA FOR LICENSURE AS
A CASINO HOTEL EMPLOYEE
(PLUMBER)

Record Closed: August 9, 1981 Decided: September 22, 1981

Received by Agency: Mailed to Parties:

APPEARANCES:

David Sciarra, Esq., Cape-Atlantic Legal Services,
for Applicant, Felix A. Rivera

Robert Dintino, Esq., Deputy Attorney General, for
the Division of Gaming Enforcement (James R.
Zazzali, Attorney General of the State of
New Jersey, attorney)

BEFORE **JACKSON DWYER**, ALJ:

Felix A. Rivera filed an Application, including a Personal History Disclosure (PHD) form, to work as a Casino Hotel Employee (plumber). The applicant received a

letter from the Casino Control Commission (Commission), dated November 14, 1980, stating that based upon an initial report of the Division of Gaming Enforcement (Division), dated September 16, 1980, there was a substantial possibility that the Commission would deny his application. The applicant requested a hearing, and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. After a prehearing conference, a prehearing order was issued on April 15, 1981. A hearing was held on June 23, 1981. Final memoranda were received on August 9, 1981.

By stipulations the issues in the prehearing order have been reduced to two: the first issue is whether the applicant's failure to completely disclose his criminal record in response to question 46 on the PHD requires his disqualification pursuant to N.J.S.A. 5:12-86(b) of the Casino Control Act.

The testimony is virtually undisputed. In response to question 46 on the PHD, the applicant stated that he was charged with and acquitted of homicide in "Atlantic City and Mays Landing" in 1968. The applicant failed to reveal four other arrests, including a conviction of malicious damage to property and molesting and interfering, N.J.S.A. 2A:170-29.

The background circumstances of the arrests and one conviction are as follows: On March 26, 1968, the applicant was arrested in Middle Township and charged with being a material witness and carrying a concealed weapon, N.J.S.A. 2A:162-2. The applicant testified that he paid five unknown men to take him from Washington, D.C. to Atlantic City. Their car was stopped on the Garden State Parkway in Cape May County. A State Police search revealed that everyone in the vehicle, except the applicant, possessed a gun. The applicant was taken to the Cape May County Courthouse where he was fingerprinted, photographed and held overnight.

On October 7, 1968, the applicant was arrested by the Newark Police Department and charged with two counts of atrocious assault and battery with an automobile, N.J.S.A. 2A:90-1. The Newark police report relates that three witnesses signed statements that the applicant intentionally drove his automobile over the sidewalk to strike two teenagers, who were seriously injured. That police report also states that on

October 7, 1968 the applicant reported his car was stolen on October 3, 1968 at approximately 10:30 p.m. The applicant was fingerprinted and photographed. After arraignment in the Newark Municipal Court, bail was set at $1,000. The case was dismissed on September 29, 1971.

Shortly after being charged with atrocious assault and battery with an automobile, the applicant left Newark and moved to the Atlantic City area. On January 15, 1969 the applicant was arrested by the Atlantic City police and charged with homicide, N.J.S.A. 2A:113-1. The applicant spent approximately one year in jail awaiting trial because he could not make bail. On January 19, 1970, a judgment of acquittal was entered. However, the applicant was not released from custody but was sent directly to the Essex County penitentiary because of a detainer filed by the Newark Police Department. The applicant remained at the Essex County jail from January 21, 1970 until September 17, 1970, at which time he was released in the custody of his father.

The applicant was arrested on November 25, 1977 by the Pleasantville Police Department and charged with resisting arrest, N.J.S.A. 2A:85-1 and malicious damage to property, N.J.S.A. 2A:170-30. The police report states that the applicant broke out the windows of his brother's car after a family dispute. A handwritten notation on the complaint states that the applicant did not assault the officer and that no injuries were inflicted. The applicant was fingerprinted and photographed at the police station. The charges were amended, and the applicant was convicted of malicious damage to property and molesting and interfering, N.J.S.A. 2A:170-29. The applicant was fined $150 plus $25 court costs and given a 30-day suspended sentence on each charge, which sentences were to run concurrently.

On April 30, 1979, the applicant was arrested by the Atlantic City Police Department and charged with molesting and interfering, N.J.S.A. 2A:170-29 and assault and battery on a police officer, N.J.S.A. 2A:170-26. The arrest report reveals that the applicant was arrested after interfering at the scene of an automobile accident and that he struck two police officers. The applicant testified that he was assisting his brother-in-law at the scene, who did not speak English, during an automobile accident and that he was attacked by two police officers. The applicant was held for one night on these charges, and ultimately the matter was dismissed by the Atlantic City Municipal Court for lack of prosecution on August 3, 1979.

The Division contends that the applicant wilfully and intentionally failed to disclose significant facts involving his arrest and conviction record material to his qualification for licensure. The applicant contends that "the only thing he could think of was the homicide charge which was a serious offense" and that "the homicide stuck out in his mind so much that he forgot about the other arrests and only discussed the homicide."

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

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

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

Three of the unlisted arrests were not prosecuted and were ultimately dismissed. I have no indication that the applicant was ever charged in the 1968 Cape May County incident. The applicant was taken directly from the Atlantic County jail, after dismissal of the homicide charge, to the Essex County jail where he remained for 22 days, prior to being released on the charge of atrocious assault and battery with an automobile. These periods of incarceration most probably merged in the applicant's mind. The 1977 and 1979 charges involved disputes among his family members and relatives; one charge was dismissed and the other resulted in disorderly persons conviction.

The applicant's disclosure of his arrest for homicide is strongly probative of his intention to comply in good faith with the Commission's full disclosure requirement. Accordingly, I CONCLUDE that the applicant did not make a conscious decision to withhold information from the Commission, which he felt might unfavorably affect his application for licensure.

The final issue is whether the applicant has met and properly satisfied the burden of establishing his good character, honesty and integrity. This issue relates to the affirmative qualification criteria set forth in N.J.S.A. 5:12-89(b)2 of the act, incorporated by reference in Section 91(b), which describes the qualification criteria for casino hotel employee licensure. Those sections of the act require, inter alia, that each applicant for licensure as a casino hotel employee "establish by clear and convincing evidence" that he has the reputation for good character, honesty and integrity.

Any applicant's arrest and/or conviction by law enforcement is disturbing; however, it is important to point out that none of the applicant's arrests in and of themsleves constitute disqualifying events, pursuant to N.J.S.A. 5:12-86(c) or (g). For that reason, it was deemed appropriate by counsel to delete three issues from the prehearing order.

The applicant had worked as a plumber's helper and plumber's assistant for various firms in the Atlantic City area from 1970 to 1978. On November 12, 1979, the applicant was employed by Balley's Park Place as a plumber, and provided routine plumbing maintenance, which included fixing pipes, leaks, toilets in hotel rooms and kitchen garbage disposals and repair of the water fountain in the hotel facility. The applicant held that job for approximately a year until he was required to resign because of his difficultv in obtaining a casino license. Since that time, he has been employed as a plumber in his neighborhood and the Inlet Area of Atlantic City. The applicant performs routine plumbing and maintenance and repair work for landlords, rental agents and tenants in the neighborhood.

The applicant is 33 years of age and resides at 120 South Metropolitan Avenue, second floor, Atlantic City, New Jersey with his wife and five children. The children's ages range from ten months to 13 years. The applicant has lived at his current address for the past ten years.

The applicant completed ninth grade at Pleasantville High School, at which time he dropped out of school to obtain employment.

The applicant produced two character witnesses: Saul Cohen, a licensed real estate broker, testified that applicant has performed plumbing work on his residential holdings and in the building in which the applicant resides. Cohen testified that the applicant has created no disturbances. Ms. Kathy Sugden, a former nun, testified that she was employed as a housing specialist for the Latin Organization of Atlantic City, a community program which serves residents and tenants in the south Inlet section of the city. She observed the applicant provide emergency plumbing service and repairs to the tenants and landlords in the neighborhood, often without the promise of pay, in order to assist those residents to obtain adequate plumbing and heat. She testified that he is a man of good character, honesty and integrity.

All of these factors militate in the direction that the applicant has carried his burden of demonstrating his present good character, honesty and integrity by clear and convincing evidence.

For the foregoing reasons, it is **ORDERED** that the application of Felix A. Rivera for licensure as a casino hotel employee (plumber) is **GRANTED.**

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

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

September 22, 1981
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Sept. 25, 1981
DATE

Ronald I. Parker
OFFICE OF ADMINISTRATIVE LAW

db

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-13
OAL DOCKET NO. CCC 2294-80

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. GREGORY L. SMITH, Respondent.	:	FINAL ORDER

This matter having been opened to the Commission upon the Complaint of the Division of Gaming Enforcement seeking the revocation of the Respondent's casino employee license; and the Honorable R. Jackson Dwyer, A.L.J., having determined in his Initial Decision that the Respondent's casino employee license be revoked; and the Commission having considered the entire record of these proceedings; and the Commission having resolved at its public meeting of July 8, 1981, to reject in its entirety the Initial Decision of the Administrative Law Judge and to dismiss the Division's Complaint based upon the Commission's determination that none of the alleged incidents comprising the Respondent's criminal record rise to the level of an inimical offense under N.J.S.A. 5:12-86(c)(4) and that due to the equivocal character of the evidence in the record, the Commission does not believe that

the Respondent intentionally failed to disclose information upon his Personal History Disclosure Form,

IT IS on this 16th day of July 1981, ORDERED that the Initial Decision of the Administrative Law Judge in this matter be and hereby is rejected in its entirety; and

IT IS FURTHER ORDERED that the Complaint filed by the Division of Gaming Enforcement seeking revocation of the Respondent's casino employee license be and hereby is dismissed; and

IT IS FURTHER ORDERED that the Suspension Order entered by the Commission on August 9, 1979 be and hereby is vacated; and

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

NEW JERSEY CASINO CONTROL COMMISSION

MARTIN B. DANZIGER, Acting Chairman

BY: Dennis Daly
Dennis Daly
Senior Assistant Counsel

DATED: July 16, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2294-80

AGENCY DKT. NO. 79-13

IN THE MATTER OF:

THE STATE OF NEW JERSEY,
DEPARTMENT OF LAW and PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Charging Party

v.

GREGORY L. SMITH,
Respondent

Record Closed: April 8, 1981 Decided: May 19, 1981

Received by Agency: May 22, 1981 Mailed to Parties: May 26, 1981

APPEARANCES:

Patricia J. Arons, Deputy Attorney General,
for the Division of Gaming Enforcement
(James R. Zazzali, Attorney General of the State
of New Jersey, attorney)

Paul J. Hirsh, Esq., for Respondent, Gregory L. Smith
(D'Alessandro, Sussman, Jacovino & Dowd, attorneys)

BEFORE **R. JACKSON DWYER**, ALJ

A brief description of the background circumstances of this matter is as follows: On April 5, 1979 at about 3:45 a.m. Gregory L. Smith (respondent) was stopped for speeding by a police officer in the town of Northfield, New Jersey. Respondent, the holder of a plenary casino dealer's license on that date, was employed by Resorts

International Casino. A National Crime Information Center (NCIC) check revealed that there was an outstanding fugitive bench warrant for respondent in Hudson County for possession of a dangerous weapon, N.J.S.A. 2A:151-56; assault with an offensive weapon, N.J.S.A. 2A:90-3; and attempted armed robbery, N.J.S.A. 2A:151-5. Exhibits in evidence reveal that respondent failed to appear for a plea to the indictment and that Judge Handrahan signed an order forfeiting recognizance and issued the bench warrant on October 10, 1974.

Respondent was placed under arrest. Ultimately, this matter was disposed of by Judge Thuring, who accepted respondent's guilty plea to the charge of possession of a dangerous weapon. The other counts of the indictment of assault with an offensive weapon and armed robbery were dismissed. Respondent was given an eighteen (18)-month suspended sentence, placed on probation for two years and fined $250.

Subsequent investigation by the Division of Gaming Enforcement revealed that respondent failed to list that 1971 arrest and certain other arrests that occurred in 1974 and 1975 on his Personal History Disclosure Form (PHD). The Division of Gaming Enforcement (the charging party) filed a complaint against respondent with the Casino Control Commission. On August 9, 1979, Chairman Joseph P. Lordi signed an emergency order suspending respondent's license. Respondent then filed an answer to the Division's complaint and requested a hearing. The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. on April 21, 1980. A prehearing conference was held on June 19, 1980. A hearing was held on October 1, October 2 and December 8, 1980 and February 9, 1981. The record was closed after receipt of memoranda from counsel on April 8, 1981.

The issues are:

A. Whether the applicant's 1971 arrest on November 28, 1971 for possession of a dangerous weapon, assault with a dangerous weapon, and armed robbery; his 1974 arrest on August 19, 1974, for possession of a dangerous weapon, possession of narcotic paraphernalia; and his 1975 arrest on March 16, 1975 for possession of a dangerous weapon and possession of narcotic paraphernalia are inimical to the policies of the Casino Control Act under N.J.S.A. 5:12-86(c) and N.J.S.A. 5:12-86(g).

B. Whether the applicant's failure to disclose his 1971, 1974, and 1975 arrests on his Personal History Disclosure Form constitutes a per se disqualifier under N.J.S.A. 5:12-86(b), and if such failure to disclose reflects negatively on his good character, honesty and integrity under N.J.S.A. 5:12-89(b).

C. Whether respondent has affirmatively demonstrated his rehabilitation under N.J.S.A. 5:12-90(h).

The Division of Gaming Enforcement delved thoroughly into the background circumstances of respondent's three arrests through documentary evidence and the testimony of Detective Richard Avery Rementer of the New Jersey State Police, assigned to the Casino Control Commission; Detective Edward Ayling and Detective Jeremiah O'Shaughnessy of the New York City Police Department; Sergeant Walter Adams of the Jersey City Police Deparment; and Captain Robert Morris of the Newark Police Department.

Respondent testified and produced character witnesses Julius Bradley, Dr. Lillian Small, Ms. Deborah Smith and numerous letters attesting to his good character.

Against this background, I now turn to a summary of the testimony about respondent's three arrests.

(a) November 28, 1971 Arrest

Detective Walter Adams of the Jersey City Police Department testified that on November 28, 1971 at 3:30 p.m. he and another officer went to the top floor of an apartment house at 300 Montgomery Street, Jersey City, with a search warrant to locate narcotic paraphernalia. In response to a knock on the door, Detective Joseph Massey opened the door, and respondent was pointing a fully loaded, 22-calibre, six-shot revolver at Detective Massey. Detective Massey removed the gun from respondent, placed him under arrest and gave him his Miranda warnings. Detective Massey's incident report reveals that hypodermic needles, syringes, numerous glassine bags of white powder, which contained a controlled dangerous substance, cookers and cotton and plastic holders were removed from the premises.

Respondent's version of the episode was that he was assigned by Lieutenant James Sellers, Security Division of the Narcotics Bureau, Newark Police Department, to investigate at 300 Montgomery Street for possible narcotic traffic. Upon arrival at the premises, respondent found a loaded revolver in a box outside the door, which he picked up. After respondent was arrested, Lieutenant Sellers assured him that he would "fix" the matter with the Jersey City authorities.

Lieutenant Sellers, who recently suffered a massive myocardial infarction, was unable to appear at the hearing. The Division took his sworn affidavit. Certain pertinent parts of that affidavit require recitation:

> 4. Gregory Smith was authorized to go into the Newark High School and ascertain whether persons in the school were purchasing drugs. He was authorized to purchase drugs from individuals in the furtherance of his work. He was not authorized at any time to carry a gun. He was not authorized to make arrests. He was not authorized to investigate outside the Newark area without conferring with me first and receiving my permission. (emphasis mine)
>
> 5. On November 28, 1971, I did not authorize Gregory Smith to go to 300 Montgomery Street, Jersey City, New Jersey to "make a buy." I never authorized Gregory Smith to make any buys in Jersey City. If this had been the case, I would have notified the Jersey City Police Department to investigate in Jersey City, not Gregory Smith.
>
> 6. I never told Gregory Smith I would "fix" the case for him when he was arrested on November 28, 1971 by the Jersey City Police. I never told Gregory Smith I would get together with Captain Morris and "fix" things with the Jersey City authorities.
>
> 7. I didn't know Gregory Smith had been arrested on November 28, 1971 until several days later when he said "I got busted in Jersey City." . . .

There is no need to recite the testimony of Captain Robert Morris, who, at the time, was in charge of the Narcotics Bureau of the Newark Police Department. Captain Morris corroborated the essentials of Lieutenant Seller's affidavit.

(b) August 19, 1974 Arrest

A rap sheet from the Division of Criminal Justice Services, State of New York, revealed that respondent was arrested for possession of a dangerous weapon, a Class A Misdemeanor, and possession of a hypodermic, also a Class A Misdemeanor. Respondent was convicted of disorderly conduct upon a plea of guilty. Respondent contended that he was not guilty of the charge.

(c) March 16, 1975 Arrest

Detective Edward Ayling and Detective Jeremiah O'Shaughnessy of the New York City Police Department testified that on March 16, 1975 respondent was arrested at West 117th Street and 8th Avenue, New York City, around 1:35 a.m., for possession of a loaded firearm and possession of a hypodermic instrument. Detective Ayling saw respondent remove a gun from concealment, hold it in his hand, and then drop the gun to the ground. That weapon was a "Clerke" 32-calibre, nickel plated, five-shot revolver, loaded with five, live rounds of ammunition. Detective Ayling's report notes that he observed "needle marks left arm" and that respondent related that he used "heroin" "daily amount - $25."

Respondent denied that he had a gun in his possession. He opined that Detective Ayling made up the story, "possibly for his conviction record." He steadfastly denied that Detective Ayling found a hypodermic needle or syringe on his person, or that he made statements to Detective Ayling that he used heroin or that the officer observed needle marks on his arm.

Here, the outcome depends entirely on resolving the question of credibility. The choice of accepting or rejecting the testimony of witnesses rests with the finder of facts, Atkinson v. Parsekian, 37 N.J. 143 (1962). See also, Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). To be believed, testimony must not only come from the mouth of a credible witness, but must also be credible in itself. It must be such as common experience and observation can appove as proper under these circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The gist of respondent's contentions, that he was arrested on three separate occasions for possession of a dangerous weapon and drug paraphernalia because he "was in

the wrong place at the wrong time" - pure coincidence and/or that the New York police officers were trying to enhance their arrest records at his expense, is not very plausible. Accordingly, I find no merit to respondent's contentions.

I **CONCLUDE** that the possession of dangerous weapon offenses that occurred in 1971, 1974, and 1975 are violations of N.J.S.A. 2C:39-4(a), a crime of the second degree, and/or N.J.S.A. 2C:39-5(b), a crime of the third degree. Accordingly, I **CONCLUDE** that the Division has established by a fair preponderance of the believable evidence that respondent's three arrests for possession of a dangerous weapon and possession of narcotic paraphernalia is inimical to the policies of the Casino Control Act under N.J.S.A. 5:12-86(c) and N.J.S.A. 5:12-86(g).

The Division finally contends that respondent failed to disclose his 1971, 1974 and 1975 arrests on his Personal History Disclosure Form and that such conduct constitutes a per se disqualifier under N.J.S.A. 5:12-86(b) and adversely reflects on his good character, honesty and integrity under N.J.S.A. 5:12-89(b).

Question 45 on the PHD reads "Have you ever been arrested or charged with any juvenile offense whether in this state or in any other jurisdiction?" Respondent placed an "X" in the block designated "Yes" and wrote "under age driver (mother's car) - information unavailable at present, will be forthcoming - cleared."

Question 46 on the PHD reads "Have you or has any member of your immediate family (as defined on page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or in any other jurisdiction?" Respondent placed an "X" in the block designated "No."

Respondent testified that he failed to list his 1971, 1974 and 1975 arrests on his PHD because of time pressures. Respondent's wife called him periodically during the day from her place of employment to verify that certain information on the PHD was accurate.

On cross-examination respondent's wife testified as follows:

Q. Did you get the information by calling him up on the phone?

A. No, this was filled out when I got to the office. Like I said, what I did, probably, was I asked him and what I thought I knew I put in in pencil and when I went to the office I typed it up.

Q. When you were in the office, didn't you keep calling your husband to confer with him about this?

A. No, it wasn't necessary, Deputy Attorney General, because I had what I needed, I thought.

Q. So, when you were in your office typing this up, you never called your husband to confer with him about specifics because you had already discussed them?

A. Right.

Accordingly, I **FIND** that respondent's explanation for failure to list his three arrests on his PHD is devoid of merit. The testimony of respondent and his wife is in conflict.

Respondent also contends that, because of the pressures of time, he intended that his comments to Question 45 "information unavailable at present, will be "forthcoming," also applied to Question 46. Respondent testified that he spoke on the telephone to a "Sergeant Brown" of the Division of Gaming Enforcement and sent that officer copies of his New York arrests.

I **FIND** that the testimony contained in the record does not support such an assertion. The Division of Gaming Enforcement submittted sworn affidavits from Ernest Collucio, Director of Personnel, and Detective Sergeant Bud Gallagher, in charge of the records for State Police employees. "No Sergeant Brown" is or has been employed in such a capacity by the Division of Gaming Enforcement. Moreover, it is equally clear that the Division of Gaming Enforcement was not aware of respondent's arrests for possession of a dangerous weapon and drug paraphernalia until respondent was stopped for speeding in Northfield, and an NCIC check revealed that he was wanted on a fugitive bench warrant.

I **CONCLUDE** that respondent's failure to disclose his 1971, 1974 and 1975 arrests on his PHD Form was wilful and intentional and constitutes a per se disqualifier under N.J.S.A. 5:12-86(b).

Furthermore, since the credible evidence in the record amply established respondent's lack of truthfulness about the background circumstances of his arrests and his failure to disclose those arrests on his PHD Form, I **CONCLUDE** that his conduct reflects negatively on his good character, honesty and integrity under N.J.S.A. 5:12-89(b). I also **CONCLUDE** that the rehabilitation statute, N.J.S.A. 5:12-90(h), is not applicable to intentional and wilful disclosures on the PHD Form. The rehabilitation statute was meant to apply exclusively to criminal conduct. Parenthetically, I **CONCLUDE** that respondent's failure to relate the truthful background circumstances of his arrest demonstrates that he has not affirmatively established his rehabilitation.

It is, therefore, hereby **ORDERED** that the casino employee license of respondent, Gregory L. Smith, be revoked.

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

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

May 21, 1981
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

May 21 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

May 26, 1981
DATE

OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-EL-5

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Charging Party,	:	ORDER
v.	:	
SALVATORE FRANK SPARACIO,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law which was filed May 27, 1981, in which it is determined that Respondent's presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey and licensed gaming therein, and in which it is recommended that the name of Salvatore Frank Sparacio be placed upon the Commission's Exclusion List; and the Commission having considered the entire record of those proceedings and the Initial Decision, no exceptions having been filed by either party; and the Commission having determined that the placement of Respondent's name on the Commission's Exclusion List is appropriate pursuant to Section 71 of the Casino Control Act and Commission Regulations, N.J.A.C. 19:48-1 et seq.; and the Commission having resolved at its public meeting on September 9, 1981 to affirm and adopt the said Initial Decision,

IT IS on this 17th day of September 1981, ORDERED that the name of Salvatore Frank Sparacio be placed upon the Commission's Exclusion List based upon the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 17, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3519-80

AGENCY DKT. NO. 80-EL-5

IN THE MATTER OF:

SALVATORE FRANK SPARACIO,
Respondent

v.

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

Record Closed: April 10, 1981
Received by Agency: 5/27/81

Decided: May 26, 1981
Mailed to Parties: 5/28/81

APPEARANCES:

Thomas A. Mitchell, Esq., for Respondent

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

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

STATEMENT OF CASE

By petition filed with the Casino Control Commission, the Division of Gaming Enforcement seeks to have the name of respondent Salvatore Sparacio placed upon the Commission's list of persons who are to be excluded or ejected from any licensed casino establishment, pursuant to section 71 of the New Jersey Casino Control Act. The specific issue to be resolved is whether the placement of the respondent's name on the exclusion list is warranted, within the meaning of N.J.S.A. 5:12-71a(2) and (3) and N.J.A.C. 19:48-

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1.1 et seq., on the basis of the respondent's alleged conduct and convictions set forth in the Division of Gaming Enforcement's Petition for Placement on the Exclusion List.

PROCEDURAL HISTORY

The Division of Gaming Enforcement's Petition for Placement on Exclusion List was filed with the Casino Control Commission on March 6, 1980. After receiving personal service of the petition on or about April 24, 1980, the respondent requested a hearing. The Casino Control Commission thereafter 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.

FINDINGS OF FACT

On June 21, 1956, the respondent was sentenced to prison for a term of not less than one year, nor more than two years, upon his conviction on the charge of breaking and entering (Exhibit P-1). On June 28, 1967, the respondent was convicted on a charge of bookmaking, and on September 14, 1967, was sentenced to prison for a term of three to five years (Exhibit P-2). The respondent is currently under a pending State Grand Jury Indictment which alleges, in four out of five counts, his involvement in a bookmaking operation. According to a letter dated November 18, 1980, from Harold G. Handel, Deputy Director, Division of New Jersey Racing Commission, the records of the racing commission reveal that the respondent was ejected from the premises of Garden State Park Race Track on March 14, 1977, due to his criminal record (Exhibit P-4).

The respondent's name has appeared in numerous newspaper articles in the Camden, New Jersey area, between June 22, 1950 and January 8, 1978 (Exhibits P-5 through P-26). These articles report the respondent's many arrests for illegal gaming activities over a period of nearly 30 years. Also reported are his convictions and the prison terms to which he was sentenced. These articles were not admitted into evidence for the truth of their contents. Rather, they were admitted to demonstrate the degree to which the respondent's name has been placed before the public through reports concerning his illegal gaming activity.

The parties have stipulated that there are presently 39 individuals who have been placed upon the Commission's exclusion list. Of these, only two were placed upon the exclusion list as a result of a petition initiated by the Division of Gaming

Enforcement. At the hearing in this matter, the Division presented no testimony, relying solely upon Exhibits P-1 through P-26, admitted into evidence. The respondent presented no testimony or documentary evidence on his own behalf.

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

CONCLUSIONS OF LAW

Pursuant to section 71 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., the Casino Control Commission is mandated to provide by regulation for the establishment of a list of persons who are to be excluded or ejected from any licensed casino establishment. The applicable rule adopted by the Casino Control Commission is N.J.A.C. 19:48-1.3(a)3, which provides that the commission's exclusion list may include any person:

> who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than six months in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein. . . .

In essence, it is the contention of the respondent that the discretion afforded the Casino Control Commission to place the names of individuals on the exclusion list is impermissibly broad. The respondent further contends that the proposal to place his name on the exclusion list is discriminatory and violative of his right to equal protection under the law.

It is well settled that a duly promulgated regulation of an administrative agency is entitled to a strong presumption of validity. The respondent has failed to show that the criteria for exclusion adopted by the Casino Control Commission is unduly onerous or otherwise unreasonable or outside the scope of delegated authority. In addition to the specific mandate of section 71 of the Casino Control Act to establish an exclusion list, the legislature has included in the Casino Control Act an express declaration of public policy. N.J.S.A. 5:12-1b (6) provides in part:

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

> regulatory provisions of this act are designed to extend strict state regulation to all persons, locations practices and associations related to the operation of licensed casino enterprises. . . .

In view of the clear statutory mandate to extend strict state regulation to the legalized gaming industry, it is apparent that the criteria for exclusion adopted by the Casino Control Commission are reasonably designed to effectuate a legitimate regulatory purpose in furtherance of public policy.

The credible evidence in the record establishes that the respondent was twice convicted of offenses which carry a punishment of more than six months in prison. One of these convictions involved illegal gaming activity, and the respondent is presently under indictment on a charge of bookmaking. At numerous times over a period of approximately 30 years, the respondent's name has been before the public in newspaper articles which have reported allegations concerning his illegal gaming activity. The records of the New Jersey Racing Commission indicate the respondent was ejected from the Garden State Race Track in 1977, due to his criminal record.

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the presence of the respondent in a licensed casino establishment would be 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, within the meaning of N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.3(a)3. Therefore, I further **CONCLUDE** that the name of the respondent should be placed on the Casino Control Commission's list of persons who are to be excluded or ejected from any licensed casino establishment.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the name of respondent Salvatore Frank Sparacio be placed on the Casino Control Commission's list of persons who are to be excluded or ejected from any licensed casino establishment.

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

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

May 26, 1981
DATE

Joseph J. Fidler
JOSEPH E. FIDLER, ALJ

Receipt Acknowledged:

May 27, 1981
DATE

CASINO CONTROL COMMISSION
Senior Assistant Counsel

Mailed to Parties:

May 28, 1981
DATE

OFFICE OF ADMINISTRATIVE LAW

SUB

INVENTORY OF EXHIBITS

FOR THE DIVISION OF GAMING ENFORCEMENT:

P-1 Certified Copy of Commitment In the Matter of State of New Jersey v. Salvatore Sparacio filed with the Camden County Clerk's Office on June 21, 1956.

P-2 Certified Copy of Judgment of Conviction In the Matter of State of New Jersey v. Salvatore Sparacio filed with the Camden County Clerk's Office on September 14, 1967.

P-3 Indictment, Superior Court of New Jersey, Law Division-Criminal, State Grand JurySGJ62-79-5.

P-4 Letter from Harold G. Handel, Deputy Director of Division of New Jersey Racing Commission to DAG Howard Barman of the Division of Gaming Enforcement dated November 18, 1980.

P-5 Camden Courier-Post news article dated June 22, 1950.

P-6 Camden Courier-Post news article dated March 10, 1951.

P-7 Camden Courier-Post news article dated March 12, 1951.

P-8 Camden Courier-Post news article dated November 14, 1951.

P-9 Camden Courier-Post news article dated December 10, 1951.

P-10 Camden Courier-Post news article dated April 30, 1956.

P-11 Camden Courier-Post news article dated December 10, 1956.

P-12 Camden Courier-Post news article dated November 23, 1965.

P-13 Camden Courier-Post news article dated November 30, 1965.

P-14 Camden Courier-Post news article dated November 11, 1966.

P-15 Camden Courier-Post news article dated November 23, 1966.

P-16 Camden Courier-Post news article dated February 10, 1967.

P-17 Camden Courier-Post news article dated June 29, 1967.

P-18 Camden Courier-Post news article dated September 15, 1967.

P-19 Camden Courier-Post news article dated December 7, 1967.

P-20 Camden Courier-Post news article dated December 15, 1957

P-21 Camden Courier-Post news article dated August 23, 1968.

P-22 Camden Courier-Post news article dated August 14, 1975.

P-23 Camden Courier-Post news article dated March 21, 1977.

P-24 Camden Courier-Post news article dated January 7, 1978.

P-25 The Philadelphia Inquirer news article dated January 8, 1978.

P-26 Envelope from Samuel L. Singer, Public Service Editor of the Philadelphia Inquirer to DAG Howard Barman with enclosures (news article dated March 10, 1951).

FOR THE RESPONDENT:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-341
OAL DOCKET NO. CCC 4424-81
APP. NO. 1737-11

IN THE MATTER OF THE APPLICATION
OF JOHN C. STALLINGS FOR LICENSURE
AS A CASINO KEY EMPLOYEE
(SLOT SHIFT MANAGER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on October 23, 1981, recommending that the application be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions or objections filed; and the Commission having resolved at its public meeting on December 1, 1981, to affirm and adopt the said Initial Decision, as modified herein, and to grant the application for licensure,

IT IS on this day of 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter, as modified herein, be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the Initial Decision be modified in the following particular:

(1) At pages 3 and 6 of the Initial Decision, the finding that the Applicant was advised by New Jersey State

officials that he did not have to disclose criminal arrests, excluding arrests for felony offenses which had occurred more than five years prior to completion of his personal history disclosure form be and hereby is rejected as not being supported by the record as a whole; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: _____
THOMAS N. AURIEMMA
DEPUTY DIRECTOR, LEGAL DIVISION

DATED: _____

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4424-81

AGENCY DKT. NO. 81 EA 341

IN THE MATTER OF:

THE APPLICATION OF
JOHN C. STALLINGS
FOR LICENSURE AS A
CASINO KEY EMPLOYEE
(SLOT SHIFT MANAGER)

Record Closed: September 28, 1981

Received by Agency: 10-23-81

Decided: October 22, 1981

Mailed to Parties: 10-26-81

APPEARANCES:

John C. Stallings, Applicant, Pro se

John Menite, Esq., Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for Division of Gaming Enforcement

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

John C. Stallings, Sr., seeks a casino key employee license so that he may serve in the position of slot shift manager. The Division of Gaming Enforcement conducted a background investigation and determined that Mr. Stallings had failed to note various information on his Personal History Disclosure Form (PHDF). However, in a letter of June 22, 1981, to the Chairman of the Casino Control Commission, the Division concluded that the applicant's "failure to disclose . . . arrests should not interfere with his eligibility for licensure." Further, the Division concluded that "the applicant's failure to disclose . . . two . . . civil suits should not interfere with his eligibility for licensure."

Although the Division did not recommend against licensure, the Commission transferred the application for a hearing before the Office of Administrative Law, seeking further information as to the reasons for the applicant's failure to disclose various information. A prehearing was held before Administrative Law Judge Jeff S. Masin on August 18, 1981, and the hearing was held at the Guaranty Trust Building in Atlantic City on September 28, 1981.

The Division's letter of June 22, 1981, specifies the civil suits and arrests which Mr. Stallings had failed to list on his application. With respect to the civil suits, the first was a judgment entered against the applicant in favor of Gorden Drendel in the amount of $250. The second matter was a judgment for $1,742 entered on behalf of Jean Summers in a personal injury suit.

As for the arrests, the first nondisclosed incident was an arrest in Cleveland, Ohio, on a charge of conversion, the arrest occurring on September 12, 1959. The second was a January 6, 1973 arrest for defrauding a garage keeper. The third incident was an April 25, 1966 arrest for carrying a firearm without a permit, this arrest occurring in San Francisco, California. On January 19, 1973, the applicant was arrested in Cleveland and charged with assault and battery. Finally, on September 21, 1974, Mr. Stallings was arrested in Cleveland and charged with violating a local liquor ordinance.

In connection with the above civil matters, Mr. Stallings testified that the Drendel suit arose out of a situation where he had gone to court on behalf of the Sahara Reno, a former employer of his. While there, he had observed a security guard for the hotel being brought into court in handcuffs. Stallings posted bail for this individual and never saw him again. Mr. Stallings was under the impression that his wife had taken care of paying off the bail bond, which was in the amount of $250. Stallings testified that his wife takes care of the family checking account. The obligation has now been paid. Because the applicant thought that the matter had been taken care of, he did not list the suit on his application.

The 1979 suit by Ms. Summers was not disclosed because Stallings had no numbers to list referencing the suit. He believed that the case was already over with.

Stallings stated that the 1959 arrest in Cleveland occurred after he borrowed a tape recorder from a lady and lent it to someone else who proceeded to pawn it. It took some time for Stallings to recover the recorder. He did not remember if he had ever gone

to court, but he did remember that he had gotten the recorder back for the lady. Stallings was 19 years old at the time of this arrest, which the Division's letter indicated was dismissed for lack of prosecution. Stallings testified that at the time that he filled out the application form, he did not remember the 1959 incident and recalled it only when Detective Quirk of the New Jersey State Police showed him a record of arrests and conviction (rap) sheet.

Stallings did recall the 1966 San Francisco matter, which involved his being stopped for a motor vehicle violation while driving a friend's car. The car contained a 22-caliber target pistol in the back seat. Stallings was fined $27. Although he recalled the incident at the time he filled out the disclosure form, Stallings did not list the matter because he recalled that when he was living in Nevada, he had been told by New Jersey State officials who had come out to Nevada to explain the New Jersey licensing system that it was not necessary to list criminal arrests going back beyond five years from the time of application, unless the arrests involved felony matters.

As for the 1973 arrest in Cleveland for assault and battery, Stallings cannot recall anything about the incident, even to this day. The Division's letter indicates that it was dismissed for lack of prosecution.

The January 6, 1973 arrest for defrauding a garage keeper arose because Stallings had leased a vehicle and had it overtime. Again, he did not list this because it was more than five years old. Stallings recalled that the matter had been dismissed. The Division's letter notes that no police reports concerning this incident are available.

The 1974 arrest in Cleveland for a liquor violation occurred in a restaurant at a private party being held after closing time. Stallings testified that it was common practice at birthday parties in the Cleveland area for party goers to pin money on the birthday person's clothing. According to Stallings, the charges were dismissed in court. The matter was not listed on the Personal History Disclosure Form because it had occurred more than five years prior to filing of the application.

The applicant presented evidence in support of his good character, honesty and integrity from two witnesses, Danny L. Savage and Robert Dew. Savage, employed at The Claridge Hotel as a slot manager and the holder of a casino key employee license since his employment on July 17, 1981, has known Stallings since November 1979, when he was

assigned by the Del Webb Corporation to work at the Sahara Reno as a slot system coordinator. Stallings was then the assistant slot shift manager and the two gentlemen worked together on a regular basis. Savage testified that he never heard anything derogatory concerning Stallings' honesty, integrity and character and that this was the primary reason why Savage asked Stallings to come to New Jersey to work for the Del Webb venture at The Claridge. Stallings had already applied for the license in New Jersey at the time that he was interviewed for this position. Since coming to New Jersey, Savage has heard compliments about Stallings' reputation and his professional manner of dealing with personnel, particularly those whom Stallings has trained as slot attendants. Savage testified that any failure by Stallings to list arrests on his Personal History Disclosure Form would not affect Savage's opinion as to Stallings' character.

Robert Dew, the Assistant Slot Manager and Chief Mechanic at The Claridge and previously an employee of the Del Webb Corporation for ten years, testified that he has known Stallings since October 1979, when he was transferred to Reno to be the slot manager. At that time, Stallings was the assistant shift manager and Dew served as Stallings' supervisor for 13 months. He never heard anything derogatory about Stallings and considered him an excellent, trustworthy and dependable employee who got along with all his fellow employees. Since coming to New Jersey, Dew has heard nothing derogatory about Stallings. The failure of Stallings to list any arrests on his application form would not change Dew's opinion as to Stallings' character, honesty or integrity.

Mr. Stallings testified that he is 42 years old. He left school after the 11th grade and went into the Air Force where he served for two years. He has been in the casino industry for six years, starting out as a change person and then moving up to a floor person, then an assistant shift manager and thereafter continuing to advance within the industry. The applicant has attended Atlantic Community College for management courses.

The Division of Gaming Enforcement presented Detective Edward P. Quirk, a Detective for the New Jersey State Police attached to the Division of Gaming Enforcement, as a witness. Quirk is responsible for checking applications for those seeking casino key employee licenses. He reviewed the applicant's Personal History Disclosure Form and determined that Stallings had not listed several arrests. He obtained this information by checking with the Federal Bureau of Investigation and then checking further with various police departments. He also interviewed Mr. Stallings and went through the Personal

History Disclosure Form, specifically reading Question No. 66, which requests information as to any arrests. Stallings was completely cooperative throughout the interview. He did not remember the 1959 arrest for conversion, but he did recall the 1966 arrest in San Francisco and noted his understanding that only felonies had to be listed, unless an arrest were within five years. The applicant did recall the 1973 fraud charge and explained the circumstances surrounding it, and also described the 1974 arrest for the liquor violation.

With respect to the civil matters, the detective had received a copy of a credit profile and also checked the county indices for any liens against Stallings. These disclosed a small claims suit and a civil suit for personal injury. With respect to the interview, when questioned about Question No. 77, which asks whether the applicant was ever a party in a civil suit, Stallings told the investigator about the Summers matter. This occurred at the April 21, 1981 interview, which took place prior to Quirk's going to Nevada to investigate the application. Stallings voluntarily gave Quirk a copy of the interrogatories which had been served upon him in that suit. When Quirk went to Nevada, he learned of the Drendel suit, and when he returned, Stallings told him that he believed that the judgment had been paid off by his wife. Stallings explained that he had not listed the Summers suit because the matter was still in litigation and he felt he was not required to disclose it.

Detective Quirk testified that the applicant did not seem to be evading any questions and that he was very helpful at all times.

The Casino Control Act, N.J.S.A. 5:12-1 et seq., specifically Section 86b, requires the denial of licensure to any applicant who fails to reveal "any fact material to qualification." It is not to be doubted that information concerning the financial abilities and standing of an applicant, as well as the past criminal record of arrests and convictions, is material to licensure. However, in determining whether or not a failure to disclose requires the sanction of a denial of licensure, one must determine whether the failure was willful and done with an intent to frustrate, deceive and evade the regulatory process, or whether the failure arose from a lack of recollection or other blameless neglect.

My review of the evidence in this case convinces me without any question that Mr. Stallings never at any time intended to evade the regulatory process or to conceal information purposefully and willfully from the Casino Control Commission or the

Division of Gaming Enforcement. Stallings operated on a misunderstanding of the requirements for listing of arrests, a misunderstanding which appears to have arisen from some incorrect information which was given to him. No evidence was presented to refute his contention that some officials of either the Division of Gaming Enforcement or the Casino Control Commission had given out information to persons in Nevada that only arrests within the last five years, other than felony matters, had to be disclosed on the Personal History Disclosure Form. While this information was not accurate, the applicant here should not be held liable for following that direction. Further, the applicant's failure to recall one of the incidents, even to this day, clearly places that failure to disclose in the realm of a totally blameless nondisclosure.

As apparently the Division of Gaming Enforcement understood, the nature and ages of the criminal and quasi-criminal incidents, as well as the nature of the explanation surrounding each, and the dismissal of all charges, except for the minor fine in the 1966 firearms violation, all point to a denial of licensure as being a overly severe and totally unnecessary penalty.

I have been impressed by the testimony of Mr. Stallings' witnesses concerning his good character, honesty and integrity, and I FIND that he has both a reputation for those attributes and that he does, in fact, possess them. Stallings was a sincere, helpful and impressive witness. While he has had several brushes with the law in the past, none of them, with the expection of one minor matter, has ever resulted in convictions. It would be an abuse of the administrative process to deny licensure to this gentleman.

I **FIND** that the applicant did fail to disclose information concerning various arrests, a conviction and civil suits, but I **CONCLUDE** that, while the information has potential materiality in the licensing process, a denial of licensure here would be improper. I **CONCLUDE** that the applicant has both a reputation for and an actual good character, honesty and integrity, and that he has done nothing which requires the imposition of the Section 86b sanction. It is, therefore, **ORDERED** that the Casino Control Commission grant a casino key employee (slot shift manager) license to John C. Stallings, Sr.

This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMISSION, which by law is empowered to make a final decision

in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

October 22, 1981
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

October 23, 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

10-26-81
DATE

Ronald I. Parker
OFFICE OF ADMINISTRATIVE LAW

plb

EXHIBITS IN EVIDENCE

Joint Exhibit

J-1 - Personal History Disclosure Form-1, 64 pages, dated August 26, 1980

On Behalf of the Division of Gaming Enforcement

R-1 - U.S. Department of Justice, FBI rap sheet, 2 pages

R-2 - Letter from Division of Gaming Enforcement to Cleveland Police Department, with attached History of Subject

R-3 - Affidavit and Order, SC 28,063, Drendel vs. Stallings

R-4 - Complaint, Summers vs. Stallings, No. 79-3258, 13 pages

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-49
OAL DOCKET NO. CCC 5830-80
APP. NO. 10407-21

IN THE MATTER OF THE APPLICATION
OF BERNARD STRICKLAND FOR LICENSURE
AS A CASINO EMPLOYEE
(SECURITY OFFICER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission October 6, 1981, recommending that the application of Bernard Strickland for licensure as a casino employee be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions or objections filed; and the Commission having determined to consider the Applicant's application for licensure as a casino hotel employee together with said application for a casino employee license; and the Commission having found that, pursuant to N.J.S.A. 5:12-91(e), that the waiver of the Applicant's disqualifications is consistent with the public policy of the Casino Control Act and is required by the interests of justice; and the Commission having resolved at its public meeting on December 8, 1981, to affirm and adopt the said Initial Decision, deny the application for licensure as a casino employee, waive the disqualification

with regard to the application for the casino hotel license and to grant the application for licensure as a casino hotel employee;

IT IS on this 31st day of December 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that the disqualification criterion set forth in the Initial Decision and incorporated herein be and hereby is waived; and

IT IS FURTHER ORDERED that the application of Bernard Strickland for licensure as a casino hotel employee be and hereby is granted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, ACTING CHAIRMAN

BY: Thomas N. Auriemma
THOMAS N. AURIEMMA
DEPUTY DIRECTOR, LEGAL DIVISION

DATED: December 31, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5830-80

AGENCY DKT. NO. 80-EA-49

IN THE MATTER OF:

BERNARD STRICKLAND,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: August 19, 1981*

Received by Agency:

Decided: October 5, 1981

Mailed to Parties:

APPEARANCES:

Bernard Strickland, Petitioner, Pro se

John Mennite, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for Respondent

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

The petitioner applied to the Casino Control Commission for licensure as a Casino Employee (Security Officer). The Division of Gaming Enforcement objected to licensure and the petitioner requested a hearing. The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

*Date of receipt of J-2 in evidence

The Division's objection rests on the petitioner's arrest and conviction record. The Division contends that those arrests and convictions render petitioner's licensure inimical to the policy of the Casino Control Act and to casino operations, a disqualifying criterion set forth in N.J.S.A. 5:12-86c(4). The Division further contends that the petitioner's arrest and conviction record, if not inimical to licensure, at least prevents the petitioner from establishing by clear and convincing evidence his good character, honesty and integrity, a licensing requirement set forth in N.J.S.A. 5:12-89b(2) as incorporated by reference in N.J.S.A. 5:12-90d. Finally, the Division contends that the petitioner failed to disclose his arrests and convictions on his Personal History Disclosure Form, a failure that requires disqualification, pursuant to N.J.S.A. 5:12-86b.

Most of the facts of this case are either stipulated or substantially uncontroverted. I find them to be as follows:

1. On May 2, 1974, Mr. Strickland then 23 years old, was leaving his class in Martial Arts with a pair of sticks under his arm. These sticks, variously referred to as nuchaku, or nunchucks, were used in the Martial Arts that Mr. Strickland was studying. Police officers spotted the sticks and arrested Mr. Strickland for possession of dangerous weapons, in violation of N.J.S.A. 2A:151-56. At the police station, Mr. Strickland was asked to sit down by one of the police officers, and he refused. He was warned to follow instructions and was told once again to sit down, without result. The police officer finally approached him, cursing, and placed his hands on Mr. Strickland's shoulders to force him into a seat. Mr. Strickland struck the officer, giving rise to an additional charge of assault and battery upon a police officer, in violation of N.J.S.A. 2A:90-4. Both charges were downgraded and amended to a single charge of simple assault, in violation of N.J.S.A. 2A:170-26, of which Mr. Strickland was convicted.

2. On June 3, 1974, Mr. Strickland observed a youth of approximately 17 or 18 years demonstrating nuchaku sticks to some friends on the streets of Atlantic City. Mr. Strickland apparently felt that the youth was incorrectly using or demonstrating the sticks and should not have them in his possession. He took the sticks from the youth and walked away with them, telling the youth that he could get them back from Mr. Strickland

at a later time at Mr. Strickland's apartment. The young man did, in fact, arrive at Mr. Strickland's apartment, together with members of the Atlantic City police department. Mr. Strickland was charged with and convicted of N.J.S.A. 2A:170-30.1, larceny under $200.

3. On September 28, 1977, the petitioner saw his brother being arrested for drinking beer on the street in Atlantic City. Mr. Strickland interposed himself between his brother and the police officer in an attempt to forestall the arrest. Mr. Strickland was arrested and charged with interfering with and molesting a police officer in the course of his duty, in violation of N.J.S.A. 2A:170-29.

4. On April 21, 1978, the petitioner was arrested for atrocious assault and battery, in violation of N.J.S.A. 2A:90-1. This arrest occurred as a result of a fight which the petitioner had with a person who the petitioner claims was, and still is, a good friend of his. The charges were dismissed when the victim failed to appear as a witness at the preliminary hearing.

The Division first contends that the petitioner's two arrests for assault and battery, N.J.S.A. 2A:90-4 and N.J.S.A. 2A:90-1, constitute automatic disqualifications. It is true that convictions of those offenses are automatic disqualifications, since those offenses are listed in N.J.S.A. 5:12-86c(2). However, the petitioner was never convicted of either offense. The first charge was downgraded to simple assault and the second charge was dismissed. The Division would count the incidents as automatic disqualifiers by the terms of N.J.S.A. 5:12-86g; i.e., the commission of acts that violate the listed statutes, even though the acts were not or may not be prosecuted under the criminal laws of this State, constitutes automatic disqualification. In the case before me, each act was prosecuted and neither resulted in a conviction. I am satisfied, from the evidence, that the criminal process worked properly, and there is no reason to conclude that the petitioner was guilty of acts of which he was not convicted. Therefore, I do not find that the petitioner is disqualified, pursuant to N.J.S.A. 5:12-86g.

The Commission further argues that the petitioner's convictions of disorderly persons offenses, even though not specifically listed as disqualifiers, are nevertheless inimical to the policy of the Casino Control Act and to casino operations, in accordance

with N.J.S.A. 5:12-86c(4). However, I **CONCLUDE** that the convictions of Mr. Strickland are not inimical to those policies. An inimical offense is one that would require automatic disqualification regardless of the circumstances of the acts. The disorderly persons offenses of which petitioner was convicted are offenses which should be weighed against the surrounding circumstances and the other activities of the petitioner's life. They are not automatic disqualifiers. Therefore, I **CONCLUDE** that the petitioner is not disqualified, by reason of N.J.S.A. 5:12-86c(4).

Even if the foregoing offenses were automatically disqualified, I **CONCLUDE** that the petitioner would have demonstrated rehabilitation in accordance with N.J.S.A. 5:12-90h. The same evidence which shows rehabilitation also shows that the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity, in accordance with N.J.S.A. 5:12-89b(2). My findings in this regard are as follows:

1. The petitioner was raised in a social setting where violence was commonplace. He grew up constantly defending himself because of his height of approximately five feet four and one half inches. He studied and mastered certain forms of martial arts. This mastery became his greatest pride and achievement. As a result of these factors, his easy attitude toward violence for what he misconceived as "self-defense" became a dominant force in his personality. This attitudinal problem directly resulted in the arrest and conviction record that has been detailed in this decision.

2. Since his last arrest in 1978, Mr. Strickland has had no problems with the law.

3. From 1977 through 1979, Mr. Strickland became involved with the plight of tenants at the Jamaica Hotel in Atlantic City. These tenants were without heat and other basic services, and additionally faced eviction. Mr. Strickland was apparently absorbed in the plight of these tenants. He worked tirelessly with Cape-Atlantic Legal Services, a Tenants Association, Senator Perskie's office and with other community organizations. He generated publicity in the media and achieved some

degree of relief for the tenants, as well as remedial legislation. Mr. Strickland earned a new reputation as a man of good character, honesty and integrity as a result of these endeavors. This entire process had a positive effect on Mr. Strickland's personality.

From July 1979 to July 1980, Mr. Strickland worked as a security officer assigned to the hotel detail at Park Place. His work earned praise from his employer.

4. Mr. Strickland has married and now supports his wife and three children. His wife also works.

I **CONCLUDE** that all of the above factors have worked to eliminate the previously hostile nature of Mr. Strickland's earlier personality. He has matured and expresses open regret for the offenses that he committed. I am convinced, by the clear weight of evidence, that Mr. Strickland is a man of good character, honesty and integrity and should be licensed in accordance with those criteria.

However, one last issue poses grave problems for Mr. Strickland's application. He failed to disclose any of his arrests or convictions in response to question number 46 of the Personal History Form. Mr. Strickland graduated from high school and was further awarded a degree or certification as an Electronic Technician by the U.S. Navy. I find him to be a man of sufficient intelligence to understand easily the import of question number 46. That question reads as follows: "Have you or has any member of your immediate family, (as defined on page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or in any other jurisdiction?"

Mr. Strickland's explanation for his failure to answer that question appropriately is not impressive. He states that a friend, who was already a possessor of a casino license, helped him in filling out the form. When they came to this question, Mr. Strickland told his friend that he did not answer a similar question on his previous application for a hotel license and that he received the license anyway. His friend then advised him not to answer the question on this form, so that both forms would be consistent. It is apparent to me that Mr. Strickland understood the question and that he debated in his mind whether to answer it or not, and chose not to answer the question.

N.J.S.A. 5:12-86b is mandatory in language: "The Commission shall deny a casino license to any applicant who . . . [fails] to reveal any fact material to qualification . . . [or who supplies] information which is untrue or misleading as to a material fact pertaining to qualification criteria. . . ."

His false statement on his Personal History Disclosure Form that he was never arrested, charged, or convicted of any juvenile, disorderly or indictable offense, an answer given under oath, must constitute a mandatory disqualification.

The language of the statute is clear and incapable of misinterpretation. Neither I, nor an administrative agency, may interpret a statute is such a manner as to change the scope of the statutory language. In re Estate of Fisher 165 N.J. Super. 122, 128 (Probate 1978); Service Armament Co., v. Hyland, 70 N.J. 550, 563 (1976). Where statutory language is unambiguous, courts cannot give it a different meaning. In re Jamesburg High School Closing, 83 N.J. 540, 547 (1980).

Although Mr. Strickland has amply demonstrated his other qualifications, he cannot clear the hurdle of his intentional failure to disclose his arrest and conviction record. While I might not favor this strict application of this statute, I am bound by its clear meaning and its mandatory language. Were I to choose to ignore it, I would be derelict in my duty.

Therefore, because of his failure to disclose his arrest and conviction record, which I **FIND** to be knowing and intentional, I reluctantly **DENY** the petitioner's application for licensure.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 5, 1981
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

October 6, 1981
DATE

Bernadette T. Fagan
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

P-1 through P-12 Letters that B. Strickland sent to Division of Gaming Enforcement

P-12 Letter re: licensure difficulties

R-1 F.B.I. Rap Sheet

R-2 New Jersey State Police Computer Printout

R-3 Atlantic City P.D. Arrest Card

R-4 A.C.P.D. Investigative Report, May 1, 1974

R-5 A.C.P.D. Investigative Report, June 3, 1974

R-6 A.C.P.D. Investigative Report, September 28, 1977

R-7 A.C.P.D. Investigative Report, April 6, 1978

R-8 Complaint against B. Strickland re: September 28, 1977

R-9 Municipal Court Record of Judgment, September 28, 1977

J-1 Personal History Disclosure Form

J-2 Sample Question No. 8 of the Personal History Disclosure Form No. 46 for Hotel Employees

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE PETITION OF	:	
TRAILWAYS, INC. FOR AN AMENDMENT	:	
TO THE COMMISSION'S REGULATIONS	:	ORDER
REGARDING INTER-CITY BUS PASSENGER	:	
SERVICE BY CASINOS	:	

This matter having been opened to the Casino Control Commission by petition of Trailways, Inc., for an amendment to N.J.A.C. 19:43-1.6, a hearing having been held and a Report and Recommendation issued concerning the ability and the desirability of the Commission prohibiting casino licensees, holding companies, affiliates and subsidiaries from independently engaging in inter-city autobus passenger service and the Commissioners having considered the Report and Recommendation which concluded that while the power to so act exists, the situation does not require that such action be taken and the Commissioners having available to them the transcripts, briefs and other materials determined at the September 9, 1981 public meeting to adopt the Report and Recommendation and deny petitioner's request:

IT IS on this 11th day of September 1981, ORDERED that the Report and Recommendation of Hearing Commissioner McWhinney is hereby adopted and the petition of Trailways, Inc. for an amendment to N.J.A.C. 19:43-1.6 is hereby denied.

NEW JERSEY CASINO CONTROL COMMISSION

By: _____
Martin B. Danziger
Acting Chairman

Date: Sept 11, 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE PETITION OF TRAILWAYS, INC., FOR AN AMENDMENT TO THE COMMISSION'S REGULATIONS REGARDING INTER-CITY BUS PASSENGER SERVICE BY CASINOS	REPORT AND RECOMMENDATION

Procedural History

On November 12, 1980, Petitioner Trailways, Inc., which through its wholly owned subsidiaries and affiliates is a major national common carrier of bus passengers, petitioned the Commission for declaratory and injunctive relief. Petitioners sought a declaratory ruling that the then pending acquisition by Golden Nugget, Inc. [hereinafter "GNI"] and Golden Coach, A.C., Inc. [hereinafter "GCAC"] of a fleet of buses, presumably for the purpose of providing bus passenger service to the Golden Nugget Casino, was violative of various provisions of the Casino

Control Act, N.J.S.A. 5:12-1 et seq.* Petitioner also sought an Order by the Commission directing GNI and GCAC to divest all interests in passenger buses which were expected to provide service to the Golden Nugget Casino. Simultaneously therewith, Petitioner filed a petition with the Commission requesting that a hearing be conducted pursuant to N.J.S.A. 5:12-69(c) to consider a proposed amendment to N.J.A.C. 19:43-1.6 of the Commission's regulations, the essence of which would prohibit a casino licensee or affiliated company from operating an inter-city bus passenger service. The regulation, if adopted, would presently affect only GNI and GCAC, since no other applicant or holder of a casino license, nor subsidiaries or holding companies thereof now own or control any company providing bus passenger service to Atlantic City casinos.

At its public meeting of January 7, 1981, the Commission considered the above petitions. First, the Commission dismissed without prejudice Petitioner's demand for declaratory and injunctive relief. Second, the Commission granted Petitioner's request for a hearing regarding the regulation amendment proposed by it. Thereafter, pursuant to the authority delegated to him by the Commission, Chairman Lordi appointed the undersigned to conduct this hearing.

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* Golden Nugget, Inc. is the holding company of GNAC, Corp., the holder of a temporary casino permit and applicant for a casino license. Golden Coach, A.C., Inc., is a wholly owned subsidiary of Golden Nugget, Inc.

During discussion at the Commission's January 7, 1981, public meeting, the issue of who was to bear the "cost" of the hearing on the regulation proposed by Petitioner was raised. In response thereto the Commission determined to have the designated hearing examiner consider the issue of who was to bear the cost of the hearing prior to its commencement. After soliciting the views of interested persons, I filed my Report and Recommendation on the "cost" issue with the Commission on February 20, 1981. My recommendation that each participant in the hearing be expected to bear its own expenses attendant thereto and further that the expenses attributable to the Commission's participation in and conduct of the hearing be considered as part of its overall operating expenses and not chargeable to Petitioner was adopted by the Commission at its public meeting of March 4, 1981.

In an effort to ensure that all interested parties were apprised of the hearing on the proposed regulation amendment, notices were sent to all applicants for and holders of casino licenses, providers of bus passenger service to the casinos which had filed applications for licensure or for waiver of the requirement that they be licensed as casino service industries, known trade associations which might be interested in the proposed regulation, the Division of Gaming Enforcement, the Interstate Commerce Commission, the New Jersey Department of State, the New Jersey Department of Transportation, the City of Atlantic City, the Public Advocate, and the Atlantic County Transportation Authority. These notices requested the submission of written comments on the proposed regulation amendment and a summary of any testimony witnesses at the hearing were to offer. Moreover, pursuant to Petitioner's

request, a questionnaire was submitted to each applicant for and holder of a casino license to glean information regarding the number of patrons frequenting their casinos, the amount of private automobile parking capacity they owned or leased, and whether they, their holding and subsidiary companies or affiliates presently owned any interest in any common bus carrier, tour broker or other transportation entity serving an Atlantic City casino hotel. After receiving responses to this questionnaire, the data gathered therefrom was supplied to Petitioner.

The hearing on the proposed regulation amendment commenced on March 16, 1981. The hearing was reconvened on April 20, 1981, primarily for the purpose of adducing testimony from witnesses called on behalf of the Commission. After concluding the testimonial phase of the hearing on that date, all interested parties were invited to submit legal memoranda regarding the merits of the petition. Upon receipt of Petitioner's post hearing brief, the record was closed on May 27, 1981.

Discussion

A. Introduction

As noted earlier, the Commission has been petitioned, pursuant to N.J.S.A. 5:12-69(c), to amend N.J.A.C. 19:43-1.6 of its regulations. N.J.S.A. 5:12-69(c) provides:

> c. Any interested person may file a petition with the commission requesting the adoption, amendment or repeal of a regulation. Such petition shall state clearly and concisely:
> (1) The substance and nature of the regulation, amendment or repeal requested;
> (2) The reason for the request; and
> (3) Reference to the authority of the commission to take the action requested.
> Upon receipt of the petition, the commission shall schedule the matter for hearing within 90 days and shall render a decision within 30 days after the completion of said hearing.

The clear legislative intent of this subsection was to provide a forum for interested persons who seek the adoption, amendment or repeal of a Commission regulation. Cf. N.J.S.A. 52:14B-4(f). Implicit in the Commission's grant of Petitioner's request for a hearing was the finding that it was in fact an "interested person". Moreover, in view of Petitioner's participation in the bus industry there can be little doubt that it may properly petition the Commission for the regulation amendment it seeks. Therefore, I reject the argument advanced by GNAC, Corp. to the contrary.

The statutory authority cited by petitioner for the proposed regulation amendment is N.J.S.A. 5:12-1(b)(12) which states:

> (12) Since the economic stability of casino operations is in the public interest and competition in the casino operations in Atlantic City is desirable and necessary to assure the residents of Atlantic City and of this State and other visitors to Atlantic City varied attractions and exceptional facilities, the regulatory and investigatory powers and duties conferred by this act shall include the power and duty to regulate, control and prevent economic concentration in the casino operations and the ancillary industries regulated by this act, and to encourage and preserve competition.

N.J.A.C. 19:43-1.6 of the Commission's regulations tracks the language of this subsection. It provides:

> The Commission and the Division shall have the power and the duty to regulate, control and prevent economic concentration in casino operations and in casino service industries so as to encourage and preserve competition.

Petitioner proposes the following additions to N.J.A.C. 19:43-1.6:

(a) In general, the Commission and the Division shall have the power and the duty to regulate, control and prevent economic concentration in casino operations and in casino service industries so as to encourage and preserve competition.

(b) Specifically, and without limitation as to the preceding paragraph herein, the Commission shall not permit a casino licensee or a holding, intermediate, affiliate or subsidiary company of a casino licensee, to own, control or engage in the operation of inter-city autobus passenger service except pursuant to contractual arrangements with independent inter-city autobus passenger carriers, provided that for purposes of this paragraph,

1. "Autobus" shall mean any charter, special operations or regular route autobus service which requires a Certificate of Public Convenience and Necessity issued by the New Jersey Department of Transportation and/or the Interstate Commerce Commission.

2. "Independent autobus passenger carrier" shall mean any enterprise engaged in the operation of charter, special operations or regular route autobus service which said enterprise is in no way owned or controlled by a casino licensee.

3. This paragraph shall not apply to the ownership, control or operation of jitney-type passenger shuttle service transportation between local parking lots and casino hotels.

Adoption of this proposed amendment would prohibit a holding company (N.J.S.A. 5:12-26), intermediary company (N.J.S.A. 5:12-28) or subsidiary (N.J.S.A. 5:12-47) of a casino license from owning, controlling or engaging in the operation of inter-city bus passenger service. A casino licensee would be limited to contracting for such service with independent bus companies.

While a plethora of questions are potentially raised by this petition, I find it necessary to address only two. First, is the Commission empowered to adopt a regulation limiting or prohibiting either a casino licensee, its holding company, intermediary company or subsidiaries from entering or engaging in an ancillary service industry pursuant to the legislative mandate expressed in N.J.S.A. 5:12-1(b)(12)? Second, is adoption of the proposed regulation necessary to regulate, control and prevent economic concentration in casino operations and in casino service industries so as to encourage and preserve competition? For the reasons which follow, I find positive and compelling support for an affirmative response to the first question. However, I find no reason for the present adoption of the regulation amendment proposed by Petitioner.

B. Jurisdiction

The Commission and the Courts of this State have had scant opportunity to address the parameters of the Commission's authority to control and prevent economic concentration in ancillary service industries so as to encourage and preserve competition. Nevertheless, the few pronouncements on this subject indicate that the authority of the Commission in this area is broadly defined.

The Commission itself has previously considered the question of a casino licensee's entry and participation in an ancillary service industry. In The Matter Of The Contract For Operation Of The Boardwalk Trams By Resorts International Hotel, Inc., Docket No. 79-CA-1 (1979). There, the Commission was faced with the application of Resorts International Hotel, Inc. for permission to operate the boardwalk trams in Atlantic City. The jurisdictional question then facing the Commission is indistinguishable from the first issue raised herein, namely whether the Commission has the authority to limit or prohibit a casino licensee's entry into an ancillary service industry so as to encourage and preserve competition. Explicit from the Commission's review of Resorts' proposed contract with Atlantic City to operate the boardwalk trams and the imposition of limitations upon its operation is the determination that the Commission is indeed authorized to regulate a casino licensees' entry or participation in ancillary service industries.

Any doubt as to the breadth of the Commission's authority to regulate economic concentration was laid to rest by

the Supreme Court of New Jersey in Bally Mfg. Corp. v. N.J. Casino Control Comm'n, 85 N.J. 325 (1981). In Bally, the Commission's adoption of a regulation prohibiting a licensed casino from acquiring more than 50% of its slot machines from any one manufacturer, in view of the dangers inherent in permitting any one slot manufacturer to dominate this field, was affirmed by the Supreme Court. Given the Supreme Court's expansive construction of the Commission's authority to prevent economic concentration in casino operations and in ancillary service industries, I find no merit in the contention that the Commission is not empowered to regulate involvement by casino licensees, their holding companies, intermediary companies or subsidiaries in ancillary service industries.

Nor do I find that the Legislature was only concerned with economic concentration of a horizontal rather than vertical axis. Initially, neither the language of N.J.S.A. 5:12-1(b)(12) nor the legislative history of the Casino Control Act supports this contention. See the Second Interim Report, Staff Policy Group On Casino Gambling. To be sure, the dangers inherent in economic concentration on a horizontal axis, i.e., among casino licensees or among ancillary service industries, are perhaps more pronounced than economic concentration on a vertical axis, i.e., among the casinos and ancillary service industries. However, in both instances economic concentration may cause a diminution of the quality and availability of goods and services which, in addition to retarding Atlantic City's

economic redevelopment, may also increase the risk of unfair advantage. As was noted by the Supreme Court in Bally, supra, economic domination of an ancillary service industry by a casino licensee may create a more aggravated situation than economic concentration by some other company otherwise unrelated to casino operations. Bally, supra at 331 n.3. Commission regulation of a casino licensee's involvement in ancillary service industries was never intended by the Legislature when it adopted the Casino Control Act N.J.S.A. 5:12-1 et seq. Based upon the foregoing I find that the Commission has the authority to limit or prevent a casino licensee's participation in ancillary service industries to prevent economic concentration and to encourage and preserve competition.

C. Overview of Existing Bus Service to Casinos, Its Regulation by Other Governmental Agencies And The Operation of GNI and GCAC.

Having determined that the Commission indeed has the authority to prevent economic concentration and preserve competition between casino licensees and ancillary service industries, the question of whether the regulation amendment proposed by Petitioner is presently necessary to effectuate this goal must be placed in proper perspective. To do so, a brief description is appropriate of existing bus service to Atlantic City casinos and the nature and extent of the bus operations of GNI and GCAC, the only entities which are presently engaged in both interstate and intrastate bus transportation and which are also applicants for or holders of or who must qualify for a casino license.

Generally speaking, bus service is provided to potential casino patrons in one of three forms. First, a "charter bus operation" requires a fixed charge per trip for the use of an entire bus to a location designated by the users or or riding public. The yearly trip from a local tavern to see the New York Yankees is an example of a charter bus operation. A second type of service offered is a "special bus operation". A "special bus operation", similar in some respects to a "charter bus operation" is characterized by the irregular offering by a bus operator of service from a point of origin to a specified destination. Excluded from the parameters of charter and special bus operations is daily or other regular service over substantially the same route. The third type of bus service is known as "autobus" or regular route service.

This type of service traditionally follows a predetermined route at specified times with established stops between points of origin and destination.*

Authority to conduct intrastate bus service of the types described above is conferred by the New Jersey Department of Transportation. Before a bus company may offer bus service of any kind to the public it must first obtain a Certificate of Public Convenience and Necessity. N.J.S.A. 48:4-3. Generally, in assessing an application for a certificate, the Department of Transportation considers the effect its issuance will have upon the financial stability of existing operators rendering similar service in the area, whether the service will enhance public convenience and whether a demand exists for such service. The Interstate Commerce Commission is empowered to regulate interstate as opposed to intrastate bus service. 49 U.S.C.A. 301 et seq. Essentially the same factors enumerated above are considered by the Interstate Commerce Commission when considering applications for the issuance of the various certificates.

Charter, special bus operation and regular route service are generally available from numerous carriers to potential casino hotel patrons from various points along the east coast. There are approximately 360 bus companies licensed to provide such service in N.J. It plainly appears that competition

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* Although the above definitions appear simple and straightforward, the line of demarcation between the three types of bus service is not always readily descernable. Subtle distinctions exist amongst them. Whether a bus company is in fact offering a given type of service is often disputed before the governmental agencies charged with its regulation.

for these patrons, who are valuable to the casinos* as well as to the bus companies, is fierce. Still, as the number of operating casinos and marketing efforts to attract patrons increases, patron demand for bus transportation to Atlantic City remains high** and bus companies serving this market are prospering from these operations. Moreover, there exists a shortage of available equipment to service the Atlantic City market. This problem is exacerbated by the current inability of bus manufacturers to fill orders for equipment on a timely basis. In fact there are only two manufacturers of inter-city buses in this county, one of which is a subsidiary of Petitioner, the other a subsidiary of Greyhound Lines, Inc. In short, the record reveals that bus service to Atlantic City although not without problems has experienced tremendous growth since the legalization of gaming, is highly competitive, is in

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* The Division of Financial Evaluation and Control recently quantified the relationship between bus patrons and casino revenue by analyzing the number of patrons and slot machine win on a daily basis for the six months ending February 28, 1981, at Resorts International Hotel, Inc., Boardwalk Regency Corp. and Bally's Park Place, Inc. A correlation analysis indicated a relationship between the number of patrons and slot machine win at Boardwalk Regency Corp. and Bally's Park Place, Inc. At Resorts International Hotel, Inc., there was a low correlation between the two variables. Additionally, the result of regression analysis indicates that at Boardwalk Regency Corporation and Bally's Park Place, Inc. slot machine revenues attributable to bus patrons were approximately $48 and $54 per person, per day, respectively.

** In 1980 almost 4 million persons journeyed to Atlantic City by bus.

great demand, and from all indications continues to flourish.*

The entry of GNI and GCAC into the bus industry is perhaps a natural consequence of their desire to improve existing bus service to their casino, reach additional markets and reap the profits therefrom. In December 1980, GNI purchased all the capital stock of Leisure Time Tours, Inc. [hereinafter: "Leisure Time"]. At the time of acquisition Leisure Time possessed 34 buses and operated regular route or autobus service from three northern New Jersey municipalities to the Port Authority Bus Terminal in New Jork City. Further, Leisure Time provided regular route service between various casino hotels and Ramsey, Paramus, Saddlebrook, Paterson, Clifton, Wayne, Bloomfield, Union, Clark and Woodbridge. Charter service was provided by Leisure Time throughout the State. In addition to providing the foregoing, Leisure Time has recently acquired special bus operation service between New York City and Philadelphia on the one hand and Atlantic City on the other.

As of March 1981, GCAC was operating six buses. Two of these buses, manufactured by Neoplan of West Germany, are ultra luxury double deckers. GCAC has ordered 5 additional Neoplan buses. Of the original six, the remaining four buses are Prevost buses. Unlike either the Neoplan or conventional

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* The prosperity currently experienced by that part of the bus industry serving Atlantic City is attributable to a number of factors including but not limited to: the cost or unavailability of alternative modes of transportation, the paucity and high cost of private automobile parking space, the increased quality of service offered by bus companies and the inducements offered to patrons which may take the form of cash, meals, show tickets, salt water taffy, etc. In some instances these inducements substantially reduce if not completely eliminate the actual cost of the transportation to the bus patron.

bus, Prevost buses are designed to seat only eight to ten passengers and provide unique luxury accommodations.

GCAC has ordered ten additional Prevost buses. Through the use of these luxury buses GCAC provides a service not otherwise available to casino hotel bus patrons. GCAC has been granted authority by the New Jersey Department of Transportation to provide charter and special bus operations over irregular routes operating in all 21 counties of this State to the Golden Nugget Casino. Additionally, GCAC has acquired authority from the Interstate Commerce Commission to offer special bus operations between points in Connecticut, Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia and the District of Columbia on the one hand, and, on the other the Golden Nugget Casino. During the months of December 1980 through February 1981 GCAC and Leisure Time combined provided service to approximately 9% of the bus patrons whose destination was the Golden Nugget Casino.

D. Need for the Regulation Amendment Proposed by Petitioner.

As previously noted, adoption of the regulation proposed by Petitioner would preclude entry by a casino licensee, holding, intermediary or subsidiary company into the interstate bus transportation industry and would force GNI and GCAC to cease such operations. Given the current state of the bus industry serving Atlantic City casinos, the clear language of N.J.S.A. 5:12-1(b)(12), and this Commission's and the New Jersey Supreme Court's construction of same, I am thoroughly convinced that Petitioner's proposed regulation is totally unnecessary. In point of fact, its adoption would be antithetical to and would frustrate the legislative intent to prevent economic concentration so as to encourage and preserve competition.

Initially, the proposed regulation goes too far. Prohibiting mere entry by casinos into the bus industry is simply contrary to the notion of encouraging and preserving competition. This is especially true given the fact that the bus service offered by GCAC is almost completely unavailable from other providers of bus service. Moreover, in view of the limited scope of bus operations conducted by casino licensees, holding or intermediary companies compared with the bus operations of "independent" carriers, economic concentration of the bus industry by the casinos in neither present nor reasonably forseeable.* The entry of GNI and GNAC into the bus industry has had no perceptible effect upon

*I need not define the relevant market, i.e., Atlantic City, the casinos or the Golden Nugget, for purposes of assessing the degree to which casinos participate in the bus industry. Even the narrowest of markets, the Golden Nugget Casino, is not dominated by GNI or GCAC, nor will it be if Leisure Time and GCAC increase their fleets substantially.

competition, which remains fierce. Absent some significant change in circumstances, this level of competition is not likely to change.

Petitioner places great reliance upon the Commission's adoption of the "50% rule" and its affirmation by the Supreme Court. This reliance is misplaced for a number of reasons. In Bally, supra, the Supreme Court recognized that:

> [i]n prohibiting "economic concentration" in the casino industry, the Legislature was concerned with the fact of economic concentration in casino operations. Its intent was to prevent economic domination in any area related to the industry. [Id. at 331 Emphasis in original.]

In addressing the contention that the regulation was directed at Bally, thereby triggering the need for an evidentiary hearing the Court further observed:

> The Commission's action was founded on certain basic facts which were not in dispute: (1) the slot machine market was dominated by one manufacturer, (2) there was an absence of significant competition in the sale of slot machines, and (3) slot machines are an important source of casino revenues. In light of these facts, the Commission was obligated to take action to prevent "economic concentration" in the slot machine market and to "encourage and preserve competition." The Commission was not interested in the reasons for the then existing situation in such a sensitive industry. It was the fact of market domination and the resultant "economic concentration" which concerned the Commission. [Id. at 333 Emphasis in original.]

Clearly, the factors recognized by the Court as justifying the Commission's adoption of the "50% rule" are not present in the bus industry serving the casino hotels. This industry is not dominated by any one carrier. Nor is there an absence of significant competition among the many carriers. While the bus industry, and the patrons brought by bus are an important source

of casino revenues, as are slot machines, this singular factor cannot serve to justify the regulation amendment Petitioner seeks.

The foregoing comparison of the instant case to Bally, supra, should not be construed to imply that the Commission will sit idly, waiting for the bus industry serving Atlantic City to be dominated before taking remedial action.* If in the future there exists a demonstrable threat of domination of the bus industry serving Atlantic City with a concomitant reduction in competition, then and only then would some form of restriction be appropriate. Until such time, preventing entry or participation by casino licensees or their holding and intermediary companies in the bus industry is unwarranted and extends beyond the parameters of N.J.S.A. 5:12-1(b)(12).

I am not insensitive to the fact that because of its economic size and uniqueness, a casino licensee might conceivably use such position to its advantage by the manipulation of loading spaces or "slots" at its casino hotel. However, the record reveals no evidence of such conduct. More importantly, it is improbable that a casino licensee would so act to any significant degree. I draw this conclusion from the indisputable fact that more bus patrons equate with more casino revenues. It is plainly in the casinos' interest to maximize the number of patrons who visit their facilities. To do so they must continue to contract with "independent" carriers. A casino licensee's failure to do business with or offer only less desirable slots to independent carriers, who, are not without leverage of their own, would be

* The Commission did not wait for the slot machine industry to be dominated before taking action. Rather, one manufacturer dominated this industry prior to the legalization of the gaming in New Jersey. Hence, the Commission was confronted with this fact when it came into existence.

self defeating. Common sense dictates that a casino licensee will seek to maximize its profits; if independent buses contribute more to its overall profits than its own buses, or if supplemental or independent buses increase its profits, a casino will deal with independent carriers.

Another argument advanced by Petitioner is that permitting a casino to dominate an industry supplying large number of its patrons will increase the risk of organized crime infiltration. Petitioner hypothesizes that this could be accomplished by the unionization of the bus industry work force, control of the union by corrupt influences, and syphoning off casino revenues in exchange for union "cooperation". While I have no particular quarrel with this premise, I find no support for the conclusion Petitioner attempts to draw therefrom, namely that the casinos should be barred from entering the bus industry. To reiterate, no casino even approaches the point where it dominates the furnishing of bus transportation service to its own or another casino's patrons. Hence, the factual basis necessary to support Petitioner's argument is simply not present.

There is another fundamental problem with this contention. If one agrees with Petitioner's hypothesis, the danger of organized crime infiltration of the bus industry per se will <u>not</u> be reduced if casinos are excluded from participating in that industry. Such exclusion will only serve to insulate the casinos from its grasp. In no way would it prevent organized crime forces from asserting pressure upon "independent" carriers whose employees were members of a corrupt union. Apart from the fact that this Commission is just as concerned with the infiltration b organized crime of casinos as ancillary service industries,adoption o

Petitioner's proposed regulation would indeed be an inappropriate response to this problem. Other more pointed means are available to the Commission to prevent organized crime infiltration. Petitioner's proposed regulation will not thwart this threat. In my view, adoption of the proposed regulation for this purpose cannot be justified.

Based upon my review of the entire record and all of the foregoing, no basis presently exists for adoption of the regulation amendment proposed by Petitioner. The ancillary bus industry is highly competitive under present market conditions. Participation by casinos in that industry is not contrary to the goal of preventing economic concentration so as to preserve and encourage competition. Therefore, I recommend that the petition of Trailways, Inc., for an amendment to N.J.A.C. 19"43-1.6 of the Commission's regulations be dismissed.

Respectfully submitted,

Madeline H. McWhinney

Madeline H. McWhinney
Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-100
OAL DOCKET NO. 4716-80
APP. NO. 8959-21

IN THE MATTER OF THE APPLICATION :
OF RICHARD ZELENAK FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE (CRAPS DEALER) :

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed August 10, 1981; recommending that the application be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions or objections having been filed by the parties, and the Commission having resolved at its public meeting on September 23, 1981 to affirm and adopt the said Initial Decision, as modified, and to deny the application for licensure,

IT IS on this 29th day of September 1981, ORDERED that the Initial Decision of the Office of Administrative Law in this matter, as modified herein, be and hereby is AFFIRMED and ADOPTED by the Commission; and

IT IS FURTHER ORDERED that the portion of the Initial Decision finding that possession of cocaine, contrary to N.J.S.A. 24:21-20a(1), is a per se statutory disqualifier, is hereby rejected by the Commission as a misstatement of law.

IT IS FURTHER ORDERED that the license application of Richard Zelenak be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified herein, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
MARTIN B. DANZIGER, Acting Chairman

BY: Dennis Daly
Dennis Daly
Senior Assistant ~~Counsel~~

DATED: September 29, 1981

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4716-80

AGENCY DKT. NO. 80-EA-100

IN THE MATTER OF:

THE APPLICATION OF
RICHARD ZELENAK FOR
LICENSURE AS A CASINO
EMPLOYEE (CRAPS DEALER)

Record Closed: July 7, 1981 Decided: August 6, 1981

Received by Agency: Mailed to Parties:

APPEARANCES:

Richard W. Zelenak, Applicant, Pro se

Howard M. Barman, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for the Respondent, Department of Law and Public Safety, Division of Gaming Enforcement

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Richard W. Zelenak, applicant, filed June 6, 1979, for licensure by the Casino Control Commission (Commission) as a casino employee (craps dealer). N.J.S.A. 5:12-90. The Department of Law and Public Safety, Division of Gaming Enforcement (Division), respondent, objected to licensure on the basis that the applicant had been involved in criminal activity and did not possess the requisite good character, honesty and integrity required for licensure.

New Jersey Is An Equal Opportunity Employer

PROCEDURAL HISTORY

Mr. Zelenak filed his application with the Commission on June 6, 1979. The applicant was advised by letter from the Commission, dated June 24, 1980, that based upon information received by letter from the Division, dated May 15, 1980, there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing. Mr. Zelenak requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 27, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

Mr. Zelenak has applied for a license to deal craps. It was stipulated that he was graduated from the Atlantic Casino Training Academy, having completed a 240-hour course in the game of craps.

The applicant currently holds a hotel employee license (No. 03708-40) as a barporter, issued by the Commission on November 15, 1978. He has been employed by Resorts International Hotel, Inc., Boardwalk Regency Corporation and Golden Nugget Hotel/Casino as a barporter. He has been employed by Golden Nugget since December 19, 1980. He performs his duties and responsibilities in a competent and satisfactory manner (P-1 and P-2).

The objections to licensure stem from the applicant's involvement in two incidents, both of which resulted in criminal charges being filed against him.

On September 29, 1979, the applicant was arrested by the Atlantic City Police Department, pursuant to a warrant. At the time of the arrest, Mr. Zelenak was in his motor vehicle. He was charged with violations of N.J.S.A. 24:21-19a(1), possession of marijuana with intent to distribute; N.J.S.A. 24:21-20a(4), possession of marijuana over 25 grams; and N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, cocaine. The applicant was indicted on these charges (R-1). On or about June 9, 1980, Mr. Zelenak entered into a plea bargain agreement. He pled guilty to a violation of N.J.S.A. 24:21-19a(1), possession of marijuana with intent to distribute, a high misdemeanor. The remaining two charges were dismissed. However, during cross-examination the applicant

admitted that he was in possession of both marijuana and cocaine on the date in question. There was no evidence of the quantities of the controlled dangerous substances. The applicant was sentenced to two years' probation and a fine of $1,000, which has been paid. The period of probation was not completed as of the time of this hearing.

On June 9, 1980, Mr. Zelenak was arrested by an officer of the Somers Point Police Department, who responded to a call for assistance (R-8). Mr. Zelenak was charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams; N.J.S.A. 2C:20-3, theft; and N.J.S.A. 2C:12-1 simple assault (R-5 and R-6). The applicant pled guilty to violations of N.J.S.A. 24:21-20a(4) and N.J.S.A. 2C:20-3. He was sentenced to six months' additional probation and fined $250. The conviction for possession of marijuana was a disorderly persons offense, and the conviction for theft was a crime of the fourth degree.

Louis Carrasquillo, Probation Officer-Adult with the Atlantic County Probation Office, testified on behalf of the applicant. He has been the applicant's probation officer since his probation commenced. During the first two months of probation, the applicant showed some hostility. However, his attitude has changed. The applicant has complied with all conditions of his probation; he has obtained a job, followed directions, obtained counselling and now has his own apartment. Mr. Zelenak has exhibited a much-improved attitude towards his probation. He now reports monthly and calls in every other two weeks in between. Mr. Carrasquillo testified that the applicant has demonstrated an ability to become a productive citizen. However, the witness stated that it was premature to determine whether to place the applicant on mail or non-reporting parole status because he has only been on probation for approximately nine months.

All of the preceding evidence is undisputed and believable and is thus found as fact.

CONCLUSIONS OF LAW

(A) N.J.S.A. 5:12-86c(3)

It was established by the preponderance of the credible evidence that Mr. Zelenak pled guilty to a violation of N.J.S.A. 24:21-19a(1), a high misdemeanor.

I **CONCLUDE** that this conviction disqualifies the applicant from licensure.

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

During cross-examination, the applicant admitted that on September 29, 1979, he was in possession of cocaine. This establishes by the preponderance of the credible evidence a violation of N.J.S.A. 24:21-20a(1), a high misdemeanor. Such an offense is a per se disqualifier from licensure under N.J.S.A. 5:12-86c(3) of the Casino Control Act.

I **CONCLUDE** that, because of this offense, Mr. Zelenak is disqualified from licensure.

(C) N.J.S.A. 5:12-89b(2) - Affirmative Criteria

Under Section 89b(2) of the act, the applicant is required to establish by clear and convincing evidence his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979) at p. 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, 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, when faced with evidence in support of the objection, to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at p. 5.

In addition to the previously stated conviction for a violation of N.J.S.A. 24:21-19a(1) and proof that the applicant possessed cocaine, in violation of N.J.S.A. 24:21-20a(1), the applicant was guilty of other offenses. Regarding the incident which occurred on September 29, 1979, by the applicant's testimony, it was established that he was in possession of marijuana, under 25 grams, in violation of N.J.S.A. 24:21-20a(4), a misdemeanor. There was no evidence of the quantity of marijuana possessed by the applicant. Regarding the incident which occurred on June 9, 1980, it was established by

his guilty plea, that the applicant violated N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams, again there was no evidence of quantity; and N.J.S.A. 2C:20-3, theft, a crime of the fourth degree. On September 29, 1979, the applicant was 19 years of age, and on June 9, 1980, the applicant was 20 years of age.

It must be noted that both incidents occurred subsequent to June 6, 1979, when Mr. Zelenak filed his application for licensure as a casino employee. Of course, he had been previously licensed as a hotel employee. The applicant must be deemed to have been aware that his conduct was under scrutiny by both the Division and the Commission at the time he committed the offenses. Although such offenses, when taken individually and in light of the absence of underlying detail, might appear to be relatively minor, the fact that they were committed during the period his application was pending makes them more significant. Further, the applicant, when asked to explain the incident of June 9, 1980, offered a vague and virtually unintelligible response, which did not explain away the incident in any respect.

Although the applicant's probation officer, Mr. Carrasquillo, testified favorably on his behalf, he did not establish clearly and convincingly the applicant's qualifications for licensure. Mr. Carrasquillo candidly stated that the applicant had recently begun to demonstrate his ability to be a productive citizen. However, his testimony that he was as yet unable to place the applicant on non-reporting parole status clearly indicated that the applicant had not yet shown that he warranted such trust. Although encouraging for the future, this testimony was insufficient to satisfy the applicant's burden.

The applicant also offered performance evaluations from the Golden Nugget (P-1 and P-2). Although quite favorable, on the evaluation of June 3, 1981, it was noted that Mr. Zelenak lacked seriousness, but has the potential to develop. Again, although favorable to the applicant, the performance evaluations were not of sufficient weight to overcome the prior and recent criminal activity.

Given Mr. Zelenak's criminal activity, which was not only recent, but which occurred subsequent to the submission of his application for licensure, it is clear that the applicant lacks the requisite good character, honesty and integrity for licensure. Notwithstanding his recent efforts, his application must be denied.

I CONCLUDE that Mr. Zelenak has failed to establish by clear and convincing evidence his good character, honesty and integrity.

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

An applicant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation. N.J.S.A. 5:12-90h. This section of the act sets forth the eight specific criteria to be evaluated when a determination of rehabilitation is to be made.

Mr. Zelenak has applied to be licensed as a craps dealer. Although he did not testify to the nature and duties of the position, it is generally understood to involve the dealing function, working closely with the public and supervisors, handling substantial sums of money and complying with the rules and regulations established by the Commission, as well as by the appropriate casino hotel.

The incidents of September 29, 1979 and June 9, 1980 involve the possession of drugs by Mr. Zelenak. This is serious. Individually the incidents may appear to be relatively insignificant; however, the fact that both incidents were drug related causes them to be viewed with greater caution.

Although the underlying circumstances of the separate offenses were not set forth to any substantial degree, the status of Mr. Zelenak's application to the Commission at the time was. The first offense was committed while the applicant was licensed as a casino hotel employee and some three months after the filing of his casino employee license. The second offense was committed some nine months after the first and also while his casino employee license was pending before the Commission. At the very least, this conduct does not exhibit responsible behavior, especially in light of his pending application and then-current license.

The offenses occurred one year and ten months and one year and approximately two months ago. Because these offenses are recent and because the applicant has not completed his parole, there has not been the passage of a reasonable amount of time for him to establish rehabilitation.

At the time of the first offense, the applicant was 19 years of age, and he was 20 at the time of the second incident. He is now 21 years old.

The fact that there were two incidents, both involving the possession of drugs, indicates that they were not isolated. It is also significant that the events took place within a short period of time.

There is no indication of any social conditions which may have contributed to the events.

Mr. Zelenak did demonstrate some evidence of rehabilitation. He has a good employment position, apparently performs his job functions in a satisfactory manner and has complied with the terms and conditions of his parole.

Mr. Zelenak's attempt to establish rehabilitation in light of his Section 86 disqualifiers is premature at this time. In the three years since he has reached the age of majority, he has been involved in two drug-related incidents. Although his recent efforts to conduct himself as a mature and contributing citizen have been most positive, there has not been sufficient time to establish his good character, honesty and integrity. He is still on parole and has not yet earned non-reporting status. Simply stated, rehabilitation is premature at this time.

However, if the applicant continues to conduct himself in his work and personal life, as he has since June 9, 1980, he is definitely on the right course towards establishing rehabilitation in the future. He must continue to conduct himself as he has recently in his personal life and continue to perform in his current position as a barporter, pursuant to his casino hotel license.

I CONCLUDE that the applicant has not affirmatively demonstrated his rehabilitation.

DISPOSITION

I ORDER that the application of Richard W. Zelenak for licensure as a casino employee (craps dealer) be DENIED.

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

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

August 6, 1981
DATE

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

Receipt Acknowledged:

8/10/81
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Aug 12, 1981
DATE

Ronald I. Parker - AZ
OFFICE OF ADMINISTRATIVE LAW

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