CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1983

PREPARED BY THE LEGAL DIVISION

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-123

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

This matter having been opened to the Casino Control Commission upon the filing of a Complaint by the Division of Gaming Enforcement with the Commission on August 30, 1982, for alleged violations involving the sale and storage of alcoholic beverages contrary to N.J.S.A. 5:12-103(f)(1); N.J.S.A. 5:12-103(f)(2); N.J.S.A. 5:12-103(a); N.J.A.C. 19:50-1.4; N.J.A.C. 19:50-1.9; N.J.A.C. 19:50-1.10(c); and N.J.A.C. 19:50-1.6(b); and the parties having filed a jointly executed Consent Agreement; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of April 20, 1983, to adopt the Consent Agreement and fine Adamar of New Jersey, Inc. in the amount of $1,750 for violations of the aforestated statutory and regulatory provisions,

IT IS on this 14th day of June 1983, ORDERED that Adamar of New Jersey, Inc., pay a fine in the amount of $1,750; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 14, 1983

STEVEN R. BOLSON, ESQUIRE
Iowa and the Boardwalk
Atlantic City New Jersey 08401
Telephone No: (609) 240-4378

Attorney for Respondent

FILED
NEW JERSEY
DEC 23 1982
CASINO CONTROL COMMISSION

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	STATE OF NEW JERSEY
Plaintiff,	CASINO CONTROL COMMISSION
-vs-	Docket No: 82-123
ADAMAR OF NEW JERSEY, INC.	
Respondent.	CONSENT AGREEMENT

WHEREAS, consistent with its responsibilities under the Casino Control Act, the Division of Gaming Enforcement has filed a formal complaint against Adamar of New Jersey, Inc., d/b/a Tropicana Hotel and Casino, ("Tropicana") (copy of said complaint is attached hereto and made a part hereof as Exhibit "A"), alleging violations of N.J.S.A. 5:12-103(f)(1); N.J.S.A. 5:12-103(f)(2); N.J.S.A. 5:2-103(g); N.J.A.C. 19:50-1.4; N.J.A.C. 19:50-1.9; N.J.A.C. 19:50-1.10(c); N.J.A.C. 19:50-1.6(b); and

WHEREAS, while admitting that it utilized its fourth floor casino service bar to provide service to its atrium level slot terrace for a period of time without having previously modified its existing CHABC license for this beverage service outlet so as to permit such service, and, while admitting that it utilized a non-licensed storage area adjacent to its loading dock area for the storage of beer prior to obtaining a CHABC license to store alcoholic beverages in this area,

Defendant, Adamar of New Jersey, while recognizing that it is no defense thereto, states and represents that said violations were inadvertenent and not intentional in that Tropicana attempted to apprise the Casino Control Commission via staff members the necessity of its proposed utilization of such bar and storage area and defendant has further represented that it was under the misconception that the Commission staff had consented to Tropicana's subject actions pending approval of the requisite licenses.

NOW, THEREFORE, after careful consideration of the facts and circumstances surrounding the violation of said regulations as more specifically set forth above, the parties hereto agree as follows:

1. Defendant, ADAMAR OF NEW JERSEY, INC., d/b/a Tropicana Hotel and Casino, shall be required to pay a total fine of $1,750.00 in full satisfaction of the violations referred to in Exhibit "A". Said fine may be paid within ten (10) days of the execution of this Agreement.

2. Defendant, ADAMAR OF NEW JERSEY, INC., d/b/a Tropicana Hotel and Casino, represents that it will, in the future, make every effort to ensure that similar violations as referenced in Exhibit "A" do not occur.

DIVISION OF GAMING ENFORCEMENT

By: Joshua E. Burck

ADAMAR OF NEW JERSEY, INC.

By: John Chiero

John Chiero

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-13
OAL DOCKET NO. CCC 0900-82
APP. NO. 13755-21

IN THE MATTER OF THE APPLICATION
OF JAIME E. ALVEY FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on August 27, 1982, recommending that the application of Jaime E. Alvey for a casino employee license as a floorperson in the games of blackjack, roulette and craps be denied based upon his failure to satisfy the experiential requirements of floorperson as contained in proposed Commission regulations, N.J.A.C. 19:41-7.18(c) and (d), to which Mr. Alvey filed exceptions on September 15, 1982; and the Commission having considered the entire record of these proceedings and having resolved at its December 21, 1982, public meeting to reject the Administrative Law Judge's conclusion that Jaime E. Alvey's application should be denied; and having further resolved to grant the application of Jaime E. Alvey for a casino employee license for the positions of floorperson in the games of blackjack and roulette and boxperson in the game of craps;

IT IS on this 17th day of January 1983, ORDERED that that portion of the Initial Decision of the Office of Administrative Law finding that the applicant lacks the requisite degree of experience to qualify as a floorperson in any game and ordering the application be denied by reason thereof be and hereby is rejected; and

IT IS FURTHER ORDERED that the application of Jaime E. Alvey for licensure as a floorperson in the games of blackjack and roulette and boxperson in the game of craps be granted as he has substantially complied with the experiential requirements and because he has otherwise demonstrated his qualifications for licensure as indicated in the Initial Decision, which is incorporated herein as if set forth in full; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 17, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 0900-82
AGENCY DKT. NO. 82-EA-13

IN THE MATTER OF THE APPLICATION OF JAIME E. ALVEY FOR LICENSURE AS A CASINO EMPLOYEE (Floorperson)

APPEARANCES:

Jaime E. Alvey, applicant, appeared Pro Se

William E. Mountford, Jr., Deputy Attorney General, for respondent, Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney)

Record Closed July 22, 1982 Decided August 26, 1982

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

Jaime E. Alvey (applicant) filed an application, including a Personal History Disclosure Form (PHD) No. 2, to work as a casino employee (floorperson). The applicant

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received a letter from the Casino Control Commission (commission), dated January 18, 1982, stating that there was a "substantial possibility" that the commission would deny his application. Applicant requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The prehearing order was issued on April 26, 1982 and the hearing was held on July 8, 1982. The record closed on July 22, 1982.

UNDISPUTED FACTS

The applicant disclosed on his PHD that he was arrested and/or convicted in New York for gambling related offenses on June 3, 1978, August 2, 1978 and August 24, 1979. On of the arrests resulted in a dismissal, and two of the arrests resulted in convictions with small fines.

The applicant failed to disclose two other arrests and convictions for gambling related offenses in New York on June 5, 1980 and June 27, 1980, which also resulted in small fines.

With respect to the applicant's experience for the position of floorperson, the Division of Gaming Enforcement received a document in Spanish with an English translation, dated December 2, 1980, from the General Agency of the Casinos, Panama, Republic of Panama, which reads in full as follows:

> Sirs;
>
> In accordance with your memorandum of October 3, 1980, where you requested information about Jaime Enrique Alvey, I am informing you of the following:
>
> Jaime Enrique Alvey, with number 9-107-2181, worked in the Nacional Casinos from December 1, 1970 to April 12, 1972; and renewed employment May 6, 1972 to April 10, 1974, date on which he was declared unsatisfactory, he was again employed on March 16, 1976 until September 1, 1976, on which date he was again declared unsatisfactory, this is all in accordance with that found in the archives of the Personnel Department, the reason for terminations are not listed.

Mr. Alvey worked at Casino Conquistador in Colon as a Teller "B", his number was #472.

I await that the information proves satisfactory to your needs.

Attentially yours,
Jose Mulino
Head of Personnel

DISPUTED FACTS

The division contends that the applicant made an intentional nondisclosure of two arrests on his PHD; that he was involved in five gambling related arrests and/or convictions in New York; that he received an unsatisfactory discharge from the General Agency of Casinos, Panama, Republic of Panama, and that these facts establish that he lacks the requisite honesty, integrity and good character necessary for licensure.

Most importantly, the division emphasizes that the applicant lacks the necessary experience for licensure as a floorperson pursuant to N.J.A.C. 19:41-7.18(c).

In essence, the applicant disputes all of the division's allegations.

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

The act provides that the commission shall deny a license to any applicant who is disqualified on the basis of:

(b) Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or the 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 crucial element when applying section 86(b) is the intention behind the nondisclosure or the providing of misleading information. See In the Matter of the Application of Resort's International for a Casino License, Casino Control Commission, Dkt. No. 79-CL-1 (February 26, 1979). If such nondisclosure is the result of ignorance or inadvertence it is not grounds for disqualification; however, if nondisclosure or the failure to provide information is based upon the applicant's belief that he would be adversely affected by a disclosure, mandatory disqualification must follow.

It is factually undisputed that the applicant disclosed three arrests and/or convictions on his PHD and that he failed to disclose two other convictions for gambling related offenses.

The applicant, a Panamanian, has difficulty expressing himself clearly; however, the crux of his explanation is that he wasn't familiar with the criminal justice system. The applicant felt that since he was a player and not an employee in the two undisclosed convictions and did not pay a fine, he did not need to disclose them on the PHD. It makes little sense that the applicant would disclose three gambling related offenses and fail to disclose two others if his intention was to circumvent the regulatory process.

I FIND that the two nondisclosed arrests and convictions on the PHD were the result of ignorance, a mistake and/or excusable error.

I CONCLUDE that the applicant did not violate N.J.S.A. 5:12-86(c).

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

Each applicant for a casino employee license must establish clearly and convincingly that he possesses the requisite good character, honesty and integrity.

The applicant produced Joe McCown, a licensed pitboss, who testified that he met

the applicant initially in Panama, and that the applicant subsequently stayed with him at his home in Las Vegas. McCown and the applicant resumed their friendship in 1980 after McCown relocated to Atlantic City and the applicant moved to New York City. McCown testified that the applicant is a "good person."

Subsequent to the hearing, the applicant submitted on the advice of the administrative law judge other letters attesting to his good character, honesty and integrity, from Charles de Casale, the former owner of the Las Vegas School of Dealing; Val John Otero, Nelson P. Italiano, Director of Casino Schools of New Jersey and Cedric L. Joe McCown, presumably the same person who testified at the hearing.

It is true that the applicant has five gambling related arrests and/or convictions, but his limited language skills and the fact he has a family to suport must be considered. The applicant is presently employed at the Las Vegas School of Dealing in New York.

Furthermore, the applicant's letter to the administrative law judge submitted subsequent to the hearing, dated July 20, 1982, states that the division's letter from the General Agency of the Casinos, Panama, Republic of Panama, dated December 2, 1980, contains a mistranslation of the Spanish language, and that he was not terminated for unsatisfactory services but rather left the casinos voluntarily. **I FIND** the applicant's explanation credible.

I FIND that the applicant presently possesses the requisite honesty, integrity and good character necessary for licensure.

I CONCLUDE that the applicant is not disqualified under N.J.S.A. 5:12-89(b)2 and N.J.S.A. 5:12-90(b).

NON-PROSECUTED CONDUCT
N.J.S.A. 5:12-86(c)2

The applicant was arrested and/or convicted on five occasions in New York of either promoting gambling or being in possession of gambling devices. His convictions for illegal

gambling in New York would constitute violations of N.J.S.A. 2C:37-1 et seq. subjecting the applicant to mandatory disqualification.

I CONCLUDE, therefore, there has been a per se statutory disqualifier under N.J.S.A. 5:12-86(c)1.

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

The applicant appeared pro se and the administative law judge inserted the issue of rehabilitation in the prehearing order. Pursuant to Section 90(h) of the act, an applicant shall not be denied a casino employee license on the basis of any disqualifying offense, provided the applicant has affirmatively demonstrated his rehabilitation. The applicant is a Panamanian who, because of difficulty with English, had a considerable disadvantage presenting his case favorably. However, **I FIND** there is enough information in the record to determine whether rehabilitation has been demonstrated. The following factors or criteria shall be considered:

1. **Nature and duties of position applied for**: applicant seeks licensure as a casino employee (floorperson).

2. **Nature and seriousness of the offenses**: the offenses are very serious because they involve acts of illegal gambling. At least three of the applicant's arrests and/or convictions involved what can be called "Las Vegas Nights" that took place during church-related activities. However, the only games of chance which are legal in New Jersey (and I assume in New York) are state lotteries, paramutual wagering at licensed horse racing tracks, bingo or lottery conducted by a registered organization, raffles conducted by registered organizations and certain other state approved contests. Games such as roulette, blackjack and craps played either for money or "a valuable thing" renders a person liable to prosecution under the statute. No matter what particular scheme or regardless of the worthwhile nature of the organization involved, the applicant's conduct was illegal under the statutes in effect at the time.

3. **The circumstances under which the offenses occurred:** on three occasions the applicant was working as a dealer during "Las Vegas Nights" at synagogues or a Greek Orthodox church. On two other occasions, the applicant was arrested as a patron in a private club when the police raided that club.

4. **The date of the offenses:** gambling related offenses occurred on June 3, 1978; August 2, 1978; August 24, 1979; June 5, 1980 and June 27, 1980.

5. **Whether the offense was an isolated or repeated incident:** the applicant was engaged in repeated illegal gambling activities.

6. **Any social conditions which may have contributed to the offenses:** the applicant is a Panamanian who has difficulty with English. He explained that he engaged in the illegal gambling activities to support his family.

7. **Any evidence of rehabilitation . . . :** evidence of rehabilitation is sparse; however, the applicant is now employed on a full-time basis by the Las Vegas School of Dealing Corporation in New York, New York. The applicant impressed me as a decent and well-intentioned person. The applicant apparently now enjoys a measure of personal and professional stability in his present occupation at the Las Vegas School in New York and his testimonials reflect that he is well-respected by his employers and co-workers. I surmise that the likelihood of the applicant returning to illegal activity is highly remote.

I CONCLUDE that the applicant has affirmatively and convincingly established his rehabilitation under the statute.

EXPERIENCE

N.J.A.C.19:41-7.18 provides: Minimum training and experiential requirements for persons seeking licensure in positions dealing or supervising table games.

(a) No person shall be licensed as a dealer unless he shall have first established that he either:

2.(c) No person shall receive licensure as a floorperson in their first game unless the following requirements are satisfied:

> 1. Blackjack, routlette, baccarat: When either blackjack, roulette or baccarat is the first game in which a first level supervisory license is sought, no person shall be licensed as a floorperson in that particular game unless he first establishes that he satisfies the requirements for licensure as a dealer in that game, and, in addition, that he was employed for at least 1500 hours or twelve months as a dealer or floorperson in that game.

An examination of the documentary evidence produced by the division from the General Agency of Casinos, Panama, Republic of Panama, dated December 2, 1980, confirms that the applicant's gaming experience in Panama casinos consists of 15 months, blackjack; 15 months, craps and 15 months, roulette.

I FIND that the applicant lacks the requisite degree of experience to qualify him for licensure as a floorperson in any game. Under the above-cited regulation, the applicant must have 21 months experience to qualify for the position of floorperson.

I CONCLUDE that the applicant has not met the experiential requirements under the regulation, N.J.A.C. 19:41-7.18, to qualify for licensure as a floorperson.

It is, therefore, **ORDERED** that the application of Jaime E. Alvey for licensure as a casino employee (floorperson) 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.

Aug 26, 1982 — R. Jackson Dwyer
DATE — **R. JACKSON DWYER, ALJ**

Receipt Acknowledged:

Aug 27, 1982 — Nancy L. Kahl
DATE — CASINO CONTROL COMMISSION
Assistant Counsel

Mailed To Parties:

August 30, 1982 — Ronald L. Parker/jrp
DATE — FOR OFFICE OF ADMINISTRATIVE LAW
jrp

ADDENDUM TO LIST OF EXHIBITS CONTAINED IN THE TRANSCRIPT

P-2	Testimonial of character from Val John Otero,
P-4	Testimonial of character from Cedric L. Joe McCown
P-5	Testimonial of character from Nelson P. Italiano
P-6	Testimonial of character from Joseph V. Casale

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-54
OAL DOCKET NO. CCC 4382-82
REGISTRATION NO. 02167-40

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

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on November 15, 1982, recommending that the casino hotel employee registration held by Dana Amidon be revoked; and Dana Amidon having filed exceptions to the Initial Decision on December 13, 1982; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of January 11, 1983, to affirm and adopt the said Initial Decision and to revoke the casino hotel employee registration held by Dana Amidon,

IT IS on this 12th day of January 1983, 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 registration held by Dana Amidon be and hereby is revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Dana Amidon is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this order, pursuant to N.J.A.C. 19:41-8.8(a), unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that Dana Amidon shall deliver his casino hotel employee registration card to the Casino Control Commission's Atlantic City office within twenty-four (24) hours of his receipt of this Order; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 12, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4382-82
AGENCY DKT. NO. 81-54

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

v.

DANA AMIDON,
Respondent.

APPEARANCES:

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

Dana Amidon, Pro Se

Record Closed October 8, 1982 Decided: November 15, 1982

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

The Division of Gaming Enforcement (Division) filed a complaint with the Casino

Control Commission (Commission) on August 21, 1982, seeking to revoke respondent's casino hotel employee registration pursuant to Section 129 of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The Division's complaint stemmed from respondent's indictment on August 20, 1981, in the Atlantic County Superior Court, Law Division, for distribution of a controlled dangerous substance, a violation of N.J.S.A. 24:21-19(a)(1) and (b)(1), possession of a controlled dangerous substance with intent to distribute, a violation of N.J.S.A. 24:21-19(a)(1) and (b)(1), and possession of a controlled dangerous substance, a violation of N.J.S.A. 24:21-20(a)(1).

By order dated August 27, 1981, on September 8, 1981 the Commission suspended respondent's casino hotel employee registration. The Commission granted respondent's request to defer the license revocation hearing pursuant to N.J.S.A. 5:12-86(b) pending final resolution of respondent's criminal charges.

On February 19, 1982, after a jury trial, respondent was acquitted of all criminal charges. Following that acquittal, the Commission granted respondent's motion to vacate the Commission's suspension order and it denied respondent's motion to dismiss the Division's complaint.

The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard on August 4, 1982, at which time, respondent declined to cross examine the Division's witness or testify at the hearing asserting that his acquittal of the criminal charges precluded the Division from proceeding any further in its administrative hearing. At the end of the hearing, the administrative law judge directed the Division to forward respondent a copy of the transcript and a letter memorandum setting forth its factual and legal contentions. On October 8, 1982, the administrative law judge wrote to respondent and "strongly suggested" that he move to supplement the record with his testimony. To date, respondent has made no motion to reopen this matter.

The Division's position can be stated as follows: respondent was acquitted in a criminal proceeding because the jury felt there was a reasonable doubt

that State Police narcotics officers had misidentified respondent and Samuel Apotas, who was also employed in the food service department of Caesar's Boardwalk Regency Hotel and Casino. The Commission contends that documentary evidence unavailable to the jury, but properly before the administrative law judge at this administrative hearing, dispels any notion that the arresting officers made such a mistake.

FINDINGS OF FACT

The evidence presented by petitioner was unrebutted by respondent. Accordingly, upon review of the evidence, I adopt the following as my findings of fact:

1. Respondent, Dana Amidon, was employed by Caesar's Boardwalk Regency Hotel and Casino in July 1980 and worked pursuant to a temporary casino hotel employee license.

2. Respondent currently holds casino employee registration No. 02167-40 issued by the Casino Control Commission in April 1981.

3. On July 24, 1980, around 11:37 p.m., respondent unlawfully distributed a controlled dangerous substance, to wit, methamphetamine, in violation of N.J.S.A. 24:21-19(a)(1) and (b)(1), to Detective Anthony Mastella, a New Jersey State Police narcotics officer, working in an undercover capacity.

4. On or about July 31, 1980, respondent unlawfully distributed a controlled dangerous substance, to wit, methamphetamine, in violation of N.J.S.A. 24:21-19(a)(1) and (b)(1), to Detective Dean Sassman, a New Jersey State Police narcotics officer, working in an undercover capacity.

5. The unlawful distribution of controlled dangerous substances on July 24 and July 31, 1980 by respondent to undercover narcotics officers

occurred within the hotel suites located within Caesar's Boardwalk Regency Hotel and Casino while respondent was engaged in the course of his employment as a room service food server for Caesar's Boardwalk Regency Hotel and Casino.

6. Detective Mastella made positive in-court identifications of respondent as the person who sold him methamphetamine on July 24, 1980, around 11:37 p.m., both at the criminal trial held on February 17, 1980, and at the administrative hearing held on August 4, 1982. Detective Mastella was also present during, and personally observed, the unlawful distribution of methamphetamine by respondent to Detective Sassman on July 31, 1980.

7. Detective Sassman made a positive in-court identification of respondent at the criminal trial held on February 17, 1982 as the person who sold him methamphetamine on July 31, 1980. Detective Sassman also personally observed the unlawful distribution of methamphetamine by respondent to Detective Mastella on July 24, 1980.

8. At the administrative hearing on August 4, 1982, Detective Mastella testified that he purchased quaaludes from a Sam Apotas on July 24, 1980, around 10:20 p.m., and further stated that there was no possibility that a subsequent purchase of methamphetamine, at approximately 11:37 p.m., on the same date, was also from Sam Apotas.

CONCLUSIONS OF LAW

Respondent took the position that his acquittal of the criminal charges precluded the Division from proceeding against him in an administrative hearing. Respondent also expressed ignorance about criminal and administrative processes, and asserted that he was being deprived of legal representation. On June 2, 1982, Ralph B. Hill, Esq., represented respondent at a prehearing conference, at which time the legal

issues to be determined at the hearing were identified. A copy of the prehearing order was ultimately mailed to counsel. On July 28, 1982, counsel sent a letter to respondent, with a copy to the administrative law judge, confirming a telephone conversation in which respondent stated that he would appear at the administrative hearing without counsel's assistance. That letter told respondent that "your failure to appear and/or actively pursue this claim will result in a dismissal of the matter." Counsel sent a follow-up letter to respondent on July 29, 1980 and enclosed the discovery package sent by the Division of Gaming Enforcement together with a copy of the interrogatories answered on behalf of the Division of Gaming Enforcement. Counsel stated, "the enclosed documents may assist you in presenting your case at the administrative hearing on August 4, 1982." It is apparent from the correspondence that respondent and his counsel discussed the differences between the criminal and the administrative processes and the issues at the administrative hearing. Respondent also had ample opportunity to obtain other representation if he chose to do so prior to the hearing date. In my view, respondent's reasons for nonparticipation in the administrative hearing are more feigned than real. Despite that fact, the administrative law judge directed the Division to submit a copy of the transcript and legal memorandum to respondent at the end of the hearing and the record remained open to allow respondent to make any supplemental motions.

An administrative agency is not precluded from proceeding against a respondent in a license hearing despite acquittal in a criminal trial. Among the reasons are, the quantum of proof in a criminal proceeding is beyond a reasonable doubt, while in an administrative hearing, the civil standard of a fair preponderance of the believable evidence is applicable. The parties to the actions differ, as well as the purpose of the proceedings. A criminal proceeding is designed to determine whether a criminal sanction is appropriate, while an administrative hearing, as in the instant matter, is to determine whether the licensure of the person is compatible with protecting the public confidence and trust in the integrity of the casino industry. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Pennica, 36 N.J. 401 (1962).

N.J.S.A. 5:12-86g

N.J.S.A. 5:12-86g of the act provides that a conviction for an automatic

disqualifying offense is not essential to the establishment of disqualifying conduct. Section 86g of the act provides that licensure shall be denied an applicant on the basis of a commission by the applicant of any act or acts which would constitute any offense under subsection (c) of Section 86, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. Section 86c(3) of the act establishes as an automatic disqualifying offense the commission of any high misdemeanor under Section 19 of P.L. 1970, c.226C 24:21-19.

The undisputed proofs establish that respondent, although not convicted of a criminal violation, did, in fact, distribute narcotics to undercover State Police detectives on July 24, 1980 and July 31, 1980 within hotel suites at Caesar's Boardwalk Regency Hotel and Casino. I CONCLUDE that the Division has established by a preponderance of the believable evidence that respondent has committed a violation of N.J.S.A. 5:12-86g.

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

As a parallel argument in opposition to Mr. Amidon's continued licensure, the Division has agreed that Mr. Amidon's criminal offenses established his conduct is inimical to the policy of the act pursuant to N.J.S.A. 5:12-86(c)(4). Subparagraph (4) clearly specifies that the Legislature, in enacting that section, intended only to refer to offenses "other" than those listed in the three prior subsections of section (c). Respondent's criminal conduct is listed in subsection (3) of subparagraph (c), and subparagraph (c)(4) by its express language therefore does not apply.

Therefore, the issue of inimical conduct under N.J.S.A. 5:12-86(c)(4) is hereby DISMISSED.

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

By respondent's lack of participation in the administrative process, he has not addressed himself to the affirmative criterion under the act, and demonstrated his rehabilitation by clear and convincing evidence under N.J.S.A. 5:12-91(d).

Pursuant to the express public policy of the Casino Control Act, and based upon the undisputed facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden for establishing grounds for revocation of respondent's casino hotel employee registration No. 02167-40 granted by the Commission in April 1981.

It is, therefore, **ORDERED** that the casino hotel employee registration of respondent be **REVOKED.**

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

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

Nov 15, 1982
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

11/15/82
DATE

David C. Kessinger
CASINO CONTROL COMMISSION

Mailed To Parties:

Nov. 17, 1982
DATE

Ronald L. Parker for
FOR OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 82-CSI-15
OAL DOCKET NO. CCC-8941-82
APP. NOS. 941-70; 44418-21

IN THE MATTER OF THE APPLICATIONS OF AMY TOURS FOR LICENSURE AS A CASINO SERVICE INDUSTRY AND AS A JUNKET ENTERPRISE, AND SAMUEL J. VALENTI AS A JUNKET REPRESENTATIVE.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on January 27, 1983 recommending that the application of Amy Tours for a casino service industry license be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on February 15, 1983; and section 102 of the Casino Control Act (N.J.S.A. 5:12-102) having been amended effective January 27, 1983, to provide in pertinent part, "A junket enterprise shall be licensed in accordance with the provisions of this section... A junket enterprise, as well as such of its owners, management and supervisory personnel and other principal employees...must qualify under the standards, except residency, established for qualification of a casino employee under this act...."; and it appearing that on January 17, 1983, Samuel J. Valenti, sole proprietor of Amy Tours, filed (1) an amendment to its

application seeking licensure as a junket enterprise and (2) an application on his own behalf for a junket representative license; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 1, 1983, for good cause shown to modify the said Initial Decision and to grant the amended application of Amy Tours for a junket enterprise license pursuant to section 102 of the Casino Control Act and grant the junket representative license application of Samuel J. Valenti,

IT IS on this 21st day of March 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. The factual findings and the legal conclusion that Mr. Valenti has demonstrated by clear and convincing evidence his rehabilitation from his statutory disqualifying convictions be and hereby are adopted by the Commission;

2. The remainder of the Initial Decision be and hereby is rejected as being unnecessary to reach the disposition of this matter;

IT IS FURTHER ORDERED that the junket enterprise license application of Amy Tours be and hereby is granted based upon the reasons set forth in the Initial Decision, as modified

above, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the junket representative license application of Samuel J. Valenti be and hereby is granted; and

IT IS FURTHER ORDERED that the order of September 17, 1982, removing the name of Amy Tours from the Commission's Master Vendor's List be and hereby is vacated; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Samuel J. Valenti, Amy Tours and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 21, 1983

FILED
NEW JERSEY
JAN 27 1983
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8941-82

AGENCY DKT. NO. 82-CSI-15

AMY TOURS,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Samuel Valenti, Sole Proprietor, for petitioner

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

Record Closed: December 8, 1982 Decided: January 24, 1983

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

Amy Tours, an applicant for a casino service industry license under the Casino Control Act, N.J.S.A. 5:12-1 et seq., specifically Section 92c thereof, requested a hearing on its proposed licensure following receipt of a letter of July 7, 1982, from the Division of Gaming Enforcement to the Casino Control Commission in which the Division objected to the applicant's licensure. The matter was thereafter transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 27, 1982, and a hearing was held before Administrative Law Judge Jeff S. Masin on December 8, 1982, at the Office of Administrative Law in Trenton.

The basis for the Division's objection to the licensure of Amy Tours arises from the convictions entered against Mr. Saverio (Samuel) Valenti, the sole proprietor of the applicant. These convictions occurred in 1975 and were entered in the Supreme Court of New York, County of Albany. Mr. Valenti was found guilty on charges of forgery in the second degree and of attempted grand larceny. He was sentenced on November 10, 1975, to one year in the Albany County Penitentiary on each forgery count and was given an unconditional discharge on the larceny offense. Mr. Valenti appealed his convictions to the Appellate Division of the Supreme Court. The conviction was upheld and Mr. Valenti then served his term at the Albany County Penitentiary from April 26, 1977 until he was paroled on June 28, 1977. He remained on supervised parole until June 26, 1978.

As revealed by the testimony of Mr. Valenti as well as by the indictment and pre-sentence report entered in evidence herein, it appears that in April 1973, Mr. Valenti was employed as a tax examiner in the Sales Tax Refund Department of the New York State Tax Commission. At the same time as he was employed by the State in this capacity, Mr. Valenti was doing private tax work for clients as part of a tax service which he had started some years before. In connection with a private client of his, one Edward Ceremuga, Mr. Valenti signed the name of a Senior Tax Examiner, John Sorbero, to an application for a tax refund. This forgery occurred on two documents. Valenti testified that he believed at the time that Ceremuga was entitled to receive the return and that he signed Sorbero's name in order to push through Ceremuga's refund. The events occurred shortly before the Christmas season and Valenti testified that he wanted to do Ceremuga a favor. He believed that his action would have not given Ceremuga anything to which he was not entitled. However, during the testimony it also was revealed that Ceremuga owed Valenti money at the time that Valenti undertook this activity. The two documents forged were in the amount of $1,417.57 and $204.88, respectively.

Mr. Valenti described the operation of Amy Tours. The business started as a small travel agency. Valenti saw an opportunity in the Atlantic City area involving the running of buses to the casinos. In essence, he operates as a travel agency obtaining individuals who are brought to the Atlantic City casinos by chartered bus for a three-day, two-night "junket." The persons brought to Atlantic City are generally "high rollers." Valenti sets the rate for the trip. He pays a commission to another individual who sometimes obtains names for him of individuals who might be willing to go on the trip. The "high rollers" are also known as "qualified casino players." Solicitation of the patrons is by posters and word of mouth. Flyers which contain information about the price of the

trip, meals, etc., are sent out in the Troy and Albany areas of New York. Individuals are required to place money in the cage when they arrive at the casino. Following the trip, Valenti receives a rating from the hotel which is based upon the amount of money spent by the gamblers in the casino. Amy Tours has been involved in operations with the Sands Hotel and with Bally's. The operation with the Sands ended as of the beginning of December, and at the time of the hearing Valenti had no operations to Atlantic City under contract.

Mr. Valenti described his employment background, beginning in 1947 when he became a Clerk with the Public Works Department of New York State. Since then, he has worked as an account clerk in the Labor Department, a junior tax examiner auditing tax returns, and finally performing payroll audits. In 1968 and 1969, Valenti went to Las Vegas where he served as a bookkeeper and night auditor for the Frontier Hotel. He returned to New York in October 1969 after his mother had a stroke. He was then employed as an accountant in private industry and began to prepare tax returns on the side. In 1972, he returned to employment with New York State as a tax examiner in the White Plains office of the Tax Commission and then was transferred in April 1973 to Albany. Following the criminal incident and his release from prison in 1977, Mr. Valenti remained on supervised parole until June 26, 1978. He worked for the City of Troy for one year as a data collector and worked for an advertising firm while on parole. His employment with Troy was under the CETA program. Since the employment with Troy ended, Valenti has run his tax service and has operated Amy Tours. The tax service grossed about $8,000 to $9,000 during the past year.

In support of his application, Mr. Valenti presented numerous letters and petitions submitted to the sentencing judge at the time of his sentencing in 1975. He also presented several letters obtained in connection with this proceeding from employers and friends.

Discussion

As noted, the Division's objections to the licensure of Amy Tours as a casino service industry arise solely from Mr. Valenti's prior problems. The Division contends that the forgery and attempted larceny convictions constitute enumerated disqualifiers under N.J.S.A. 5:12-86c(1) and bar the applicant from being licensed as a Casino service industry.

From the evidence, I **FIND** that Mr. Valenti was convicted of crimes which constituted enumerated disqualifiers, pursuant to N.J.S.A. 5:12-86c(1). The actions in which he engaged while a public official in the state of New York were inexcusable and constitute offenses tinged with moral turpitude. They are quite serious and, in the context of the highly regulated casino industry, must be given serious consideration in determining whether Mr. Valenti's company must be disqualified from licensure.

N.J.S.A. 5:12-92c states that:

> All casino service industries not included in subsection a [which the parties agree this applicant is not] of this section shall be licensed in accordance with rules of the Commission prior to the commencement or continuation of any business with a casino licensee. . . .

Subsection d of N.J.S.A. 5:12-92 states that:

> Licensure pursuant to subsection c of this section of any casino service industry may be denied to any applicant disqualified in accordance with the criteria contained in section 86 of this act.

Thus, it seems that Amy Tours may be disqualified because of Mr. Valenti's disqualification under the enumerated disqualifiers contained in section 86c(1). However, an individual whose licensure is deniable because of 86c enumerated disqualifications and who is an applicant for a casino hotel employee license or a casino employee license, may prove that he has rehabilitated himself from the adverse effects of such a disqualification, pursuant to N.J.S.A. 5:12-91d and N.J.S.A. 5:12-90h. Rehabilitation is not available to casino key employees pursuant to N.J.S.A. 5:12-89. Thus, it is arguable that if Mr. Valenti can establish by clear and convincing evidence that he has rehabilitated himself from the enumerated disqualification under section 86c(1) that Amy Tours may then be licensed because the only disqualifying factor against it has been overcome by Mr. Valenti's proof of rehabilitation. The question is whether rehabilitation is available for a sole proprietor of a service industry under subsection 92c. Although the statute is not crystal clear on the subject, I **FIND** that rehabilitation is available for such individuals.

N.J.S.A. 5:12-92 sets up a system for licensing casino service industries. In subsection a of that section, the procedure is established for licensing "casino service industries offering goods or services on a regular basis which directly relate to casino or

gaming activity." These service industries include "gaming and equipment manufacturers, suppliers and repairers, schools teaching gaming and either playing or dealing techniques, and casino security services." Subsection b requires that the industry as well as its "owners, management and supervisory personnel and other principal employees must qualify under the standards, except residency, establish for qualification of a casino key employee under this act." Further licensing requirements exist for a school teaching gaming and playing or dealing techniques under which "resident director, instructor, principal employee, and sales representative employed thereby shall be licensed under the standards established for qualification of a casino employee under this act;. . ."

Subsection c provides for the licensure of other types of casino service industries which are not included in subsection a. These are to be licensed "in accordance with rules of the Commission prior to commencement or continuation of any business." Neither subsection c nor subsection d of section 92 specifically refers to the necessity for licensing the owners of the industry. Of course, in a situation such as the present one where Mr. Valenti constitutes the sole proprietor and is in essence the alter ego of the noncorporate applicant, licensure, or at least qualification thereof, of the sole proprietor seems essential in order to permit licensure of the service industry. However, the statute does not specify how the individuals whose license qualifications must be considered are to be treated with respect to determining the nature of their qualifications, i.e., whether they are to be reviewed as casino key employees, such as the principals of subsection a service industries, or as casino employees, as are the directors, instructors and principal employees of a gaming school.

It is the court's considered opinion that a sole proprietor of a subsection c casino service industry should be permitted to establish rehabilitation from disqualifying past events as if he were a casino employee. While the subject is not free from doubt, it appears that the Legislature, in distinguishing between subsection a casino service industries directly involved and related to the casino and gaming activity and subsection c service industries not so directly related, intended to make a distinction as to the level of qualification which the differing types of service industries had to meet in order to be licensed. Thus in connection with the subsection a service industries, not only does the statute directly require the licensing of the industry, but also the licensing of principals and top employees, as if they were casino key employees.

In the subsection c area, the statute is silent with respect to the necessity for the licensing of the principals and other top individuals in the companies. From this it would appear that the Legislature was somewhat more concerned with the service industries directly related to the gaming activity than with those whose relationship is somewhat more peripheral. Since the Legislature did not see fit to specify that the owners of subsection c service industries had to meet the qualifications of casino key employees in order for the service industry to be licensed, it appears reasonable to believe that since the industries are treated in a somewhat less severe fashion than the subsection a industries, their principals should also not be required to meet so exacting a standard as the principals of subsection a industries.

The general tenor of the casino control act as presently written appears to favor rehabilitation. While it is true that the statute does not specify that rehabilitation is available for casino key employees, and while the general tenor of decisions appears to indicate that the failure of the Legislature to specify the availability of rehabilitation for these individuals implies that rehabilitation is not presently available for them, with respect to other licensing categories rehabilitation is specifically provided for. I believe that if the Legislature's concern with the subsection c industries can be reasonably said to be somewhat less acute than with the subsection a industries, that these less directly related industries, and their principals, should be permitted to demonstrate rehabilitation. The general tenor of the law today runs in favor of allowing individuals to demonstrate that they have corrected past bad habits and past criminal activity and have returned to leading lives in tune with the demands of society. Therefore, since the Legislature has not seen fit to specify in connection with subsection c service industries that they are to be treated exactly the same as subsection a industries, and since there is no specific mention in the statute that the principals of subsection c service industries are to be treated as if they were casino key employees, I believe that such individuals should be permitted to demonstrate rehabilitation.

Having determined that rehabilitation is available to someone in Mr. Valenti's category, it must now be decided whether he has in fact established by clear and convincing evidence that he has rehabilitated himself. Mr. Valenti's past record indicates that with the exception of the one incident involving the tax refund for Mr. Ceremuga, Mr. Valenti has been a good citizen who has performed services in public life for many years without any other apparent improprieties. I believe that Mr. Valenti's action in connection with his criminal conduct was an isolated and aberrant event which is not

likely to ever be repeated by this individual. The disgrace which the conviction brought upon him, the incarceration which he suffered, the humiliation which I believe he feels for what occurred, all would seem to be strong guarantees that Mr. Valenti will never again knowingly do anything which would violate the law. While I recognize that the casino industry requires considerable scrutiny, and that the industry is a highly sensitive one to which entry must be limited to those who can reasonably be expected to be trusted to follow the law, I do not believe that Mr. Valenti's past record indicates that he should be barred from conducting the type of activity in which Amy Tours has previously engaged and in which it intends to participate in the future. Based on the record before me, I **CONCLUDE** that Mr. Valenti has rehabilitated himself from his past errors and that there exists today no disqualification barring him from receiving a license under N.J.S.A. 5:12-86(c). Therefore, I **CONCLUDE** that Amy Tours should be licensed as a subsection c casino service industry. It is so **ORDERED.**

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

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

January 26, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

1/27/83
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 28, 1983
DATE

Ronald L. Parker/sc
OFFICE OF ADMINISTRATIVE LAW

bm

35.

EVIDENCE LIST

Joint Exhibits:

J-1 Certificate of Conviction, dated May 18, 1982

J-2 Indictment In the Matter of the People of the State of New York v. Saverio Joseph Valenti

On Behalf of Petitioner:

P-1 Letter of November 8, 1982, from Daniel S. Dwyer

P-2 Letter of November 15, 1982, from Charles F. Maloney, Employment Interviewer, Department of Labor, State of New York

P-3 Letter of November 3, 1982, from Joan A. McLaren to New Jersey Gaming Commission

P-4 Letter from Michael L. Lawler, President, Mike's Auto Parts, Inc.

P-5 Letter from Paul T. Bayne to New Jersey Gaming Commission, dated November 21, 1982

P-6 Handwritten letter from Joan A. McLaren

P-7 Letter of November 4, 1975, to Judge Clyne of the New York Supreme Court

P-8 Letter of November 4, 1975, from Reverend David R. Testa to Judge Clyne

P-9 Letter from Dean P. Taylor, dated November 3, 1975, to Judge Clyne

P-10 Letter of November 3, 1975, from Donald J. Anthony, PhD, to Judge Clyne

P-11 Letter from Lawrence J. Bizzarro, Esq., to Judge Clyne

36.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 82-EA-91 AND 82-73 (CONSOLIDATED)
OAL DOCKET NOS. CCC 6149-82 AND 7697-82 (CONSOLIDATED)
APP. NO. 23422-22
REG. NO. 11888-40

IN THE MATTER OF THE APPLICATION OF RICHARD W. BERG FOR LICENSURE AS A CASINO EMPLOYEE

AND

DIVISION OF GAMING ENFORCEMENT DEPT. OF LAW AND PUBLIC SAFETY,
COMPLAINANT
V.
RICHARD W. BERG,
RESPONDENT.

FINAL ORDER

These matters having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 20, 1982, recommending that the application of Richard W. Berg for a casino employee license be granted and the Complaint of the Division of Gaming Enforcement seeking revocation of Richard W. Berg's casino hotel employee registration be dismissed; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on January 17, 1983, to which Mr. Berg responded on January 25, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 1, 1983, to affirm and adopt the said Initial Decision and to grant the application of Richard W.

Berg for a casino employee license and to dismiss the Complaint,

IT IS on this 3rd day of February 1983 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the application of Richard W. Berg for a casino employee license be and hereby is granted; and

IT IS FURTHER ORDERED that the Complaint of the Division of Gaming Enforcement seeking revocation of Richard W. Berg's casino hotel employee registratation be and hereby is dismissed; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: February 3, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 6149-82 and
CCC 7697-82
(CONSOLIDATED)

AGENCY DKT. NOS. 82-EA-91 and
82-73
(CONSOLIDATED)

IN THE MATTER OF THE APPLICATION OF RICHARD W. BERG FOR LICENSURE AS A CASINO EMPLOYEE (SECRETARIAL)

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

v.

RICHARD W. BERG,
Respondent.

APPEARANCES:

Richard W. Berg, Pro Se

Lee D. Gottesman, Deputy Attorney General, for the petitioner/respondent, Division of Gaming Enforcement, Department of Law and Public Safety (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed November 4, 1982 Decided

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

New Jersey Is An Equal Opportunity Employer

STATEMENT OF THE CASE

This proceeding involves two matters. First, is the application of Richard W. Berg, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (secretarial), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had been convicted of a statutory disqualifier and lacked the requisite good character, honesty and integrity required for licensure. Second, is the complaint of the Division against Mr. Berg which alleged that he had committed a violation of N.J.S.A. 2C:17-1b(2), arson, a crime of the third degree, for which the Division sought revocation of the respondent's casino hotel employee registration, under Section 129 of the Casino Control Act (Act). Mr. Berg opposed this action.

PROCEDURAL HISTORY

Mr. Berg filed his Personal History Disclosure Form-2 (PHDF-2) with the Commission on November 14, 1980. The Commission advised the applicant that, based upon information received in a report from the Division, dated May 4, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter, dated June 3, 1982, the applicant requested a hearing. On June 14, 1982, the Commission transmitted the matter to the Office Of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The Division filed its complaint with the Commission on July 22, 1982. By letter, dated August 3, 1982, Mr. Berg requested a hearing. On August 5, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, and recommended consolidation with the matter concerning Mr. Berg's application for licensure. On August 6, 1982, the Commission denied the Division's application for a suspension of Mr. Berg's casino hotel employee registration pending the outcome of the proceedings.

A prehearing conference was held on August 24, 1982, and the consolidated matters were scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Berg is 44 years of age (J-1 and J-2). He has lived in New Jersey since April 1965, and at his present address in Tuckerton since June 1973, with his wife and three children. The applicant obtained a graduate equivalent degree while in the United States Army.

The applicant served in the United States Army from April 3, 1960 to October 1, 1960. He earned an honorable discharge.

From November 1971 until May 1976, the applicant was employed as a sales representative for several coffee distributors.

From May 1976 to November 1979, the applicant, together with his wife, was the owner and manager of the Village Coffee Shoppe and Robby's Pancake House (Robby's). The applicant moved his business from the Village Coffee Shoppe to Robby's during the summer of 1978. Both establishments were located in the same shopping center.

On November 18, 1979, the applicant was involved in an incident at Robby's, which is the basis of the Division's objection. The applicant started a fire in the premises, which caused substantial damage to Robby's and some minimal damage to adjoining stores (R-4, R-5 and R-6). The reasons underlying the applicant's conduct are in dispute and will be discussed in greater detail, infra. On November 19, 1979, Mr. Berg confessed his responsibility for the fire to the police, whereupon he was then arrested (R-7 and R-10). The applicant then gave a voluntary statement to the police authorities (R-8).

On November 20, 1979, the applicant was charged with a violation of N.J.S.A. 2C:17-1b(3), arson. It was charged that the fire had been started for the purpose of collecting insurance proceeds for the damaged property. The charge was amended to a violation of N.J.S.A. 2C:17-1b(2), arson; which alleged that the applicant started the fire and recklessly placed the building in which Robby's was located in danger of damage or destruction. The amendment was made because there was no evidence that the applicant

intended to defraud an insurance company. On December 15, 1980, the applicant pled guilty to the amended charge. On February 13, 1981, the applicant was sentenced to a four-year suspended sentence in state prison, three years probation with a condition that he serve five months in the Ocean County Jail, a $1500 fine, to be paid at the rate of $50 per month following release, and the applicant was permitted to apply for work release (R-11).

From January to May 1980, the applicant was employed as a short order cook at Quinn's Inn.

From September 1980 to February 1981, the applicant was employed by Bally's Park Place Casino and Hotel as a chauffeur. This employment was terminated due to the pending charges.

On February 13, 1982, the applicant was incarcerated. He applied for and was accepted into the work release program. He was employed by Perkins Pancake House in Toms River, and was responsible for the salad bar. The applicant was released from jail at 7:00 a.m. and returned at 8:00 p.m., after he had dinner with his family.

On June 4, 1981, after he served 111 days in jail, the applicant was released. The applicant then commenced supervised probation, which he is still serving. The applicant has made timely payments of his fine (P-1). The applicant has satisfied all of the requirements of his probation to date.

Upon his release, Perkins Pancake House offered Mr. Berg a job, which he declined because of the low pay. However, the applicant immediately became employed by Atlantic Limousine as a chauffeur, where he remained for six months. The applicant was a VIP and executive chauffeur. At that time, Atlantic Limousine had a contract with the Boardwalk Regency Casino and Hotel and provided backup services for the Golden Nugget Casino and Hotel and Harrah's Marina Casino and Hotel.

From November 1981 to May 1982, the applicant was employed by Limo-1 as a VIP and executive chauffeur. The applicant sought this position, because it offered better pay. Limo-1 did a substantial amount of work for the Golden Nugget.

At the time the applicant was employed by Limo-1, he was also employed on a part-time basis by Adjusters Auto Rental. This company provided insurance rentals. The applicant was a delivery agent, which consisted of delivering and picking up automobiles to or from customers.

During the Spring of 1982, Roger K. Barnhart, Superintendent of Services for the Hotel Division of the Golden Nugget, sought out Mr. Berg for employment. Mr. Barnhart solicited the applicant for employment because of favorable comments and recommendations from Golden Nugget customers who had been serviced by the applicant while he was employed by Limo-1. On May 14, 1982, the applicant was hired as a Senior Chauffeur and at the highest rate of pay possible. The applicant helped start the Golden Nugget's limousine department. In August 1982, the applicant received a 90-day evaluation. He was very highly rated and received most favorable comments (P-3). Subsequently, Mr. Barnhart offered the applicant a promotion to the position of Limousine Supervisor. The Limousine Supervisor has responsibility for 30 persons. However, Mr. Berg replied that he was unable to accept the position because of his difficulties with his application for licensure.

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

(B) DISPUTED FACTS

In dispute were the reasons underlying the applicant's conduct on November 18, 1979 and his good character, honesty and integrity.

The applicant testified to the circumstances which led up to the incident. During mid-1978 and while he managed the Village Coffee Shoppe, the owner of the shopping center approached the applicant and offered him another store location within the center. The applicant determined that the prospective location was more advantageous and decided to open Robby's. In order to renovate the new location, the applicant and his wife took a second mortgage in excess of $10,000 on their home. However, soon after the applicant opened Robby's, the landlord's son opened up a coffee shop within the same shopping center, and began a price war. In addition, the new location had a leaky roof, air conditioning problems and a noxious smell from the adjacent

cleaning establishment. The applicant confronted the landlord regarding these problems without success, which confrontations frequently were hostile. One of the gas shortages occurred during this period. These circumstances all contributed to create an unfavorable financial condition for the applicant's business, which was losing money.

Also at this time, the applicant's middle son developed severe "tic spasms," which required psychological assistance (P-4). These treatments were expensive. The applicant stated that his son's problems had a substantial impact upon his emotional stability.

During this period, the applicant also suffered personal physical ailments. On two occasions he was taken to a hospital with what were thought to be heart attacks.

The applicant had attempted to sell his business. On one occasion he was offered a purchase price of between $50-60,000. However, the agreement was never consumated. Subsequently, a partner of the applicant's landlord offered $18,000 to purchase the business. However, the applicant demanded $25,000, and no agreement was reached.

The applicant summed up this period in his life as one of great turmoil and stress. He suffered substantially from all of the various pressures brought to bear upon him.

The applicant described the incident of November 18, 1979. During the early afternoon on a Sunday, the applicant decided to close Robby's early because business was slow. While he cleaned up, he thought about the various problems he faced. Before he left Robby's, he lit a cigarette and placed it on some garbage in a rear storage area (R-8). The applicant then left the premises. The fire caused substantial damage to the premises and some minor damage to adjacent stores. The subject premises was reopened by different proprietors on April 1, 1981.

The applicant testified that he did not start the fire for purposes of obtaining insurance monies. Although he was first charged with such an offense, the amendment to the charges reflected the absence of any proofs of such a purpose.

Although the applicant acknowledged the substantial pressures with which he was burdened at the time he started the fire, he did not seek to excuse his conduct because of those pressures. He accepted fully the responsibility for his actions. However, the applicant believed that the pressures may have contributed to his conduct, which he characterized as irrational and aberrant behavior.

The applicant's wife had no knowledge of his conduct until he informed her after his admission to the police.

While the applicant was employed by Limo-1, he was often requested as a driver by customers and complimentary remarks regarding his conduct were made to representatives of the Golden Nugget. This very favorable feedback led Mr. Barnhart to solicit the applicant for employment.

The applicant also described circumstances which existed while he was employed by Adjusters Auto Rental. He observed the office manager commit certain improprieties in regard to financial recordkeeping. Although the applicant feared that he would lose his job, he reported his observations to the company's superiors. The applicant stated that he felt it was his obligation to do so, because to overlook the situation would likely have an adverse effect upon his efforts to rehabilitate himself. The applicant's actions led to the firing of the cited employee.

The applicant called four witnesses to testify on his behalf. First, Roger K. Barnhart has been employed by the Golden Nugget for four years, the past two years as Superintendent of Services for the Hotel Division. Mr. Barnhart supervises six departments. The witness corroborated the circumstances which led to the hiring of Mr. Berg. Mr. Barnhart described the applicant as a hard worker and one who has very effective communicative skills with the general public. Mr. Barnhart further stated that the applicant's performance led to the offer of a promotion to the position of Limousine Supervisor. The witness further indicated that there was no derogatory information in the applicant's file.

Marilyn Graham, the applicant's second witness, has known the applicant for the past nine years. Their families are very close. Ms. Graham corroborated the applicant's testimony concerning the business, landlord and personal pressures

with which he was burdened during the period leading up to the incident of November 18, 1979. The witness further described the applicant's conduct since the incident. After his release from jail, the applicant has always maintained one or two jobs, has made a substantial effort to work with school officials for the well-being of his children and has made a very sincere effort to take care of his family. Ms. Graham stated that the applicant has met all of his societal obligations without fail. The witness held the opinion that despite the applicant's conduct on November 18, 1979, he is a fine person.

The applicant's third witness, Michael J. Gannon, a neighbor of the applicant, has also known him for the past nine years. The witness took a day off from work to testify on behalf of Mr. Berg. Mr. Gannon and the applicant have been casually acquainted over the years. Mr. Gannon was of the opinion that the applicant was involved with one problem in his life, which he acknowledged as very serious. The witness corroborated the pressures with which the applicant was faced during the time preceding the incident. Mr. Gannon was of the opinion that the applicant has paid his dues and has made a very substantial effort to pull himself together following the incident. The witness was also of the opinion that the applicant is a hard worker, meets his obligations and is trying to do a good job. The witness stated that the applicant had made substantial accomplishments in a short period of time despite extremely difficult circumstances.

The applicant's fourth witness was Phyllis Berg, his wife. Mrs. Berg corroborated the circumstances and pressures upon the applicant prior to November 18, 1979. Mrs. Berg also acknowledged that the pressures upon her and her husband had additionally created a great deal of stress upon their marital relationship. The witness further testified that the applicant, in addition to participating in the work release program, had been employed steadily since the time of his release, and had even worked two jobs on occasion. She stated that he had made every effort to meet all of his obligations. Mrs. Berg testified that the applicant has made a very strong effort to create a positive atmosphere in the home. Although their middle son still suffers from some nervous problems, his condition has improved.

Mr. Berg also offered several letters in support of his application. Michael Carpenter, the applicant's probation officer, stated that the applicant has taken his probation responsibilities very seriously and has satisfied them in every respect (P-1).

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Further, the applicant has also met all of his personal obligations and continued to improve his employment situation. Mr. Carpenter was of the opinion that the applicant's conduct has been positive and supported his application.

Martin Corbo, of the Work Release Unit of the Ocean County Sheriff's Department, stated that Mr. Berg was a cooperative prisoner and that his work release employer was satisfied with his job performance (P-2).

Edward J. Helis, the owner and operator of Perkins Cake and Steak in Toms River, stated that the applicant performed his work responsibilities in a most satisfactory manner (P-5). Further, Mr. Helis favorably commented upon the efforts of the applicant to overcome the negative effects of his conduct on November 18, 1979.

Stephen R. Bolson, Vice President for Legal and Corporate Affairs for the Tropicana, stated that he knew the applicant while they were both employed at Bally's Park Place Casino and Hotel (P-7). Mr. Bolson observed the applicant to be "a hard-working, honest and sincere employee." Mr. Bolson recommended the applicant for licensure.

David B. Briller, an attorney-at-law of the State of Ohio and counsel for Adjusters Auto Rental, also supported Mr. Berg's application for licensure (P-8 and P-9). Mr. Briller described an incident in which Mr. Berg was of great assistance (P-8). Mr. Briller also stated that he found the applicant to be "fair and honest in dealing with his co-workers as well as with the company's clients." Mr. Briller was of the opinion that the applicant was a hard-working person whose integrity was above reproach (P-9).

Peter L. Corelli, President of Limo-1, Inc., stated that he found Mr. Berg to be trustworthy, honest, dependable, reasonable and well-liked by his co-workers (P-10 and P-11). Mr. Corelli formed this opinion based upon requests received from customers for Mr. Berg and from his own personal observations.

Marc D. Brown, Vice President and Assistant Division Manager, Eastern Operations, Adjusters Auto Rental, Inc., stated the following: "Mr. Berg did dispatch his duties in a most commendable fashion and, on his own initiative, made marketing calls to

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promote the company's services. From my personal observations, Mr. Berg has that unique ability to deal with the general public on a one-to-one basis while maintaining our operational goals and procedures." (P-12).

Florence Coleman, employed by Bally's Park Place Casino and Hotel, stated that she found the applicant to be professional, polite and trustworthy and to perform his duties in an outstanding manner (P-13, P-14 and P-15). Ms. Coleman held the opinion that the applicant was a person of good character and integrity.

Last, James M. Quinn, Jr., President and Manager of Quinn's Inn, stated that the applicant was an excellent employee, and held the opinion that the appplicant was an honest, dependable and reliable person (P-16).

Although the foregoing discussion concerns disputed facts, they were not refuted in any respect by the Division. In essence, the persuasiveness of the applicant's testimony is dependent solely upon his credibility. Initially, Mr. Berg's position in this matter must be recognized. He is the applicant for licensure as well as the respondent in the action seeking to revoke his registration and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was obvious both during the hearing and during my review of the record, and from my observations of the applicant's demeanor, the witnesses who corroborated his testimony on all critical points and my examination of documentary evidence, that the applicant testified truthfully. The applicant's testimony was candid, consistent, believable, sincere and most persuasive. The testimony which the applicant gave was extremely embarrassing to him; nevertheless, he addressed each issue and responded fully and completely to each and every question asked. His testimony was plausible in every respect. Further, his testimony comported fully with human experience, was inherently consistent and was corroborated either by witnesses or by documentary evidence. In the final analysis, I am persuaded to accept his testimony in all respects.

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

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DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-129(1)

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

Section 86c(2) of the Act mandates that a person who has been convicted of any offense, which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Mr. Berg pled guilty to a violation of N.J.S.A. 2C:171b(2), which is an enumerated disqualifying offense.

I **CONCLUDE** that Mr. Berg's conviction for a violation of N.J.S.A. 2C:17-1b(2) mandates that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(1). I further **CONCLUDE** that Mr. Berg's conviction subjects his casino hotel employee registration to revocation, suspension or limitation, pursuant to Section 91b of the Act.

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

An applicant faced with the existence of a section 86 disqualifer has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

First, Mr. Berg has applied for licensure to be employed as a chauffeur, which includes the possibility of employment in a supervisory capacity with responsibility over other licensed personnel. He would not have any responsibilities for actual gaming activities. However, the applicant would have substantial contact with patrons of the casino and casino key employees.

Second, the applicant was convicted of a violation of N.J.S.A. 2C:17-1b(2), which provides:

> A person is guilty of arson, a crime of the third degree, if he purposely starts a fire or causes an explosion, whether on his own property or another's:
>
> . . . .
>
> (2) Thereby recklessly placing a building or structure of another in danger of damage or destruction;

Mr. Berg's actions on November 18, 1979, constitute a violation of this statute. His acts were intended to damage his landlord's property; however, he did not intend to place another person in danger or to collect insurance monies. Nevertheless, his offense was very serious.

Third, Mr. Berg's actions were not planned or premeditated. Although the applicant has accepted full responsibility for his misconduct, it is clear that a period of substantial pressure preceded his actions. His son suffered from an extreme nervous condition which greatly disturbed the applicant. The landlord would not make repairs to the premises; which conditions created an unpleasant environment in the restaurant and, in part, contributed to an unprofitable operation. Also, the applicant and his wife were encountering marital difficulties. All of these factors contributed to the applicant's state of mind.

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Fourth, the applicant committed the crime on November 18, 1979, three years ago.

Fifth, at the time of his offense, the applicant was 41 years of age. His conduct was not the result of immaturity.

Sixth, the applicant's misconduct only occurred once. There was no other indication of wrongdoing of any kind.

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

Eighth, it is evident that the applicant has made substantial rehabilitative efforts. The day following the offense, he confessed his responsibility to the police. He also made an immediate expression of remorse and recognized the detrimental effect his conduct would have upon his family and himself. This sincere and deep expression of remorse continues to this day. The applicant fully acknowledges his wrongdoing and does not attempt to excuse it by relying upon the existence of external pressures. Mr. Berg pled guilty and served his time. He was admitted into and successfully participated in a work release program. The applicant is satisfactorily completing his probationary period. The applicant has also established a very positive employment record since his release. He immediately obtained employment and has steadily been employed, sometimes working two jobs. He has also sought to better his employment position. It is clear that the applicant has made a substantial effort to create a new career for himself. Further, the applicant has earned the respect of each of his employers and supervisors through his performance and by means of favorable comments from patrons he has serviced. Most impressive is the fact that Mr. Barnhart solicited the applicant for employment with the Golden Nugget and within six months thereof offered him a significant promotional opportunity. The applicant, recognizing his licensing difficulties, appropriately declined the promotion. Another indication of the applicant's rehabilitation was the situation he discovered during his employment with Adjusters Auto Rental. In the face of the very real prospect of losing his job, which he needed, the applicant reported a supervisor's misconduct. He took this action because he recognized that he could not tolerate unlawful activity.

A most significant demonstration of the applicant's efforts to rehabilitate himself is his reestablishment of his place in his family. He has worked very hard to keep his family together and has reestablished a positive relationship with his wife and children. The applicant has also made every possible effort to help his son, who suffers from a nervous disorder.

Further, the applicant has successfully regained the respect of neighbors and friends. This represents a very substantial achievement.

Also, and most significant, is the applicant's recognition of the need to regain his self-esteem. The applicant has achieved this goal without blocking his wrongdoing from his memory. This is unusual.

Given the nature of the offense, its recent date and the fact that his probationary period is not yet complete, the applicant faced very little likelihood, if any, of being able to establish his rehabilitation. Nevertheless, Mr. Berg is a most impressive individual. He fully acknowledged and accepted responsibility for his offense, which caused him total humiliation. Unlike most people, the applicant did not give up. The applicant appears to be very motivated and dedicated in his efforts to regain his place with his family, his career and the respect of his community. The applicant is a remarkable example for others who have an unfavorable past record. The applicant has established that his misconduct was an aberration in his life and that it is unlikely ever to recur. The applicant has performed with excellence in his new career, for which he appears to be well-suited.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-130

Under section 89b(2) of the Act, Mr. Berg was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979) at 8. In Resorts the Commission held that an

52.

unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 190 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corp. and the Jemm Co. for Casino Licenses, Casino Control Commission (November 18, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conviction for the crime of arson.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder

c. Any justification or excuse for such conduct by the licensee;

d. The prior history of the particular licensee involved with respect to gaming activity;

e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring;

The applicant has affirmatively demonstrated, against all odds, his complete rehabilitation. Mr. Berg is a person who has truly "paid his dues." There is virtually no likelihood of the applicant committing any unlawful acts in the future. The applicant presents no risk to the public and the integrity of gaming operations. The applicant has earned the privilege of licensure and of retaining his casino hotel employee registration.

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An examination of the "whole man" clearly and convincingly establishes that Mr. Berg is a person of good character, honesty and integrity and is entirely suitable for licensure in this State. Boardwalk Regency Corporation, Casino Control Commission, supra at 51, 52.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2) of the Act. I further **CONCLUDE** that Mr. Berg has overcome the possibility of revocation of his casino hotel employee registration by the affirmative demonstration of his rehabilitation, pursuant to section 91d of the Act.

ORDER OF DISPOTION

It is **ORDERED** that the petition of the Division to revoke the casino hotel employee registration of Richard W. Berg be **DENIED.** It is further **ORDERED** that the application of Richard W. Berg for licensure as a casino employee be **GRANTED.**

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

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

December 20, 1982
DATE

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

Receipt Acknowledged:

December 20, 1982
DATE

Nancy E. Lubik
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

12-27-82
DATE

OFFICE OF ADMINISTRATIVE LAW

ij
54.

LIST OF EXHIBITS

Exhibits Admitted Into Evidence:

J-1 Personal History Disclosure Form - 4, Richard W. Berg, October 15, 1979 (10 pages)

J-2 Personal History Disclosure Form - 2, Richard W. Berg, September 16, 1980 (30 pages)

P-1 Letter from Michael Carpenter, Probation Officer, August 18, 1982 (2 pages)

P-2 Letter from Martin Corbo, August 23, 1982

P-3 Golden Nugget-Performance Evaluation, Richard Berg, August 24, 1982

P-4 Psychiatric note by Nathaniel N. Boonin, M.D., November 20, 1979

P-5 Letter from Edward J. Helis, August 21, 1982

P-7 Letter from Steven R. Bolson, August 19, 1982

P-8 Letter to Adjusters Auto Rental from David D. Briller, April 20, 1982

P-9 Letter from David D. Briller, August 19, 1982

P-10 Letter from Peter L. Corelli, May 4, 1982

P-11 Letter from Peter L. Corelli, August 9, 1982

P-12 Letter from Marc D. Brown, June 2, 1982

P-13 Letter from Florence Coleman, August 20, 1982

P-14 Letter from Florence Coleman, October 30, 1980

P-15 Memorandum to Richard Berg from Florence Coleman, October 30, 1980

P-16 Letter from James M. Quinn, Jr., May 5, 1980

R-1 State of New Jersey, Division of State Police - Criminal History Summary Record, Teletype Report, Richard William Berg, November 25, 1980

R-2 State of New Jersey, Division of State Police, State Bureau of Identification - Request for Criminal History Record Information, Richard William Berg, January 16, 1981

R-3 United States Department of Justice, Federal Bureau of Investigation, Record No. 690 040 V9, Richard William Berg, March 7, 1981

R-4 Little Egg Harbor Township Police Department - Investigation Report, Patrolman Richard Hughes, November 19, 1979

R-5 Little Egg Harbor Police Department - Investigation Report, Patrolman Richard Hughes, November 19, 1979

R-6 Little Egg Harbor Police Department - Investigation Report, Detective Ken Haines

R-7 Little Egg Harbor Township Police Department - Supplementary Investigation Report, Captain George Widmann, November 19, 1979 (5 pages)

R-8 Little Egg Harbor Township Police Department - Transcript of Interview of Richard Berg, November 19, 1979 (3 pages)

R-9 State of New Jersey v. Richard Berg, Complaint, November 20, 1979

R-10 Little Egg Harbor Township Police Department - Arrest Report, Richard William Berg, November 21, 1979

R-11 State of New Jersey v. Richard W. Berg, Indictment No. 367-79, Certified Copy of Judgment of Conviction, February 17, 1981 (3 pages)

Exhibit Striken from the Record:

P-6 Letter from Roger K. Barnhart, August 20, 1982

56.

WITNESS LIST

FOR RICHARD W. BERG:

Roger K. Barnhart
Phyllis Berg
Richard W. Berg
Michael J. Gannon
Marilyn Graham

FOR THE DIVISION:

Anthony Kowal

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 7452-82
(CCC 6325-81 ON REMAND)
CCC DOCKET NO. 81-32

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

Complainant,

v.

BOARDWALK REGENCY CORPORATION,

Respondent

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed on October 25, 1982, recommending that the Respondent be found in violation of various sections of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and that specific civil penalties be assessed against the Respondent pursuant to N.J.S.A. 5:12-129; and both the Respondent and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on November 18, 1982, and November 19, 1982, respectively; and the Commission having carefully considered the entire record of the proceedings and the legal arguments of the parties; and the Commission having resolved at its public meeting of January 4, 1983, to modify certain rulings by the Administrative Law Judge Steven L. Lefelt and to order sanctions, as set forth herein,

IT IS on this 12th ~~day~~ of January 1983, ORDERED that the Initial Decisions of the Office of Administrative Law in this matter be and hereby are affirmed, except as modified herein; and

IT IS FURTHER ORDERED that the portion of the Initial Decision dismissing Count II, paragraph 7 (casino employee acting as curator of the shoe) be and hereby is rejected; and

IT IS FURTHER ORDERED that the Respondent be and hereby is found to have violated N.J.A.C. 19:48-3.6 for permitting a licensed, employed casino employee directly involved in the conduct of gaming to act as curator of the shoe; and

IT IS FURTHER ORDERED that the portion of the Initial Decision setting forth the legal analysis of the violations in Count I be and hereby is modified in accordance with the Commission's Final Decision in this matter which is incorporated herein; and

IT IS FURTHER ORDERED that, for the reasons set forth in the Commission's Final Decision, the Respondent be and hereby is fined an additional $79,500 in civil penalties for violations outlined in

Count I, paragraph 9
Count I, paragraphs 17-18
Count II, paragraph 5
Count II, paragraph 9
Count III, paragraphs 6-8.

For Count II, paragraph 7, the Commission's Final Decision shall constitute an appropriate Letter of Remand; and

IT IS FURTHER ORDERED that the Respondent pay a total fine in the amount of $257,000, which fine is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 12, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NOS. CCC-7452-82;
CCC-6325-81
CCC DOCKET NO. 81-32

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

Charging Party

v.

BOARDWALK REGENCY CORPORATION,

Respondent.

FINAL

DECISION

APPEARANCES: Robert E. Reilert, Esq., for Respondent

Charles A. Matison, Esq., for Respondent
(Cooper, Perskie, Katzman, April, Niedelman
& Wagenheim)

Brian J. Molloy, Esq., for Respondent
(Wilentz, Goldman & Spitzer).

Howard M. Barman, Deputy Attorney General and
Kevin F. O'Toole, Deputy Attorney General,
for Division of Gaming Enforcement.

Robert J. Genatt, General Counsel,
Dennis Daly, Senior Assistant Counsel,
Timothy O'Neill, Assistant Counsel and
Nancy Q. Shickler, Assistant Counsel,
for the New Jersey Casino Control Commisson

PROCEDURAL HISTORY

The Division of Gaming Enforcement (DGE) filed with the Commission a complaint against Respondent Boardwalk Regency Corporation (BRC) on June 10, 1981. That complaint

alleges various violations of the Casino Control Act, Commission regulations and BRC's Certificate of Operation on the weekend of May 15-18, 1981, in connection with the activities of a visiting patron named Gaetano Caltagirone. BRC filed a Notice of Defense and a request for a hearing on July 8, 1981. Two prehearing conferences were held before then Acting Chairman Don M. Thomas. Thereafter, on September 21, 1981, the Commission transmitted the matter to the Office of Administrative Law (OAL) for the conduct of a hearing.

The first Initial Decision was filed with the Commission on June 10, 1982. In that decision, Administrative Law Judge (ALJ) Steven L. Lefelt dismissed portions of the DGE's Complaint, found BRC in violation of sections of the Casino Control Act and Commission regulations, ordered letters of reprimand and assessed fines totalling $137,500 against BRC. By Order of Remand dated August 2, 1982, the Commission rejected certain conclusions of law made by ALJ Lefelt, made specific interpretations of the Act and Commission regulations and remanded portions of the case to the OAL for future proceedings consistent with the Commission's determinations.

Judge Lefelt filed a second Initial Decision with the Commission on October 25, 1982, in which he recommended an additional $40,000 fine and a letter of reprimand as sanctions for additional violations found. In addition, the ALJ dismissed several paragraphs of the complaint.

The purpose of this Decision is to set forth the Commission's modifications to the two Initial Decisions. Those modifications consist basically of (1) a rejection of the ALJ's legal analysis of the violations concerning the removal and redemption of the counter checks and the improper processing of the non-conforming checks accepted by BRC; (2) rejection of the ALJ's dismissal of the violation regarding a casino employee acting as curator of the shoe in baccarat; and (3) modification of some of the assessed fines.

FACTS

The Commission, after reviewing all the testimony and documents in evidence, adopts the ALJ's findings of fact in this case. Nevertheless, for purposes of clarity and completeness, we will briefly outline the events of May 15-18, 1981, which gave rise to the subject complaint.

On May 15, 1981, Gaetano Caltagirone arrived at Caesars' Boardwalk Regency Hotel and Casino for a long weekend of gambling at baccarat and roulette. Mr. Caltagirone was known by BRC officials to be a "high roller" and a credit line of $1.5 million was established for him. Mr. Caltagirone only spoke Italian and Alessandro Fornasiero, a BRC pit boss licensed in roulette and blackjack, was assigned to act as interpreter. At the end of his four-day stay, Mr. Caltagirone had lost $1.2 million.

On the evening of May 15, 1981, Mr. Caltagirone was observed by Inspector Myrna Rivera and Senior Inspector Lori Reed walking through the pit and placing roulette bets from a position next to the dealer inside the pit. Security personnel within the pit were advised of Caltagirone's activities, and they took no action.

On May 17, 1981, Mr. Caltagirone's gaming at roulette was observed by Inspector Sally Scimenes. Inspector Scimenes was asked to move away by a BRC security person who also attempted to block her view of the gaming activity. During Inspector Scimenes' observations, Anthony Leone, BRC games manager, approached the Commission booth and told Senior Inspector Gloria Ford, the supervisor for the Commission inspectors for that shift, to back Inspector Scimenes off Caltagirone's table. After discussions with Inspector Scimenes, Ford instructed Scimenes to return to the table and continue her observations. Upon returning to the table, Inspector Scimenes witnessed Cheryl Hood, the dealer of the roulette table, failing to call "no more bets." After a further discussion with Mr. Leone and Mr. Bernard Resnick, Acting Casino Manager, Ford requested that Mr. Caltagirone's play be placed on the monitor in the Commission booth and BRC surveillance complied without delay.

That same night, Senior Inspector Doris Rice Garlick observed that Alessandro Fornasiero, the pit boss serving as

translator for Mr. Caltagirone, was also acting as curator of the shoe in the game of baccarat.[1] She also observed that Fornasiero was not wearing his casino key employee license credential as required by N.J.A.C. 19:41-1.3(d).

On May 18, 1981, Senior Inspector Ford again requested BRC surveillance to place Mr. Caltagirone's roulette play on the Commission monitors. However, on this occasion the request was met with a demand for reasons and confirmation by Ms. Ford's supervisor. BRC complied with Ford's request only after Principle Inspector Plumb spoke with surveillance personnel. Thirteen minutes had elapsed between the inspector's request and BRC's compliance.

Finally, on May 18, 1981, Mr. Caltagirone called Mr. Fornasiero and stated that he wished to have his counter checks brought to his hotel room so that he could settle his gambling debts. The counter checks, amounting to $1.2 million, were removed from the cage and brought to Mr. Caltagirone's room by Larry W. Woolf, Vice President of Casino Operations, Charles Horton, Assistant to the Treasurer of the casino, Mr. Resnick and Mr. Fornasiero.

Mr. Caltagirone executed three personal checks, each in the amount of $400,000. All three were made out to Mr.

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1 The curator of the shoe is responsible for dealing the cards from the shoe in accordance with the rules of the game and on the instructions of the dealer calling the game. N.J.A.C. 19:47-3.6(c).

Caltagirone and unrestrictively endorsed; one was undated and two were postdated. The checks were then given to the BRC officials in order to consolidate and redeem his counter checks. After consultation, BRC officials agreed to take the checks and gave the counter checks to Mr. Caltagirone, who ripped them up. The BRC officials then returned to the cage with the three personal checks. None of the checks were initialled, time and date stamped or restrictively endorsed. The undated check was dated on the next day and cashed at Mr. Caltagirone's bank in Monte Carlo. The two postdated checks were redeemed several days later by an individual, claiming to be Mrs. Caltagirone, with $600,000 cash and a $200,000 cashier's check.

DETERMINATION OF CHECK VIOLATIONS

The ALJ determined for purpose of assessing a penalty that BRC's removal of the counter checks and acceptance in Mr. Caltagirone's hotel room of his three personal checks, each of which was improperly drawn and dated, constituted three offenses: the location of the transaction, the acceptance of improperly dated checks and the acceptance of checks not made payable to the casino licensee. For each violation, Judge Lefelt assessed a $35,000 fine, for a total of $105,000. The DGE and BRC have both excepted to this finding by the ALJ. The DGE contends that merger of the acceptance of three checks into one transaction is improper under N.J.S.A. 5:12-101(b).

Rather, it argues that nine violations resulted from BRC's actions. BRC, on the other hand, contends that only a single violation occurred, namely, a $1.2 million consolidation in which BRC accepted non-conforming checks.

The Commission has examined the facts and applicable law and has reached a result different from any of the above. Our analysis leads us to conclude that there are two distinct problem areas, namely: (1) the acceptance of checks which were not prepared in accordance with N.J.S.A. 5:12-101 and pertinent Commission regulations; and (2) the removal of the counter checks from the cashier's cage. We shall address these problem areas following a general discussion of the legal principles involved.

1. Acceptance of checks

Judge Lefelt identified the correct test to determine the merger of violations issue, but, in our opinion, misapplied it. The hearing officer, in evaluating the acts alleged, should look to "whether the legislative intent is to punish individual acts separately or to punish only the course of conduct which they constitute." State v. Wright, 154 N.J. Super. 174, 178 (App. Div. 1977). Judge Lefelt looked to the civil penalties section of the Casino Control Act (N.J.S.A. 5:12-129 and -130), determined that these sections "demonstrate an intense concern over the 'conduct' of casino licensees..." and concluded that there were three violations. In the

ALJ's view, the three violations arose not because there were three checks accepted but because, considering the three checks as one, three different regulatory mandates were disobeyed. We believe, however, that upon an analysis of N.J.S.A. 5:12-101 which gives the definition and scope of the offenses, the true legislative intent may be ascertained and the proper parsing of the violations may be achieved.

"Since it is the legislative branch that defines the unit of prosecution or 'offense' and ordaines its punishment, we must first determine whether the legislature has in fact undertaken to create separate offenses..." State v. Davis, 68 N.J. 69, 77-78 (1975). In State v. Davis, the New Jersey Supreme Court looked to the definitions of the offenses of possession and distribution of a controlled dangerous substance found in N.J.S.A. 24:21-20 and N.J.S.A. 24:21-19(a)(1) to determine if they merged into one offense or were separate and distinct crimes. In State v. Perlman, 169 N.J. Super. 190 (Law Div. 1979), the court looked to §§113 and 123 of the Casino Control Act (N.J.S.A. 5:12-113, -123) to determine whether four acts of swindling and cheating at blackjack in one day were

separate offenses or offenses of a continuous nature.[2]

"The appropriate unit of prosecution can best be ascertained by analysis of those provisions rendering defendant's alleged conduct criminal." State v. Perlman, supra., at 203. This complaint alleges civil violations of the credit and internal control sections of the Casino Control Act and pertinent Commission regulations. Therefore, it is appropriate to look to the provisions set forth in §101.

Subsection 101(b), appearing in the section entitled "Credit," sets forth the following restrictions:

> b. No casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with the casino licensee or other person licensed under this act, may accept a check, other than a recognized traveller's check or other cash equivalent, from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalent in exchange for such check unless:
>
> (1) The check is made payable to the casino licensee;
>
> (2) The check is dated, but not postdated;

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2 The court read N.J.S.A. 5:12-123(a) to apply only to continuing offenses, not all offenses under the Casino Control Act. The effect of §123(a) was not to merge separate, distinct violations committed on a single day into one offense but to divide an offense continuing over several days, such as unlawful possession of illegally manufactured devices or equipment under N.J.S.A. 5:12-116, into separate daily offenses. State v. Perlman, supra., at 203-204. The court concluded that swindling and cheating as defined in §113 was not an offense of a continuous nature. Ibid.

(3) The check is presented to the cashier or his representative and is exchanged only for a credit slip or slips which total an amount equal to the amount for which the check is drawn, which slip or slips may be presented for chips at a gaming table; and

(4) The regulations concerning check cashing procedures are observed by the casino licensee and its employees and agents...
[emphasis added]

With regard to a redemption or consolidation of gaming checks, subsection (c) of §101 states in pertinent part:

> ...[the drawer of the check] may issue one check which meets the requirement of subsection b. of this section in an amount sufficient to redeem two or more checks drawn to the order of the casino licensee.

In the context of a civil violation case, §101 should be read as a penal statute and its language strictly construed as a matter of due process. In Re Suspension of DeMarco, 83 N.J. 25, 36 (1980). As the Court in that case outlined the proper analysis:

> The question ultimately is one of fairness, given the statute and its provisions, and given the situation of the defendant. Should he have understood that his conduct was proscribed, should he have understood that the penalty about to be imposed was the sanction intended by the Legislature? The test is whether the statute gives a person of ordinary intelligence fair notice that his conduct is forbidden and punishable by certain penalties. The test, however, does not consist of a linguistic analysis conducted in a vacuum. It includes not simply the language of the provision itself, but related provisions as well, and especially the reality to which the provision is to be applied. [83 N.J. at 37].

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The DGE contends that the language of §101 speaks of individual instruments and not in general terms. It cites for support State v. Wright, supra., at 179. In State v. Wright, the court had to determine whether uttering four bad checks resulted in four separate and distinct offenses or one offense. The court looked to the difference in the language defining "forgery" as opposed to "uttering." The forgery statute spoke in terms of individual instruments whereas the uttering statute used more general terms. Ibid. The uttering was found to be a single course of conduct constituting one offense whereas forgery of four individual checks would constitute four separate crimes.

On the other hand, BRC agrees with Judge Lefelt's analysis that what was involved in this case was a single consolidation transaction. The fact that three checks were accepted instead of one does not magnify the conduct. BRC goes on to argue from its interpretation of §101(b) that more than one infirmity with the consolidation does not increase the number of violations. BRC's analysis is that the violation is the acceptance of a non-conforming check regardless of the number of reasons for the checks non-compliance, and therefore, only one violation should be found.

The clear legislative purpose of §101 and the regulations promulgated thereunder is the strict regulation and

control of an important part of licensed gambling activities, the extension of credit, in order to further public confidence and trust in those operations. See, Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598 (App. Div. 1981). This statute is unusually detailed in the procedure to be followed by a casino licensee, outlining the limitations on checks which may be accepted. The regulations promulgated under §101 are equally detailed in their requirements for the extension and control of credit. See, N.J.A.C. 19:45-1.25 to -1.30. Non-compliance with the conditions of §101 has resulted not only in the voiding of the checks received by the casinos but the rendering of the "underlying obligation" incurred by a patron unenforceable. Id. at 603.

The Commission reads subsections 101(b) and (c) to be principally concerned with assuring that a casino licensee only accepts properly drawn, dated and processed checks. "No casino licensee...may accept a check...unless...." the requirements listed in the subsection are met. N.J.S.A. 5:12-101(b). The casino licensee violates the statute when it accepts a non-conforming check. We agree with BRC's contention that the number of the check's infirmities are not pertinent in calculating the number of violations. However, those failings are relevant in determining the penalty to be assessed against the casino licensee for accepting the non-conforming

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check.[3]

The Commission also construes subsections 101(b), (c) and (d) to be concerned with each individual check accepted by the casino licensee. The statute speaks in terms of individual instruments, e.g., "the check" and "a check", as opposed to using general, descriptive terms. This construction, we note, is consistent with the court's interpretation of N.J.S.A. 5:12-101(f) in Resorts International Hotel, Inc. v. Solomone, supra., at 606-607.

Therefore, based upon the foregoing analysis, the Commission finds that the acceptance by BRC of three non-conforming checks constitutes three violations. While our analysis differs from that of Judge Lefelt, we nevertheless arrive at the same number of violations and believe that his

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3 N.J.S.A. 5:12-130 provides in pertinent part as follows:

> In considering appropriate sanctions in a particular case, the commission shall consider:
>
> a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
>
> b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;
>
> c. Any justification or excuse for such conduct by the licensee;
>
> d. The prior history of the particular licensee involved with respect to gaming activity;
>
> e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring; and
>
> f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee.

recommended assessment of $35,000 per violation is appropriate.

2. Removal of Counter Checks

The removal of counter checks from the cage area presents an entirely different problem from the acceptance of non-conforming checks. N.J.A.C. 19:45-1.25(f)(6)(i) [now 1.25(h)(6)(i)] provides:

> The original, redemption, and acknowledgement copies of the Counter Check shall be expeditiously transported to the cashiers' cage where the original and redemption copies shall be maintained and controlled by the Check Bank Cashier.

Francis X. Fee, Director of the Commission's Division of Financial Evaluation and Control, testified at the hearing that the removal of counter checks from the casino cage area is a serious violation. He stated that:

> Part of that regulation is for security reasons because you are in the casino cage in a secure area, securing a document that is obviously worth a great deal of money in some cases that can be converted into cash and is one of the three assets you are trying to protect in the casino....[17T7][4]

Mr. Fee also testified, in answer to a hypothetical question, that removal of counter checks at the direction of the Vice President of financial operations or his personal

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4. "17T" refers to the transcript of the hearing in this matter held on March 16, 1982.

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representative would still be a breach of Commission regulations that would endanger casino operations. (17T-14 to 17T-16).

ALJ Lefelt recognized the security risk in the improper removal of the counter checks from the cage. He found that in making the exchange in Mr. Caltagirone's room, "the casino placed the entire transaction in an unsecure area." (I.D. at 27-28).

The casino licensee is charged with the responsibility under N.J.A.C. 19:45-1.25, of maintenance and control over each counter check in the casino cashier's cage. The breach of security for each check was complete upon removal from the casino cage area. Caltagirone's destruction of the properly accepted and valid counter checks would have been less likely, if not impossible, under the carefully controlled conditions extant in the cage area. Thus, the removal of the counter checks was neither a necessary nor included act in the redemption violation. The separate objective served by the cage maintenance requirement was frustrated, quite apart from the improper redemption itself.

Accordingly, consistent with our construction of subsection 101(b), the improper removal of thirty seven counter checks by Mr. Resnick and Mr. Horton would constitute 37 separate violations. There is no evidence that these actions by BRC's management were anything other than purposeful and

deliberate. Therefore, we should impose a fine of $1,000 per check, or $37,000 for the improper removal of the 37 counter checks. Moreover, even if we were to view the removal of the 37 counter checks as a single violation, we would not alter the amount of the penalty assessed. We find the improper removal of counter checks to be an egregious breach of casino internal controls and security such that under the facts in this case a $37,000 fine is appropriate.

3. Processing of Checks

BRC's failure to restrictively endorse, to initial, and to date and time stamp each of the three personal checks received from Mr. Caltagirone would result, consistent with our analysis above, in nine violations. N.J.A.C. 19:45-1.25(d)(1)(i), (ii) and (iii) requires separate and distinct acts to be done by the casino licensee as part of the procedure in the cage after the acceptance of a check. The various subsections of the regulation are independent and the proofs on the violation of one subsection are not necessary ingredients or integral parts of the evidence on the violation of any other subsection. See, State v. Davis, supra., at 81.

The ALJ recommended that the appropriate penalty for these violations be a letter of reprimand kept in the Commission's permanent file on BRC. We view the violations as more serious than that. BRC's failure to follow N.J.A.C.

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19:45-1.25(1) could have endangered its collection of the checks. Moreover, this failure to follow the proper cage procedures occurred after the acceptance of Caltagirone's checks which BRC management knew to be deficient. Thus, their conduct here hardly appears inadvertent or innocent. We believe a more stringent sanction is in order. Accordingly we assess a fine of $1,000 for each violation for a total of $9,000 for improperly processing checks.

GAMES VIOLATIONS

1. Pit Boss As Curator of the Shoe

In Count II, paragraph 7 of the complaint, the DGE alleges that Mr. Fornasiero, a pit boss licensed in the games of roulette and blackjack, acted as curator of the shoe in the game of baccarat. In the first Initial Decision, Judge Lefelt dismissed this count, finding that neither the Casino Control Act nor Commission regulations preclude a licensee from "participating" in the game of baccarat as the curator. In his Order of Remand dated August 2, 1982, we rejected this conclusion of law. We construed the term "participant" as used in the rules of the game of baccarat, N.J.A.C. 19:47-3.1 et seq., to mean a wagering player. Further, the Order noted that a licensed, employed casino employee directly involved in the conduct of gaming is prohibited from wagering by N.J.S.A. 5:12-100(n).

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In the second Initial Decision, Judge Lefelt again found that neither Commission regulations nor the Casino Control Act precluded Mr. Fornasiero from dealing baccarat cards to accommodate a patron. He reasoned that "[t]echnically, Mr. Fornasiero was not curator, since he was not gambling." Judge Lefelt concluded that "if the Commission wishes pit bosses to perform only those functions for which they are licensed, a regulation must be promulgated" and dismissed the count.

The Commission rejects the ALJ's reasoning on this point. Commission regulations require that the dealer calling the game must offer the shoe to the participant at seat No. 1, and if he rejects it, "to each of the other participants in turn counterclockwise around the table until one of the participants accepts it." N.J.A.C. 19:47-3.6(b). The participant acting as curator deals the cards in accordance with the regulations and the instructions of the dealer calling the game. N.J.A.C. 19:47-3.6(c). After any round of play, a participant may continue as curator or pass the shoe, unless required to pass the shoe under the regulations. N.J.A.C. 19:47-3.11. As noted, we have interpreted the term "participant" to mean a wagering player.

It is reasonable to define a wagering player to be, at the very least, a player who is permitted to place bets. To participate as curator in this game, the player must be

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permitted to wager. Pursuant to §100(n) of the Casino Control Act, a licensed, employed casino employee directly involved in the conduct of gaming is prohibited from wagering.

Admittedly, the functions of the curator of the shoe involve no discretionary decisions and are purely mechanical in nature. The very fact that casino patrons are required to perform as curators under our regulations as opposed to licensed casino employees reflects the relative unimportance of that function from an internal control or security perspective. However, it is quite apparent from the record that the BRC employees involved were well aware that Mr. Fornasiero should not have been permitted to act as curator of the shoe. For example, in his deposition, Mr. Fornasiero testified that he removed his badge on instructions from the baccarat pit boss, John Groom, so that no one could see that "a floorperson or pit boss [was] dealing the shoe..." (P-1, at 45-47).

In light of the extensive regulation by the Commission over the conduct of the games, BRC's actions cannot be condoned. Therefore, we reverse the ALJ's finding on this issue and conclude instead that a violation of N.J.A.C. 19:47-3.6 did indeed occur. However, because the danger to casino integrity created by BRC's improper conduct was miminal, we believe that a letter of reprimand is an appropriate regulatory response to this impropriety.

2. Failure to Call "No More Bets"

ALJ Lefelt found that roulette dealer Cheryl Hood failed to call "no more bets" when dealing the game to Mr. Caltagirone on May 17, 1981. He further found the conduct to be intentional. His recommended sanction was a fine of $500.

Any failure to follow the rules of the game promulgated by this Commission is a serious matter. The purpose of this rule is to discourage the late posting of bets and to prevent any irregularities in the payout of winning wagers. The fact that this failure was found to be intentional adds to the gravamen of the violation.

In light of these considerations and the financial means of the licensee, the $500 fine recommended is, in our view, de minimis. Therefore, we assess a $1,000 fine as the suitable penalty for this violation.

3. Removal of license credentials

This violation took place when, at the instruction of the pit boss, Alesandro Fornasiero removed his license credential to act as curator of the shoe for Mr. Caltagirone. Casino key employees and casino employees are required to wear their license credential in a conspicuous manner "at all times while employed in the casino area." N.J.A.C. 19:41-1.3(d). ALJ Lefelt concluded that this purposeful and knowing violation of the regulation was "dangerous to the ability of the

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Commission to regulate the floor area" (I.D. at 30) and recommended a $2,000 fine.

We agree that such calculated actions endanger the strict controls essential in the regulation of casino gaming. What is particularly alarming is the fact that casino key employees, the top supervisory personnel on the casino floor, were the actors in this incident. After considering all the required statutory factors, we conclude that the $2,000 fine is insufficient. We assess a monetary penalty of $5,000 for this violation.

COOPERATION WITH THE COMMISSION

N.J.S.A. 5:12-80(d) provides that:

> All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division, to cooperate in...any inquiry, investigation, or hearing conducted by the commission. [Emphasis added].

The ALJ found that BRC had failed to provide assistance or information to Commission inspectors when it (1) delayed honoring Senior Inspector Ford's request for a table game to be placed on the monitor in the Commission's booth; and (2) attempted to move a Commission inspector and block her observation of the conduct of gaming.

The ALJ rejected BRC's argument that N.J.S.A. 5:12-80(d) is unconstitutionally vague and impermissably

restricts the licensee's freedom of speech. He found it unnecessary to resolve the Fifth Amendment and right to privacy objections. After an extensive analysis of the terms "inquiry," "investigation," "hearing," "assistance" and "information," the ALJ concluded that, on the facts in this case, a violation of §80(d) could only result from the dereliction of BRC's duty to provide the Commission with assistance and information, not under their duty to cooperate. He found that BRC is not limited to providing such assistance or information to high ranking Commission officials, but that requests from the Commission's inspectors are contemplated by the statute as well. See, N.J.S.A. 5:12-63(f). Further, he inferred from the duty to provide assistance a duty not to interfere with the Commission's functions.

We believe it is important to interpret §80(d) in the broadest possible fashion in order to maximize the casinos' obligation to cooperate with the Commission and Division. This is in furtherance of the declaration of policy of the Casino Control Act, which permits participation in this strictly controlled and regulated industry conditioned in large part:

> ...upon the discharge of the affirmative responsibility of each such licensee to provide to the regulatory and investigatory authorities established by this act any assistance or information necessary to assure that the policies declared by this act are achieved. [N.J.S.A. 5:12-1(b)(8)].

With Judge Lefelt's expansive reading of "assistance" and "information," his result in this case is one in which we can concur. Therefore, we affirm both his findings of fact and conclusions of law on this issue. We do, however, modify the sanction imposed for these violations.

The inspectors are the "eyes and ears" of the Commission on the casino floor. Section 63 requires the Commission "[t]o be present through its inspectors and agents at all times during the operation of any casino..." N.J.S.A. 5:12-63(f). Their function is integral to the statutory mandate of strict regulation and control over casino gaming. Interference with the performance of the inspectors' duties hinders and obstructs the functions of the Commission itself.

BRC's coercive actions are, in our opinion, deplorable and should be sanctioned accordingly. Judge Lefelt recommended a $20,000 fine for interference with Inspector Scimenes and a $10,000 fine for the delay in the monitor request. We increase the amount of these suggested sanctions to $40,000 and $20,000, respectively.

The justifications for such increases are the aggravating factors present in BRC's attempts to intimidate and interfere with Commission inspectors. Such direct interference with the Commission's functions impugns the integrity of the regulatory process and of casino operations. Moreover, BRC purposely and deliberately undertook these bullying tactics at the direction of high level supervisory personnel for the

expressed purpose of favoring a valued patron. The motive was simple greed. Only the absence of any similar transgression by BRC before or after this incident and the dearth of precedent in sanctioning such conduct incline us to limit our response to a monetary sanction against this corporate respondent. We choose to believe that such a sanction will be sufficient to underline the gravity of this conduct and to deter future miscreance. If we are wrong in this judgment, we will not hesitate to join our dissenting colleague in any future case involving any such impudence and disrespect to the regulatory scheme.

CONCLUSION

For the reasons set forth above, the Initial Decisions of the Office of Administrative Law in this matter are modified in accordance with this decision. We order an additional $79,500 in civil penalties for violations outlined in Count I, paragraph 9 (removal of counter checks from the cage), Count I, paragraphs 17-18 (failure to date, time stamp, initial and restrictively endorse checks), Count II, paragraph 5 (failing to call "no more bets"), Count II, paragraph 9 (removing the license credential), and Count III, paragraphs 6-8, (cooperation with the Commission). For Count II, paragraph 7 (casino employee acting as a curator of the shoe),

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this decision shall constitute an appropriate letter of reprimand. In all other particulars, the Initial Decisions in this matter are hereby affirmed.

WALTER N. READ, CHAIRMAN

E. KENNETH BURDGE, COMMISSIONER

JOEL R. JACOBSON, COMMISSIONER

DON M. THOMAS, COMMISSIONER

CARL ZEITZ, COMMISSIONER

DATED: January 4, 1983

SEPARATE OPINION OF COMMISSIONER JACOBSON

While I join with my colleagues in their findings of fact, legal analysis and conclusions of law in this case, I respectfully disagree with the penalty assessed by the majority against Boardwalk Regency Corporation. I find that a monetary penalty of $257,000 and letters of reprimand are insufficient to punish the misconduct of BRC and to deter future violations of this kind.

Section 130 of the Casino Control Act sets forth the standards to be applied by this Commission in imposing sanctions against a licensee. The conduct of the licensee is assessed in light of its seriousness, the risk to the public and to the integrity of casino gaming operations, whether the conduct was purposeful and with knowledge that it was violative of our statute and regulations and the prior history of the licensee. The conduct may be mitigated by the licensee's justification for its conduct or by corrective action taken by the licensee to prevent like violations from occurring in the future.

The Commission is also provided with sound guidance by the policy statement of the staff policy group on casino gaming, in their Second Interim Report, where they advised "...penalties must be of sufficient magnitude to eliminate the possibility that the penalty becomes simply a cost of doing business in this State." Second Interim Report, Staff Policy Group on Casino Gaming, at 54-55 (February 17, 1977).

In my judgment, the conduct of Boardwalk Regency Corporation's personnel during Mr. Caltagirone's visit constitutes the most serious violations ever presented before this Commission. Their actions on the casino floor resulted in substantial risk to the public and jeopardized the integrity of gaming operations. Their violations of casino security and internal controls procedures in removing $1.2 million in counter checks and knowingly accepting deficient personal checks outside the casino cage area destroyed the protections and limitations surrounding these important instruments.

In the four days of gambling, Boardwalk Regency Corporation's favored patron lost $1.2 million. The penalty imposed by the majority is $257,000.

There isn't a businessman in the world who wouldn't, every day in the week--or for that matter, every hour in the day--eagerly pay $257,000 as a cost of business to win $1.2 million, a return of almost 5 to 1.

The monetary fines imposed by the majority, therefore, emerge as nothing more than an insignificant cost of doing business.

Throughout this entire episode, the behavior of Boardwalk Regency Corporation and its personnel, has been characterized by one dominant and recurring theme, namely, a taunting and contumacious challenge to the authority of this Commission. The evidence chronicling this defiance of the Casino Control Commission is contained in the reports filed by our Commission Inspectors. Those reports reveal that because

our inspectors were performing their duties on the casino floor in conformance with the instructions of this Commission, they became targets of intimidation, derision and denigration.

The motivation behind Boardwalk Regency Corporation's orchestrated defiance was a conscious decision to cater to the whims of a favored patron.

In accepting the patronage and responding to the crude demands of this individual--whom the Casino's legal representative has labeled "an obnoxious person"--Boardwalk Regency Corporation had a clear choice.

The choice was either to halt promptly and firmly this patron's improper behavior and conform with this Commission's authority, or to fawn over this favored patron and defy this Commission's authority.

The evidence before us demonstrates that Boardwalk Regency Corporation made an unfortunate, unwise choice. The "obnoxious" patron went home after four days. This Commission meets every Tuesday.

I find no evidence to mitigate the casino management's conduct. It is impossible to justify a two-tier system of regulation, one for the $2 bettor and another for the million-dollar high roller.

It is my opinion that Boardwalk Regency Corporation's carefully calculated decision to curry this patron's favor and to defy this Commission's authority merits a response far more severe than the penalty imposed by the majority:

In addition to the monetary fines imposed by the majority, a proper penalty should include the temporary

suspension of Boardwalk Regency Corporation's operation certificate and the closing of the casino for a specified period of time, as provided for in Section 129(4).

I do not recommend such a drastic sanction lightly. I am aware of the consequences to the employees of the casino hotel who may be adversely affected by such closing, and to the Casino Revenue Fund.

In order to avoid imposing unwarranted hardship upon innocent employees of this casino, I would further order a corresponding mitigation of the monetary fines when the licensee completed payment to its employees of all the wages and gratuities lost during the period of this suspension.

While it may be argued that suspension of casino operations will adversely affect revenues earmarked for the Casino Revenue Fund, the undermining of the integrity of gaming operations and the weakening of the authority of this Commission cannot be justified on such grounds. Effective regulation is paramount to the receipt of revenues.

In my judgment, the imposition of a monetary fine, the temporary suspension of the operation certificate and the payment of wages and gratuities lost by employees during the period of suspension, constitute the necessary warning that relaxed, haphazard compliance is unacceptable in Atlantic City, and that the New Jersey Casino Control Commission--not any bottom line oriented casino executive--is in charge here.

JOEL R. JACOBSON, COMMISSIONER

DATED: January 4, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 6325-81
CCC DOCKET NO. 81-32

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. BOARDWALK REGENCY CORPORATION, Respondent.	ORDER OF REMAND

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed June 10, 1982, recommending that the Respondent be found in violation of various sections of the Casino Control Act, N.J.S.A. 5:12-1 et seq. and that specific civil penalties be assessed against the Respondent pursuant to N.J.S.A. 5:12-129; and both the Respondent and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on June 28, 1982 and replies to the respective exceptions on July 7, 1982; and the Commission having carefully considered the entire record of the proceedings and the legal arguments of the parties ; and the Commission having resolved at its public meeting of July 20, 1982, to reverse certain rulings by the ALJ as set forth herein, and to remand the counts of the

Complaint related to said rulings for further proceedings and to suspend any consideration of the remainder of the Initial Decision, pending the filing by the Office of Administrative Law of its findings and conclusions on the remanded issues,

IT IS on this 2nd day of August 1982 ORDERED that the following rulings in the Initial Decision be and hereby are rejected:

1. The conclusion of law that a breach of an Operation Certificiate or any of its conditions is not a sanctionable violation be rejected. The Commission finds that a breach of an Operation Certificate or any conditions imposed thereby upon a casino licensee or permittee is a violation of an order of the Commission that is sanctionable by revocation pursuant to N.J.S.A. 5:12-129(2), or, by implication, any of the lesser sanctions set forth in N.J.S.A. 5:12-129.

2. The conclusion of law that nothing in the Casino Control Act or Commission regulations preclude a licensed, employed pit boss from performing the function of curator of the shoe in the game of baccarat be rejected. The Commission finds the term "participant" as used in the rules of the game of baccarat, N.J.A.C. 19:47-3.1 et seq. to mean a wagering player. Pursuant to N.J.S.A. 5:12-100(n), a licensed employed casino employee directly involved in the conduct of gaming is prohibited from wagering.

3. The conclusion of law that N.J.A.C. 19:45-1.28(b) is inconsistent with N.J.S.A. 5:12-101(c) and invalid as applied to the facts in this case be rejected. The Commission finds

that the promulgation of N.J.A.C. 19:45-1.28(b) constitutes a valid exercise of the Commission's power and expertise under N.J.S.A. 5:12-70(g) and 101. The Commission, in N.J.A.C. 19:45-1.28(b), interprets the general term "bank" for purposes of the deposit of patron checks and counterchecks to mean the casino licensee's bank.

IT IS FURTHER ORDERED that in light of the above findings by the Commission, the following paragraphs of the Complaint in this matter be and hereby are remanded to the Office of Administrative Law for further proceedings consistent with these findings:

1. Count I, Paragraph 3
2. Count I, Paragraph 19
3. Count II, Paragraph 7
4. Count III, Paragraph 5

IT IS FURTHER ORDERED that the consideration of the remainder of the Initial Decision be and hereby is continued until such time as the Commission takes final action on the Office of Administrative Law's additional findings of fact and conclusions of law regarding the remanded issues.

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

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

By: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: August 2, 1982

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FILED
NEW JERSEY
JUN 10 1982
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL Dkt. No. CCC 6325-81

Agency Dkt. No. 81-32

DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

BOARDWALK REGENCY CORPORATION,

Respondent.

APPEARANCES:

Robert E. Reilert, Esq. for respondent

Charles A. Matison, Esq. for respondent (Cooper, Perskie, Katzman, April, Niedelman & Wagenheim)

Brian J. Molloy, Esq: for respondent (Wilentz, Goldman & Spitzer)

Howard M. Barman, Deputy Attorney General, and Kevin F. O'Toole, Law Assistant, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed April 26, 1982 Decided June 8, 1982

BEFORE STEVEN L. LEFELT, ALJ:

The Division of Gaming Enforcement (DGE) seeks civil penalties and other appropriate relief from the Boardwalk Regency Corporation (BRC) because DGE claims that between May 15, 1981 and May 18, 1981 BRC employees, in their attempts to accommodate a high-stakes gambler, violated numerous provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

New Jersey is an Equal Opportunity Employer

PROCEDURAL HISTORY

BRC holds a New Jersey Casino license and has operated a casino hotel (Caesar's) in Atlantic City since June 1979. BRC's present difficulties began when one Gaetano Caltagirone arrived with his entourage at Caesar's in New Jersey. Mr. Caltagirone was a well-known customer of Caesar's in Nevada where he was authorized to receive 1.5 million dollars in gambling credit. Mr. Caltagirone is a high-roller or high-stakes gambler and by the end of his long weekend (Friday, May 15 -Monday, May 18, 1981), he had lost 1.2 million dollars.

The complaint, alleging various BRC violations during Mr. Caltagirone's stay, was filed on June 10, 1981. On July 8, 1981, BRC filed a notice of defense and statement of request for a hearing and on August 14, 1981, the first prehearing conference was held before Donald M. Thomas, Hearing Commissioner. On September 17, 1981, the second prehearing conference was held, also before Commissioner Thomas. On September 21, 1981 the Casino Control Commission transmitted this matter to the Office of Administrative Law and on October 15, 1981 the third prehearing conference was conducted by the undersigned at the Office of Administrative Law in Trenton, New Jersey.

This matter was tried at several locations in Atlantic and Mercer counties. The evidentiary hearing ended on March 17, 1982 and a briefing schedule was established. Upon receipt of reply briefs, I closed the record on April 26, 1982.

THE EVIDENCE

Findings of Uncontested Fact

The evidence presented by the parties included witnesses, depositions, and numerous exhibits. After considering the testimony and exhibits including the depositions, I **CONCLUDE** that many of the facts are undisputed and I adopt the following recitation as my findings of uncontested believable fact:

Upon Mr. Caltagirone's arrival on May 15, 1981, he rented a penthouse suite in the hotel and completed the necessary New Jersey forms to obtain credit for 1.5 million dollars. Mr. Caltagirone's "play," as the casino personnel describe gambling, included

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mostly roulette and some baccarat. When "playing" roulette, he wagered between $5,000 and $20,000 on each spin of the roulette wheel.

BRC assigned A. Fornasiero, a pit boss licensed in the games of blackjack and roulette, as Mr. Caltagirone's interpreter, since Mr. Caltagirone spoke only Italian. Mr. Fornasiero interpreted for Mr. Caltagirone during his entire stay in the Casino.

On May 17, 1981, in order to assist Mr. Caltagirone, Mr. Fornasiero removed his casino employee license at the instruction of the Game's Manager and performed the function of curator of the baccarat shoe. Mr. Caltagirone was the sole patron at this baccarat table.

Other alleged activities of BRC personnel and Caltagirone involve factual disputes, and therefore will be discussed separately. For present purposes, it is sufficient to state that Mr. Caltagirone proceeded to "play" on credit from May 15 through May 18, 1981 by drawing counter checks or markers to cover his losses, which as previously noted were substantial.

Finally, on May 18, 1981, Mr. Caltagirone called Mr. Fornasiero and indicated that he desired to settle his account in his hotel room. The 1.2 million in counter checks was removed from the cage area (a secured physical structure in the casino) by Larry Woolf, Vice President of the Casino; Charles Horton, Assistant to the Treasurer of the Casino; Bernard Resnick, Assistant Casino Manager and Mr. Fornasiero. The BRC contingent then joined Mr. Caltagirone in his suite. Throughout this period in Mr. Caltagirone's suite, all statements made to or by Mr. Caltagirone were translated by Mr. Fornasiero.

Mr. Caltagirone presented three checks which he wished to exchange for his counter checks. Check #1 was not dated, check #2 was dated October 10, 1981 and check #3 was dated March 15, 1982. All three of the checks were made payable to Mr. Caltagirone and endorsed by Caltagirone. The Casino personnel indicated to Mr. Caltagirone that they could not, under the law, receive postdated checks and requested that he replace these checks with current ones. There then ensued a vigorous argument during which Mr. Caltagirone refused to pay by any other method. He claimed that he paid his debts in Nevada by postdated checks and could not understand why New Jersey was different from Nevada since both are in the United States. It became

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obvious to the BRC personnel that there was no way they would be able to convince Mr. Caltagirone, who appeared to be totally irrational, that New Jersey law required their rejecting his consolidation proposal. During this argument, BRC personnel claimed Caltagirone was "foaming from his mouth" with anger. Mr. Woolf attempted to make some phone calls to various persons who outranked him in the Casino hierarchy. Precisely what occurred next is contested and therefore resolved in a separate section below.

For purposes of continuing the uncontested recitation, I find that Mr. Caltagirone ripped the counter checks and BRC personnel took the three personal checks from the hotel room to the Casino cage. Mr. Woolf signed a receipt for the checks and removed them briefly from the cage for a discussion as to what BRC ought to do next. When the cage personnel received the three checks, they failed to date, time stamp and initial them and did not endorse the checks payable to BRC's bank. In addition, Mr. Caltagirone's patron credit reference card was simply marked with "CONSOL 1.2 million dollars 5/18/81." On May 19, 1981 the undated check was dated by BRC's Director of Cage Operations, Mr. Ebert, and given to Mr. Fornasiero who was bonded and flown by airplane to Monte Carlo, France, where he personally deposited this check in Mr. Caltagirone's bank and returned with the cash to BRC. On May 19, 1981, the cage personnel noted on Mr. Caltagirone's patron credit reference card that a check in the amount of $400,000 had left the cage. At about the same time the undated check was leaving the cage with Mr. Fornasiero, Messrs. Woolf and Cade, BRC's Senior Vice President, were explaining their dilemma to then Commission Chairman Lordi and thereafter to Guy Michaels then Assistant Director of DGE.

After a newspaper article concerning Mr. Caltagirone and these occurrences appeared in the Atlantic City Press, an individual claiming to be Mrs. Caltagirone redeemed the postdated checks with a shopping bag, containing $800,000 in cash.

Findings of Contested Fact

Whether the personal checks were accepted by BRC

The evidence is clear that Mr. Caltagirone's 1.2 million in counter checks was removed from BRC's cage and brought to Mr. Caltagirone's hotel room in order to accomodate a good customer who wished to settle his account. The evidence is

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conflicting, however, as to whether the three personal checks supplied by Mr. Caltagirone to consolidate his 1.2 million dollar losses were voluntarily accepted by BRC.

BRC contends that the checks were received to memorialize the underlying debt after Mr. Caltagirone ripped the counter checks. BRC maintains that the evidence justifies a conclusion that BRC involuntarily received the checks. BRC's contention is largely based upon Mr. Woolf's testimony and deposition. Mr. Woolf claims that Mr. Caltagirone tore the counter checks during their vigorous argument and before BRC accepted the personal checks. Mr. Woolf, the highest BRC corporate official in the hotel room, and Mr. Horton in their depositions testified that when Mr. Caltagirone ripped the counter checks, Mr. Woolf said "well I guess that makes the decision for us." It is interesting to note, however, that Mr. Woolf at the evidentiary hearing claimed that either Mr. Horton or Mr. Resnick made this statement. In his deposition, Mr. Woolf acknowledged that while in the hotel room he was in charge. At the evidentiary hearing, however, Woolf maintained that on reflection he was not the ranking official. Woolf explained that BRC operations are separated between casino and financial matters and since he represented only casino matters, Mr. Horton, as the Financial Vice-President's representative, was technically Mr. Woolf's equal, representing BRC's financial interests.

Nevertheless, Mr. Fornasiero's deposition indicated that Mr. Woolf accepted the checks. Mr. Fornasiero stated in his deposition that they all agreed to cash the checks and give Mr. Caltagirone the counter checks. Mr. Resnick said in his deposition that after a consensus was reached, Mr. Caltagirone handed his personal checks to Mr. Horton and Mr. Horton handed Mr. Caltagirone the markers and then Mr. Caltagirone ripped them up. BRC seeks to mitigate the depositions by arguing that when BRC employees spoke of acceptance they meant receipt and that Caltagirone must have been given the markers to count, before agreeing to the exchange. I do not believe that the evidence supports this position.

I believe that BRC accepted the undated and postdated checks not as a coerced only alternative, but as its best bet to get paid. In short, the BRC representatives weighed the various alternatives and a business decision was made. I find support for this conclusion not only in the depositions already mentioned, but in the realization that it would have been extremely foolish for BRC to relinquish control over the counter checks until BRC agreed to accept the personal checks in consolidation of the counter checks. I reject BRC's contention that it gave Mr. Caltagirone 1.2 million dollars

in negotiable counter checks to count, when he was foaming from his mouth in anger. I also cannot believe that if BRC was coerced into the decision by Caltagirone's tearing the markers, that fact would not have been mentioned to Chairman Lordi at the meeting where Messrs. Woolf and Cade reported this incident. Mr. Woolf can only assume that such a statement was made; he cannot remember. However, Mr. Fee, the Casino Control Commission's Director of Division of Financial Evaluation Control, was present during this meeting. He recalls Messrs. Woolf and Cade stating only that they had no other alternative and that there ought to be an amendment to the Casino Control Act to accomodate high-stakes gamblers.

I, therefore, find as fact that BRC voluntarily agreed to accept the three checks before Mr. Caltagirone tore the counter checks.

Whether BRC employee's told a Casino Control Inspector to leave the table where Caltagirone was gambling and to observe from inside the pit rather than behind Caltagirone

Casino Control Inspector Scimines testified that on May 17, 1981 the area at Caltagirone's table "was not crowded," but Senior Inspector Ford described the area as "very crowded" and Bernard Resnick, Assistant Casino Manager, in his deposition indicated that crowd control was impossible because of the interest generated by the large sums Mr. Caltagirone was betting. The dealer, Cheryl Hood, described the scene as very chaotic, like a circus. BRC at the request of Mr. Caltagirone placed two security guards at either end of the private table provided for Mr. Caltagirone's benefit.

Senior Inspector Ford testified that Mr. Leone, a BRC Games Manager, approached her and told her to back Inspector Scimines off the table. Leone, according to Ford, claimed that Inspector Scimines had laughed and disturbed Caltagirone. Leone said: "I want you to back her off that table." Ford was upset and concerned that a member of her shift might be accused of wrongdoing and therefore she asked Leone whether Inspector Scimines had done anything wrong. Leone said, "no," but claimed that Caltagirone was temperamental and that Scimines was making him nervous. Ms. Ford believed that Leone's manner was abrupt and "not nicely done." According to Ford's report of this incident, she then explained to Leone that she would respect his wishes and not have Inspector Scimines stand directly over the table, but that Scimines must perform

her duties. After this conversation, Leone returned to the pit and Senior Inspector Ford called Inspector Scimines to the Commission booth to determine whether she had done something wrong.

Senior Inspector Ford explained that Scimines stated that a BRC security officer asked her to leave the area of the table — "to move on." Inspector Scimines explained to the Senior Inspector that she was being blocked by a BRC security guard from viewing the table. Scimines testified that the security guard was standing in front of her, keeping her from seeing Caltagirone. Scimines laughed when the security officer precluded her observations. When Senior Inspector Ford asked Inspector Scimines why she laughed, Ford testified that Inspector Scimines explained that it was an immediate nervous response to what had occurred. At the evidentiary hearing, Senior Inspector Ford further testified that she instructed Scimines to return to the table and continue her observations. "We would do our job" said Senior Inspector Ford.

Shortly after Scimines returned to the table area, Mr. Resnick and Mr. Leone came to the Commission booth. According to Resnick's deposition, Inspector Scimines had been standing very close to Caltagirone and talking to one of the security guards. Caltagirone said "I don't want her standing there." Resnick claims that he asked Inspector Ford whether it would be possible to have Scimines stand inside the pit, especially since she could probably see the game better from the inside anyway. Senior Inspector Ford explained that they were just doing their job. Resnick, according to his deposition, said that "we respect your job. If you feel there is a violation, by all means write it up and we will answer it later." Resnick further explained to Ford that with the kind of money Caltagirone was betting, if Caltagirone wanted to burn the Casino down, he would give him a match.

Ford's testimony at trial closely followed Resnick's account of this conversation contained in his deposition. Senior Inspector Ford added that Resnick was very definite in his manner and that she told Resnick and Leone that, until she spoke to her Supervisor, she would have Inspector Scimines observe from the pit.

Before being called by Senior Inspector Ford, Scimines had observed Caltagirone from approximately 2:15 p.m. until 2:40 p.m. After her conference with Ford, Inspector Scimines returned to the table at approximately 2:45 p.m. Inspector Scimines testified that the security officer was again blocking her view. According to 96.

Scimines he moved in front whenever she tried to observe Caltagirone — the security officers appeared not to want anybody in front of them. Inspector Scimines observed from the outside of the table, approximately 12 feet from the table, until approximately 3:00 p.m. when Inspector Scimines reported to Ford at the Commission booth that she had observed the dealer failing to call "no more bets." (See the findings relating to this charge below.)

BRC asserts that the purpose of its contacting Senior Inspector Ford was to request that she "exercise her discretion to decide where to place her inspectors." The overwhelming weight of the evidence, however, does not support this assertion. After considering all of the evidence on this point and the witnesses' demeanor, I find the following facts:

1. The area around Caltagirone's table was at times very crowded on May 17, 1981 when he was playing roulette. The security guards were placed at both ends of the table to keep the crowds from Caltagirone.

2. Caltagirone became disturbed by Inspector Scimines, when Scimines talked to the security guard and laughed in disbelief as the security guard first told her to move on and then attempted to block her view of the table.

3. BRC employees wanted Senior Inspector Ford to move Inspector Scimines further away from the table. Mr. Resnick suggested that Scimines could observe the game from the pit. Their manner and statements were chosen to accomplish their goal — rid Caltagirone of an annoyance.

4. Inspector Scimines was called to the Commission booth by Senior Inspector Ford and after a brief discussion, Ford told Scimines to continue observing Caltagirone. DGE contends that "BRC's action caused Scimines to be called to the booth, thereby causing the table game, for a time, to be left unobserved by Commission personnel." This is accurate; however, at most, the table was unobserved for

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approximately five minutes and there is nothing in the evidence to indicate that it is unusual for table games to be unobserved by Commission personnel for brief periods. In fact, Inspector Scimines testified that she returned to the Commission booth to report the "no more bets" incident, presumably leaving the table unobserved for a brief period.

5. On this record, I cannot determine whether Scimines' second observation point was either further from her initial observation post or inferior in some other way from her prior post. While Inspector Scimines testified that a BRC security guard was blocking her view, she explained that she could see Caltagirone making his wagers and she obviously saw and heard well enough to report a violation of the Casino Control Commission Regulations. (See "no more bets".) Consequently, I cannot conclude that her observation was in fact made less effective at the second vantage point. Both of Scimines' observations were probably made from 7 to 12 feet, since Senior Inspector Ford, when she made her observation of the table to verify the "no more bets" incident, testified to walking around the table by the security guards approximately 7 feet from the table. Scimines testified to making her "second observation" at 12 feet.

6. Finally, it is clear on this record that the observations of Caltagirone were continued largely because of Senior Inspector Ford's courage and devotion to her duty. She did not succumb to either Messrs. Leone or Resnick's pressure and had instructed Scimines to return to the table and continue her observations. Ford did not instruct Inspector Scimines to view Caltagirone from the pit as she mistakenly indicated in her deposition. I reach this conclusion by relying on Ford's demeanor and her live testimony, her reports made prior to the deposition and the other related evidence. While Ford did indicate to Leone and Resnick sometime between 2:45 and 3:00 p.m. that she would have Inspector Scimines observe from the pit, this order was neither communicated to Scimines nor implemented, presumably because Inspector Scimines shortly thereafter (at about 3:00 p.m.) reported the dealer's failure to call "no more bets."

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Whether a dealer, Ms. Cheryl Hood, called "no more bets" during the roulette "play" of Mr. Caltagirone on May 17, 1981

Both Inspectors Ford and Scimines testified that they observed the dealer, Cheryl Hood, failing to call "no more bets," which delineates that time when all wagering must stop. Inspector Ford testified that Inspector Scimines said that the dealer was told by her employer not to call "no more bets." On the other hand, Ms. Hood denies the allegation, claims to have called "no more bets," and asserts that BRC supervisory persons did not give her any special dealing instructions. Mr. Fornasiero in his deposition claimed that to the best of his knowledge the dealer called "no more bets." Mr. Resnick in his deposition also stated that "no more bets" was definitely said.

BRC seeks to make much of various alleged inconsistencies and improbabilities in Inspector Scimines' testimony. BRC contends that it is inconceivable that Inspector Scimines did not tell Senior Inspector Ford about the dealer failing to call "no more bets" when Ford spoke to Scimines about Mr. Leone's complaint. Scimines testified that she was not sure whether the dealer failed to call "no more bets" during her initial observation, but later she testified that the dealer had failed to call "no more bets" during this period. Furthermore, BRC urges that it is unbelievable that Scimines did not record this alleged violation in her notebook until 3 p.m., at the end of the second observation. BRC implies that Scimines is fabricating this incident to mitigate the charges concerning her observation techniques. (Apparently, before the Caltagirone incidents there had been another complaint made about Inspector Scimines.)

However, on cross-examination, Ms. Hood admitted that while she usually calls "no more bets," she had no specific recollection of calling "no more bets" on that day. Furthermore, Senior Inspector Ford also testified before me and stated uncategorically that the dealer was not calling "no more bets." Senior Inspector Ford may not have mentioned this observation in her deposition, notebook or daily narrative, but I observed Senior Inspector Ford and I find her testimony highly credible, especially when I consider Mr. Lenz's response to the original violation report. Mr. Lenz is BRC's Casino Manager tasked with responding to violation reports prepared by the Casino Control Commission. Lenz wrote that "management felt it was unrealistic in this situation (to call "no more bets") if there was only one player and he did not understand one word of English." Mr. Lenz in his deposition claimed that his usual practice upon receipt of a violation

report was to check and verify the violation with the Casino personnel involved, but he claimed not to have followed that procedure here. I find that assertion incredible. I also believe that for the dealer to call "no more bets" and have Mr. Fornasiero repetitively interpret that statement, each time it was made, must have seemed cumbersome. Therefore, based upon my assessment of all of the witnesses' credibility and the probabilities of what actually occurred, I **FIND** that "no more bets" was not called by BRC's dealer on May 17, 1981.

Whether BRC denied or delayed a Casino Control Commission request to place Caltagirone's gambling activities on the Commission closed circuit video monitors

This dispute centers around whether BRC acted in an expeditious and reasonable manner, neither delaying nor denying the request. After considering the evidence and the credibility of the witnesses testifying on this matter, I find the following facts:

DGE staffs a surveillance room at BRC with the TV capabilities of monitoring and taping the activity at any gaming table. BRC also maintains a surveillance room containing several TV monitors connected to numerous cameras throughout the Casino. The Commission has TV monitors in its booth, but is dependent upon BRC surveillance personnel to connect those monitors with the BRC surveillance cameras.

On May 18, 1981 Senior Inspector Ford requested BRC to place Mr. Caltagirone's "play" on the Commission television sets so Mr. Caltagirone's activities could be monitored. BRC's practice required such a request to be forwarded to Mr. Mancari, BRC's Director of Surveillance, if he were present. In accordance with this practice, Ms. Jenkins, a BRC surveillance employee, referred Ford's request to Mr. Mancari. Mr. Mancari did not know that Ms. Ford was a Senior Inspector. Mancari telephoned Ford and told her that he could not put this activity on the screen unless she had a reason, since BRC had a policy not to put high-roller activity on the Commission screen because it was visible to the public. Ford said she had a reason, but Mancari told

Ford to have her Supervisor call him. BRC contends that Senior Inspector Ford's reason was recreational to dispel boredom. This contention is based on testimony in the record that from time to time, Commission personnel have made such requests of BRC surveillance officials.

I **CONCLUDE** that Senior Inspector Ford's request was not made for recreational purposes. On Saturday May 16, 1981, Mr. Resnick called Principal Inspector Plumb, Ms. Ford's Supervisor, at his home to complain that the Casino Control Commission was upsetting Caltagirone. On May 17, 1981, the Commission discovered that Mr. Fornasiero had removed his license badge as a direct result of observing the baccarat game on its TV monitors. Furthermore, on May 17, 1981, Ms. Ford and Ms. Scimines both observed Caltagirone's roulette dealer fail to call "no more bets" and BRC personnel made clear to Ms. Ford that they were concerned that the close Commission monitoring was disturbing Caltagirone. It is inconceivable to me that under these circumstances Ms. Ford would wish to observe Caltagirone solely for "recreational purposes." It is understandable why Senior Inspector Ford maintained only in conclusionary terms that she "had a reason." By this time, the Commission and BRC were in fact adversaries.

Mr. Mancari testified that after speaking to Senior Inspector Ford, he called Principal Inspector Plumb and BRC contends that this call was "to obtain the required authorization." Principal Inspector Plumb, however, testified that after receiving a call from Senior Inspector Ford complaining about Mancari's refusal, Plumb went to the DGE's office, where DGE Detective Hull called Mr. Mancari. Hull and Plumb then requested that Mancari tape Caltagirone's roulette game. After these requests, Mancari, approximately 13 minutes after the initial Ford request, prepared a videotape of the game.

Senior Inspector Ford was confused about Mr. Mancari's position, since she knew of no such BRC policy. In fact, on May 7, 1981, Ms. Ford was informally told by a BRC surveillance person that anytime Ford wanted anything on the screen, the BRC employee would "be happy to do so." In addition, a number of Ms. Ford's prior requests for TV monitoring had been granted by the BRC surveillance personnel.

There were no written BRC procedures for handling monitoring requests in May 1981 and none were implemented until June 19, 1981, well after this incident.

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I believe that Mr. Mancari considered Inspector Ford's request and since he did not know her and did not know that she was a Senior Inspector, he believed that protecting Mr. Caltagirone outweighed this particular request. When Ford said she had a reason, Mancari wanted confirmation from a superior. I believe that Mr. Mancari did not tape the game until after he was called and requested to tape the game by DGE and a Commission representative. I **CONCLUDE** that Mr. Mancari's action, especially when considered within the context of BRC's concerns, was intended to and did in fact delay Senior Inspector Ford's request to monitor the game.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

This civil penalty disciplinary proceeding has been brought by DGE against BRC exclusively; neither agents nor employees of the corporation were charged. The Casino Control Act does not specifically make the corporate casino licensee liable for violations committed by its employees.

Since the act is penal in nature and is to be strictly construed, State v. Perlman, 169 N.J. Super. 190, 196 (Law Div. 1979), a preliminary question is whether the casino may be responsible for all violations even if committed by relatively low-level employees such as dealers and cage employees.

The ability of the Legislature to subject a corporation to criminal liability for the acts of its agents or employees has become well established since the decision in New York Central R.R. v. United States, 212 U.S. 481 (1909). In State v. Western Union Telegraph Co., 13 N.J. Super. 172, 221 (Cty. Ct. 1951), aff'd, 12 N.J. 468, app. dis. 346 U.S. 869 (1953), the defendant was held liable for the conduct of a local manager of one of its branch offices who allowed bookmaking to take place on the premises. If corporate criminal liability is possible for misconduct by agents and employees a fortiori, civil penalties are appropriate.

To further the public confidence in the integrity of casino operations, the regulatory provisions of the act were designed to extend "strict State regulations to all persons, locations, practices and associations related to the operation of licensed casino enterprises. . . ." N.J.S.A. 5:12-1(6) (emp. added). "The statutory and administrative controls over casino operations established by the [Casino Control] act are extraordinarily pervasive and intensive." Knight v. Margate, 86 N.J. 374, 380-381 (1981) 102.

Unlike the regulation of veterinarians, see, In re Kerlin, 151 N.J. Super. 179 (App. Div. 1977), casinos have assumed their place with other heavily regulated New Jersey industries, such as liquor and racing. In re Application of Boardwalk Regency Corp., 180 N.J. Super. 324, 341 (App. Div. 1981). Gaming was illegal before the Casino Control Act and therefore the industry operates on a revocable privilege. N.J.S.A. 5:12-1(8).

N.J.S.A. 5:12-129(5) states that the Commission may "assess such civil penalties as may be necessary to punish misconduct and to deter future violations" and specifically mentions individual licensees and casino licensees. Thus, civil penalty actions were contemplated against both individuals and corporations. The casino licensee corporation may act only through its agents and employees. If a distinction were made among categories of employees to isolate the casino from the acts of "lower-level" employees, a dilution of the regulatory effect would result. The casino would have less reason to monitor carefully all of its employees' activities. It is no defense to a discipline action that the licensee inadvertently, unintentionally, or unknowingly violated a provision of this act. N.J.S.A. 5:12-130(g). Other jurisdictions have had little difficulty in holding a corporation liable for its employee's acts in discipline proceedings. See, e.g., Northeast Dodge Co. v. Commonwealth, 54 Pa. Commw. Ct. 182, 185, 420 A.2d at 771, 773 (1980) (car dealership license suspended for transgression of salesmen).

To insure faithful compliance and strict regulation, I, therefore, **CONCLUDE** that the Legislature intended in N.J.S.A. 5:12-129(5) that casino licensees shall be responsible for all misconduct occurring on the licensed premises. If any casino employee violates a regulation or statute, the casino licensee shall be responsible whether it had knowledge or not. N.J.S.A. 5:12-130(g).

DGE, therefore, could have brought this case against either the individuals involved or the corporation or both. It chose, legitimately, to proceed against only the corporation. In order to avoid corporate responsibility under the legal test that I believe applies, BRC would have had to demonstrate that it did everything possible in its power to prevent a violation. Ishmal v. Div. of A.B.C., 58 N.J. 347, 351-2 (1971). The proofs are to the contrary. In fact, the proofs presented leave little doubt that many BRC management personnel including the Vice-President for Casino Operations, Games Managers, the Casino Manager, Assistant Casino Manager, Shift Managers, and the Director of Surveillance had knowledge of most of what occurred to "convenience" Mr. Caltagirone. I specifically **FIND**, based on the evidence that for each violation discussed below,

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occurring either on the casino floor (including BRC's surveillance room) or in Caltagirone's room, a managerial person either participated in the misconduct, or had knowledge of the misconduct. I also **FIND** that there is no evidence that BRC managers knew that BRC cage personnel failed to date, initial, time stamp, and endorse the three personal checks, and to record properly the 1.2 million dollar consolidation on Caltagirone's credit reference card. I **CONCLUDE**, however, that managerial persons probably knew and should have known, since the three checks were brought to the cage by Mr. Woolf and Mr. Horton, temporarily removed by Mr. Woolf and returned by Mr. Woolf. In addition, the nature of the cage operations and the uniqueness of this transaction supports this conclusion. In this case, BRC was clearly a willing participant in its efforts to satisfy Mr. Caltagirone and each employee involved in these charges had sufficient authority and responsibility to act for and on behalf of the corporation in handling the particular corporate business which formed the basis for the charged misconduct. Commonwealth v. Beneficial Finance Co., 360 Mass. 188, 275, 275 N.E. 2d 33, 83 (1971) cert. den., 407 U.S. 914 (1972).

I have organized the following legal analysis and conclusions around each paragraph of DGE's complaint against BRC. For each allegation, I determine whether the proofs justify a violation. Appropriate penalties are discussed thereafter in the section entitled Penalty Determination.

The 1.2 million dollar consolidation (DGE Complaint, Count I, paragraphs 11, 12, 13, 14, 15 and 16)

The facts I have found indicate that BRC voluntarily accepted three personal checks from Mr. Caltagirone in his hotel room in consolidation of Mr. Caltagirone's 1.2 million dollar debt and that BRC intended to take possession of these three checks as "owner." Vacuum Ash and Soot Conveyor Company v. Huyler's, 101 N.J.L. 147, 149 (E. & A. 1925.) Each $400,000 check was made payable to Mr. Caltagirone and each check was intended to consolidate numerous counter checks totalling $400,000. In addition, one check was undated and two were postdated. Caltagirone's purpose in offering such checks clearly was to delay their deposit beyond the time periods prescribed in N.J.S.A. 5:12-101(c).

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For BRC to accept a personal check in exchange for counter checks, the check must be payable to the Casinso licensee and currently dated, but not postdated. N.J.A.C. 19:45-1.25(c) 3 and 4. See also, N.J.S.A. 5:12-101(b) and (c). BRC accepted the postdated checks and thereby impliedly agreed to delay deposit beyond the permitted time periods, in violation of N.J.S.A. 5:12-101(c). Furthermore, the facts and the clear wording of the regulation belie BRC's contention that a valid consolidation may occur either in the general cashier's cage or in the customer's hotel room. Consolidations should occur in the general cashier's cage. N.J.A.C. 19:45-1.26(d). Thus, for each $400,000 consolidation, there were three improprieties: dates, payee, and location of transaction.

For purposes of penalty, should BRC's conduct constitute one violation, as BRC argues, or nine or more violations as DGE argues? The test to determine merger is "whether the legislative intent is to punish individual acts separately or to punish only the course of action which they constitute." State v. Wright, 154 N.J. Super. 174, 178 (App. Div. 1977). I believe that the Casino Control Act civil penalty statutory sections (N.J.S.A. 5:12-129(5) and 130) demonstrate an intense concern over the "conduct" of casino licensees. For example, N.J.S.A. 5:12-129(5) empowers the Commission to assess such "civil penalties as may be necessary to punish misconduct and to deter future violations. . . ." Furthermore, N.J.S.A. 5:12-130, which establishes the standards for the imposition of sanctions, discloses additional concern over the "conduct of the licensee." The first standard of N.J.S.A. 5:12-130(a) requires an assessment of "the risk to the public and to the integrity of gaming operations created by the conduct of the licensee. . . ." (emp. added). The second standard requires an assessment of the "seriousness of the conduct of the licensee. . . ." N.J.S.A. 5:12-130(b) (emp. added). While one could argue that to control conduct effectively, each act should be punished, the Casino Control law does not specifically provide that each violation in a course of conduct must be separately penalized. State v. Perlman, 169 N.J. Super. 190, 198 (Law Div. 1979).

It seems to me that BRC's misconduct was accepting a 1.2 million dollar consolidation that was defective in three ways. BRC accepted consolidation checks, which were improperly drawn and dated, in an improper place (the hotel room). The State attempted to prove and did prove that an unlawful 1.2 million dollar consolidation occurred when these checks were exchanged for Caltagirone's counter checks. To punish

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BRC for nine or more violations seems unduly harsh, especially since it was Caltagirone who presented the three checks in consolidation. BRC was wrong in accepting any of the checks, but the fact that it accepted all three of them does not magnify its misconduct beyond a 1.2 million dollar consolidation, defective in three ways.

After resolving the factual dispute over BRC's acceptance of the 1.2 million dollar consolidation (DGE Complaint, Count I, paragraph 15), I was better able to consider the related paragraphs in proper perspective. Consequently, I must modify my March 15, 1982 Substantive Order, Appendix B, by indicating that this Initial Decision controls and any conclusions to the contrary in my March 15 Order dealing with DGE Complaint, Count I, paragraphs 11-16 should be disregarded. The BRC misconduct encompassed by the charges in paragraphs 11-16 amounts to three punishable violations.

Dating, Initialling, Time Stamping and Endorsing the Checks (DGE Complaint Count I, paragraphs 17 and 18

There is no factual dispute that BRC cage personnel failed to date, initial, time stamp and restrictively endorse the three Caltagirone checks as required by N.J.A.C. 19:45-1.25(d)1 i, ii, iii. The cage personnel could not accept any check without dating, initialling, time stamping and restrictively endorsing it, yet each of Caltagirone's checks was so received. Thus, my Substantive Order of March 15, 1982 concluded that this conduct constituted three violations of N.J.S.A. 5:12-101(b)4.

Depositing the Undated Check in the Casino's Bank Account (DGE Complaint, Count 1, paragraph 19)

For the reasons explained orally on March 11 and 12, 1982, I dismissed this charge. I will not repeat my reasons herein except to say that BRC had carried this check to Caltagirone's personal bank, thereby in my opinion, cashing it in the most expeditious manner possible. Furthermore, there is some question whether N.J.A.C. 19:45-1.28(b), which technically required this check to be deposited in BRC's bank, is authorized by

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N.J.S.A. 5:12-101(d)(2), which permits the presentation of this check to any "bank for collection or payment. . . ." An administrative agency may not use regulations to cover conduct not contemplated by statute. Hotel Suburban Sys. v. Holderman, 42 N.J. Super. 84, 90-91 (App. Div. 1956); and Terry v. Harris, 175 N.J. Super. 482, 496 (Law Div. 1980).

Completing the Patron Credit Reference Card (DGE Complaint, Count I, paragraphs 20 and 21)

Caltagirone's credit reference card contained the following notation: "CONSOL 1.2 million dollars 5/18/81." The 1.2 million dollar consolidation, however, was accomplished by three $400,000 checks. Thus, I concluded on March 15, 1982 by Substantive Order that this notation constituted one violation of N.J.A.C. 19:45-1.27(d)10, which required the recording of the date and amount of each check (paragraph 20).

It was undisputed that Caltagirone's credit reference card noted that a $400,000 check left the cage on May 19, 1981 when the undated check was hand delivered to Caltagirone's bank. Thus, DGE did not object to BRC's motion to dismiss paragraph 21 of the complaint and on March 15, 1982 by Substantive Order, I dismissed this alleged violation of N.J.A.C. 19:45-1.27(d)13 (paragraph 21).

Traversing the Pit (DGE Complaint, Count II, paragraph 3)

DGE alleged that Caltagirone traversed the pit area by playing from a position adjacent to the dealer. DGE contended that this conduct violated N.J.S.A. 5:12-96(b) and BRC's Certificate of Operation, condition paragraph 29. For the reasons expressed orally on March 11-12, 1982, I granted respondent's motion to dismiss this count at the conclusion of DGE's case.

Neither regulation nor statute could be found making this conduct illegal and subject to civil penalty. Undoubtedly, good practice would require barring patrons from the pit area, but based on the absence of any regulatory or statutory provision, I could not conclude that failure to do so was intended to be a violation.

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DGE further claimed that a breach of the Certificate of Operation merits a discipline charge. The statute and regulations, however, indicate that the Certificate of Operation is a license to operate. Neither statute nor regulation provides that breaches of the Certificate are to be sanctioned by civil penalty. N.J.S.A. 5:12-35 provides that the Operation Certificate issued by the Commission certifies that the operation of the casino conforms to the act's requirements and that the casino personnel and procedures are efficient and prepared to entertain the public. The Operation Certificate states the understanding of the Commission with respect to the caliber of the licensee's activities as of a certain date and provides the necessary approval to commence operation. N.J.S.A. 5:12-129(4) permits the Commission to suspend the Operation Certificate of any casino for violations of any provision of the act or regulations. It does not provide that a sanctionable violation occurs when the provisions of the Certificate are disobeyed. The Commission's remedies for violations of a Certificate must be through renewal under N.J.S.A. 5:12-88.

Should the Commission reject my analysis, conclude that a violation is proper, and reverse my dismissal of paragraph 3 of Count II in DGE's Complaint, a remand will be necessary to provide BRC with an opportunity to present its defense of this allegation. Whatever result the Commission reaches, I suggest that it consider adopting a regulation precluding patrons from traversing the pit. I further suggest that the Commission determine whether it wishes to subject casinos to discipline for breaches of their Certificates of Operation and, if so, suggest that the Commission prepare an appropriate rule.

Calling "no more bets." (DGE Complaint Count II, paragraph 5)

Having determined that the dealer on May 17, 1981, in fact failed to call "no more bets" during Caltagirone's play, a violation of N.J.A.C. 19:47-5.3(b) has occurred. It is well established that the duly promulgated rules and regulations of an administrative agency have the force and effect of law. See, e.g. Co v. Bond Trans. Inc., 53 N.J. 186, 201, cert. den., 395 U.S. 935 (1969), 270 (1957). A violation of a regulation alone may support a disciplinary action. E.g., In re Weston, 36 N.J. 258, 260-61 (1961), cert. den., 369 U.S. 864 (1962).

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Pit Boss Performing Curator of Shoe Function (DGE Complaint, Count II, paragraph 7)

DGE claimed a violation when Mr. Fornasiero, a licensed pit boss, performed the function of curator of the shoe at baccarat. For the reasons expressed orally on March 11-12, 1982, I granted respondent's motion to dismiss on this count at the conclusion of DGE's case. I found neither regulation nor statute precluding this conduct and suggest here also that the Casino Control Commission consider adopting an appropriate rule, if it intends to preclude such conduct. Should the Casino Control Commission disagree with this ruling, a remand will be necessary to provide BRC with an opportunity to present evidence in defense of this charge.

Wearing the Licensee Badge (DGE Complaint, Count II, paragraph 9)

DGE claimed that a violation occurred when Mr. Fornasiero removed his casino key employee license badge to perform the function of curator of the shoe. N.J.A.C. 19:41-1.3(d) requires licensees to wear their licenses in a conspicuous manner and therefore I ruled by March 15, 1982 Substantive Order that a clear violation occurred.

Cooperating with the Commission (DGE Complaint, Count III, paragraphs 5,6,7, and 8)

DGE alleged that the following BRC employee action constituted violations of N.J.S.A. 5:12-80(d): (1) BRC contumaciously refused to take action when advised that a patron was traversing the pit (paragraph 5); (2) BRC employees told a Commission Inspector to leave the area of the gaming tables (paragraph 6); (3) BRC employees told a Commission Inspector to view a game from inside the pit (paragraph 7); and (4) BRC employees "denied, for a period of time," a Commission Inspector's request to place gaming activities on the Commission's closed circuit TV monitors (paragraph 8).

Preliminarily, I note that on March 15, 1982 by Substantive Order I ruled that under the circumstances of this case, it would not be a violation of N.J.S.A. 5:12-80(d) even if it were found that BRC contumaciously refused to take action when advised that a

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patron was traversing the pit. I believed that it would be unfair to find a violation for a failure to cooperate when the patron's action, assuming it occurred, was not precluded by statute or regulation (see above). Should the Commission disagree with me, a remand will be necessary to provide BRC with an opportunity to present its defense.

With regard to the allegations in paragraphs 6, 7, and 8, DGE contends that N.J.S.A. 5:12-80(d) requires instantaneous compliance by casino employees with any legal request by Commission Inspectors. BRC, however, argues that the statute is unforceable since it is unconstitutionally vague as applied and is being used to prosecute mere speech.

N.J.S.A. 5:12-80(d) provides that:

> All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division and to cooperate . . . in any inquiry, investigation or hearing conducted by the commission. (emp. added).

There is nothing in the definitions section, N.J.S.A. 5:12-2 to 49, or in the available legislative materials which is of assistance in construing the underlined terms. In its absence, reference was made to case law in other areas.

In State v. Maravola, 29 Ohio App. 2d 412, 198 N.E. 2d 88, 89 (1963), the court defined "assistance" as help, aid, support, cooperation or relief. As such, assistance seems to connote some activity or effort. In DeFazio v. Haven Savings and Loan Ass'n, 22 N.J. 511, 520 (1956), the court noted that all definitions of "information" were extremely broad and included books, records, or any item of knowledge.

"Inquiry" has been construed as a question, query, or request for information, Reiser Co. v. Baltimore Radio Show, Inc., 169 Md. 306, 313, 181 A. 465, 468 (1935) and as the act or an instance of seeking the truth or asking for information about something. Webster's Third New International Dictionary, p. 1167 (1971). "Investigation" refers to the process of inquiring into or tracking down through inquiry. Mason v. Peaslee, 173 Cal. App. 2d 587, 593 n. 2, 343 P. 2d 805, 808 n. 2 (1959). While a request for information may be the initial step, it does not, by itself, constitute an investigation. Electronic Components Corp. of North Carolina v. N.L.R.B., 546 F. 2d 1088, 1093 (4th Cir. 1976).

Applying the facts of this case to the statutory language, it is clear that the Commission was not holding a "hearing" and I believe that BRC is correct when it asserts that there is no evidence of any "inquiry," or "investigation" being conducted by the Commission in this case. The Commission Inspectors were performing their normal function of observing casino operations pursuant to N.J.S.A. 5:12-63(f) when the incidents mentioned in paragraphs 6, 7 and 8 allegedly occurred. Inspector observations may be a part of an "inquiry" or "investigation," but the terms are broader in meaning than daily routine inspector observations. I believe that the terms "inquiry" or "investigation" as used in section 80(d) refer to a more active, inquisitive process than Inspectors making regular, routine on-site observations of the casino practices. The charges in paragraphs 6 and 7 arose out of BRC's attempt to manipulate Commission observations. A request for information may arise out of an inquiry or investigation but there was no evidence of "any inquiry" or "investigation" being pursued. Indeed, it is only in paragraph 8 (TV monitor charge) where any verbal request by a Commission Inspector was made of any BRC personnel. It seems to me that the request to display a gaming table on a TV monitor seeks "assistance" or "information" rather than answers to questions, which are the normal goals of an inquiry or investigation. Furthermore, to construe "inquiry" as including all requests for "assistance" or "information," would render "inquiry" indistinguishable from "assistance" and "information," which licensees have a duty to provide under the first part of N.J.S.A. 5:12-80(d). Such a construction would render the first part of section 80(d) inoperative and should be avoided. Hoffman v. Hock, 8 N.J. 397, 406-7 (1952) Consequently, there was no "hearing," "inquiry," or "investigation" for BRC to cooperate in, and if any violation has occurred, it must be because BRC failed to provide "assistance or information" required by the Commission.

I further believe that requests for "assistance or information" from the "Commission" should not be limited to requests from high-ranking officials. "Commission" is simply defined as "The New Jersey Casino Control Commission." N.J.S.A. 5:12-14. While in many aspects of the statute, the duties to be performed by the "Commission" obviously contemplate action by the five-member board, when it comes to investigatory and supervisory activities, it is lower-level employees who are the "eyes and ears" of the Commission. N.J.S.A. 5:12-63f requires the Commission "to be present through its inspectors and agents at all times during the operation of any casino for the purpose of certifying the revenue thereof, receiving complaints from the public, and conducting such

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other investigations into the conduct of the games and the maintenance of the equipment as from time to time the Commission may deem necessary and proper . . ." (emp. added). Emergency matters can easily be foreseen where requiring an Inspector to contact a high-level official, who in turn would make some request of the casino, would result in an unnecessary and undesirable delay. Therefore, I conclude that for purposes of determining whether a casino failed to comply with a request for assistance or information, it should make no difference whether the request came from a Senior Inspector or an Inspector. Obviously, should the Commission prefer that certain requests be made by higher ranking officials, the Commission may set such internal working procedures. I only conclude that for purposes of determining whether a violation of N.J.S.A. 5:12-80(d) has occurred, the status of the Commission official is not alone determinative.

BRC contends, however, that paragraphs 6 and 7 allege a violation of N.J.S.A. 5:12-80(d) solely because of statements made by BRC personnel to Commission Inspectors. BRC argues that if 80(d) is construed to reach mere words, serious constitutional questions arise. See Hess v. Indiana, 414 U.S. 105, 107-8 (1973). Such a construction, however, is both unnecessary and unwarranted. To determine whether a casino failed to provide assistance or information required by the Commission, I believe that the casino's actions must be assessed in light of all the surrounding circumstances. State v. Lashinsky, 81 N.J. 1, 18 (1979) and State v. Caez, 81 N.J. Super. 315, 321 (App. Div. 1963). The licensee's conduct must be considered together with the Commission's need for the assistance or information. The circumstances preceding the request, the reasonableness and clarity of the request itself and the occurrences following the request are all relevant factors. In addition, N.J.S.A. 5:12-80(d) is obviously limited to assistance and information reasonably related to the Commission's authority. If a Commission Inspector asked a dealer to paint his or her personal residence, for example, a violation of 80(d) would not occur on the dealer's refusal. Similarly, a Commission request for assistance that was incomprehensible and not reasonably understood by a casino employee could not in fairness form the basis of an 80(d) violation. As construed, section 80(d) does not punish mere words and is therefore not unconstitutional on this basis.

BRC further contends that section 80(d) is too vague. The vagueness doctrine generally requires that a statute be precise enough to give fair warning to actors that contemplated conduct is proscribed and to provide adequate standards to enforcement agencies, fact finders and reviewing courts. Lanzetta v. N.J. 306 U.S. 451, 453 (1939). I

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believe that as construed above, section 80(d) provides adequate guidelines to licensees. Cases involving either economic regulation or civil sanction are subject to a lesser test for vagueness. Village of Hoffman v. Flipside, Hoffman Estates, 50 U.S.L.W. 4267, 4269-70 (1982). The fact that numerous requests might fall within the statute's proscription does not make the act unenforceable since a broad scope is not necessarily unconstitutional. Village of Hoffman, at 4269, n. 9. Licensees should be on notice that any clearly stated request for assistance or information from the Commission, which seems reasonably related to Commission business and responsibility should be honored.

I find it unnecessary to consider BRC's contention that section 80(d) is invalid because it could result in violations for failure to comply with requests impinging upon either the 5th amendment or the right to privacy. It is sufficient to state that no such requests were made in this case.

The facts in this case, however, demonstrate that a request was made by the Commission only in conjunction with the TV monitoring incident. The other allegations, paragraphs 6 and 7, involve attempts by BRC personnel to "adjust" the location which a Commission Inspector selected to observe a gaming table. Thus, BRC contends that since there was no request by the Commission, there can be no violation of any "continuing duty to provide any assistance or information required by the Commission." However, for assistance or information to be required, a formal request need not be made. I believe that section 80(d) permits a violation if the casino understood that the assistance or information which was not provided was impliedly required by the Commission. Many of the Commission activities are "continuous, ongoing and necessarily thorough." In re Application of Antonio Tufi, A-1541-80T1 at 13 (App. Div., Feb. 10, 1982). Since licensees have a continuing duty to cooperate and the Commission has an ongoing duty to observe casino operations, "assistance" by implication, should include lack of interference with the Commission's function. Therefore, the fact that no formal request was made for assistance or information would not necessarily be controlling.

Applying the facts to the law as construed, I conclude that one violation of N.J.S.A. 5:12-80(d) occurred when BRC attempted to have a Commission Inspector moved from a gaming table and attempted to obscure the Inspector's view of that gaming table. There is no evidence of any wrongdoing by the Commission Inspector. All that was proved

is that the Commission Inspector may have unintentionally annoyed a patron, who apparently was extremely temperamental. Furthermore, the annoyance of the patron was a direct result of BRC's action in attempting to isolate Caltagirone's gaming from the public and the Commission by placing security guards around the table.

The location of its Inspectors is the Commission's responsibility, obligation and authority. The Casino had no business attempting to coerce an Inspector into a different location. N.L.R.B. v. Copes-Vulcan, Inc., 611 F. 2d 440, 443 (3rd Cir. 1979) was cited by BRC for the proposition that there must be "some room for play in exchanges between union and management personnel." I agree that casino personnel should be free to talk to Commission personnel and to alert Commission personnel to any problems that Commission actions may be causing. However, the evidence in this case goes far beyond that type of communication. There is no question that BRC was forceful and wanted Inspector Scimines moved from the table. The evidence is replete with indications that BRC was terribly concerned about the close monitoring of Caltagirone by the Commission. BRC wanted Caltagirone to be "satisfied." In their language, he was a "good customer," meaning he was placing at risk substantial sums. This was BRC's overriding concern — to keep Caltagirone gambling. The fact that the Commission suffered no apparent detriment by BRC's action is not necessarily determinative, but merely one of the factors to be considered in assessing whether a violation occurred. Because Senior Inspector Ford was not coerced, but maintained Inspector Scimines at the table should not benefit BRC. The licensee's overall conduct might clearly have forced a less courageous Senior Inspector to remove an Inspector. Such conduct should not be condoned. It should be kept in mind that at the time BRC was attempting to convenience its patron by removing a Commission Inspector, and by blocking her view of the table, a violation of the regulations was occurring ("no more bets").

I conclude that BRC's attempt to move a Commission Inspector further from the table or into the pit area and the attempted blocking of the Inspector's view by a BRC security guard violated N.J.S.A. 5:12-80(d) by unjustifiably interfering with the Commission's functions. BRC should have known that its attempted interference with an Inspector's observations was a failure to provide impliedly required assistance.

With regard to the TV monitor incident, Count III, paragraph 8, DGE Complaint, a request was made for BRC personnel to place Caltagirone's table play on the Commission's TV monitors. I have previously determined that this request was not made

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for "recreational purposes" and therefore was clearly related to Commission business. For 13 minutes, BRC delayed complying. The short period of the refusal is not determinative, since the full circumstances must be evaluated and the time frame is only one factor to be considered. However, it should be noted that a 13-minute delay is a substantial time period, especially when the patron the Commission wished to observe was betting between $5,000 and $20,000 on each roll of the roulette wheel.

Under section 80(d), "assistance" was required by the Commission and BRC delayed in honoring this request, which if complied with would not have placed any burden upon BRC's operating procedures. I, therefore, conclude that by delaying Senior Inspector Ford's request, BRC violated N.J.S.A. 5:12-80(d).

PENALTY DETERMINATION

In this case, I do not believe that the misconduct of the licensee merits either revocation or suspension of its license. In my opinion, the possible and appropriate sanctions under N.J.S.A. 5:12-129 for the above-mentioned violations are:

(a) suspension of the certificate of operation;

(b) civil penalties and fines;

(c) cease and desist orders; and

(d) letters of reprimand or censure. See N.J.S.A. 5:12-129(4),(5),(7) and (8).

In determining an appropriate sanction for the violations detailed above, I must consider the following factors as specified in N.J.S.A. 5:12-130:

(a) The risk to the public and to the integrity of gaming operations created by the licensee's conduct;

(b) The seriousness of the conduct and whether the conduct was purposeful and with knowledge that it was in contravention of the act or regulations;

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(c) Any justification or excuses;

(d) Prior history of the licensee with respect to gaming activities; and

(e) Any corrective action to prevent further similar misconduct

DGE contends that in assessing a penalty, I must send a message to the casino industry that this conduct shall not be tolerated. BRC argues that the sanction standards do not permit such a consideration and an administrative agency may not go beyond the standards prescribed by the Legislature. In re Suspension of Heller, 73 N.J. 292, 310 (1977); In re Suspension of Wolfe, 160 N.J. Super. 114, 119 (App. Div. 1978). N.J.S.A. 5:12-129(5), however, permits me to consider deterrence of future violations as a factor in assessing civil penalties. Deterrence is normally directed not only at the immediate wrongdoer, but also at those who might follow thereafter. State v. Ivan, 33 N.J. 197, 201-202 (1960).

I would be lax, if I did not note before assessing any penalty that much of the dispute in this case was caused by escalating tempers. As BRC attempted to accommodate Caltagirone and as the Commission seemed to be attempting to thwart BRC's interests, friction and hard feelings developed. Some friction between the regulator and the regulatee is obviously unavoidable. Hopefully, this opinion, especially the construction of N.J.S.A. 5:12-80(d), provides some guidance to casino floor personnel and Commission Inspectors. In the absence of special regulations, however, there is no justification for treating certain gamblers differently from others, just because they are placing at risk more money than many people see in a lifetime. I suggest, however, that the Commission study whether the needs and concerns of the high roller merit special regulation.

The 1.2 Million Dollar Consolidation
(Count I, paragraphs 11-16)

When BRC accepted the Caltagirone checks, I believe that there was risk to the public. The reason that such transactions are supposed to occur at the cage is to foster security. By going to a hotel room, the casino placed the entire transaction in an

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unsecure area. Similarly, by accepting these checks, the casino increased its collection risk, Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598 (App. Div. 1981), thereby also jeopardizing the collection of the State's taxes, which in this case, amounted to $96,000.

I also conclude that there was no doubt that every BRC person in Caltagirone's hotel room knew that to accept the checks would violate the Casino Control Act and regulations. The justification or excuse after accepting the checks was that the casino had no other choice. They could have, however, refused to accept Caltagirone's personal checks and attempted to collect on the counter checks. N.J.S.A. 5:12-101(f). Instead, BRC accepted the personal checks.

No evidence of any BRC prior difficulties with the Casino Control Act was presented by DGE. Respondent's brief indicates that BRC commenced gaming operations in 1979 and in nearly three years of operation, there have been only three complaints made. The first alleged certain check-cashing violations during BRC's first few weeks of casino operation. That complaint was settled. The second complaint alleged improper storage of 16 bottles of wine and that complaint was settled. The third complaint involved this proceeding.

I know of no corrective action taken by BRC except for a meeting with then Chairman Lordi and DGE's Assistant Director to discuss this matter. It was BRC's position that it was coerced into this arrangement and that there ought to be an amendment to the rules permitting such conduct.

Because this incident appears to be an isolated occurrence, I do not believe that a suspension of the Certificate of Operation permitting credit is appropriate. I also find no ongoing conduct to cease, but I do believe that the offense is far too serious to merit a reprimand. Accordingly, a fine shall be imposed. Under N.J.S.A. 5:12-129(5), a $50,000 limit is present for each violation, amounting to a $150,000 maximum for the three violations, which occurred in conjunction with the consolidation. In addition, when imposing a fine, I must consider the severity of the misconduct and the financial means of the licensee. The parties stipulated that BRC for the last ten quarters reported a net worth of approximately 44 million dollars. I do not believe that BRC's conduct represents

the most serious offense that could occur under the Casino Control Act, since there was no risk to the integrity or to the public confidence in gaming operations. In addition, the licensee's prior history is good. Furthermore, I doubt strongly that BRC will engage in similar conduct in the future. However, I also believe that in civil penalty cases under the Casino Control Act, deterrence to others is an appropriate consideration, N.J.S.A. 5:12-129(5), and that "penalties must be of sufficient magnitude to eliminate the possibility that a penalty becomes simply a cost of doing business in this State." Second Interim Report, Staff Policy Group, p. 54-55.

Accordingly, after considering all the factors required to assess penalties as explained above, I believe that a $105,000 fine is an appropriate sanction, calculated at $35,000 for each offense.

Dating, Initialling, Time Stamping
and Endorsing the Checks
(Count I, paragraphs 17 and 18)

I believe that there was minimal risk to the public, since these checks were being handled separately by high-level casino employees. The testimony indicates that because of the confusion surrounding the three checks, and the circumstances of their arrival at the cage, the cage personnel forgot to perform this mechanical function. It was therefore a mistake without an intent to violate the act. Under the circumstances, I believe that a letter of reprimand is an appropriate penalty for these three violations.

Completing the Patron Credit Reference Card
(Count I, paragraph 20)

I find this to be a technical violation, with no risk to the public or to the integrity of gaming operations. The total amount of the three checks was indicated as was the date and word "CONSOL." I do not know why the records were kept in such a manner. However, any future violations of this kind should not occur since BRC should now understand that each check in a multi-check consolidation must be recorded. Accordingly, I conclude that a letter of reprimand is an appropriate penalty for this violation.

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Calling "no more bets"
(Count II, paragraph 5)

Here, only Caltagirone was gambling and he spoke only Italian. No other offense was charged — there is no allegation of cheating by Mr. Caltagirone or by BRC in connection with the dealer's failure. The conduct, however, was intentional, even though the circumstances are so unique that it is highly unlikely that they will be repeated. Nevertheless, the conduct cannot be condoned and a fine of $500, in my opinion, is an appropriate penalty.

Wearing the License Badge
(Count II, paragraph 9)

The wearing of the casino license is an important requirement for personnel on the casino floor. The badge must be worn by authorized persons at all times or the public could not distinguish casino employees from Commission employees from other members of the public. The public could not seek out appropriate casino employees when they needed them and Commission Inspectors might be unable to distinguish the public from casino employees.

The pit boss who removed his badge did so to assist a patron at the insistence of a superior. Presumably, this was done because the superior did not wish anyone to see a pit boss performing the curator of the shoe function. Most likely the conduct was purposeful and in knowing violation of the regulation. I find this conduct to be dangerous to the ability of the Commission to regulate the floor area and believe that a civil penalty is appropriate. After considering all of the required statutory factors, I conclude that a $2,000 penalty is appropriate.

Cooperating with the Commission
DGE Complaint, paragraphs (6) and (7) - the
moving of the Commission Inspector

Here, BRC security guards attempted to block a Commission Inspector from viewing a table. In addition, casino officials attempted to move an Inspector either further from the table or into the pit area, when a violation of the regulation was occurring. This is a serious violation.

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While the Commission should certainly consider the convenience of the gaming public and the casino's operational needs in the placement of its Inspectors, allowing the regulatee to control the "eyes and ears" of the regulator has obvious risks to the public and to the integrity of gaming operations. I also find the conduct here to be purposeful since the Casino's main concern was to convenience the patron. I find no justification and no excuse offered except that Caltagirone was temperamental.

Because of the isolated nature of the occurrence, however, a suspension of the Certificate of Operation is inappropriate. Nevertheless, I consider the offense too serious for a cease and desist or a letter of reprimand or censure. A fine must be imposed. The only mitigating factor is the good prior record of BRC. BRC's conduct must be punished and deterrence considered. Accordingly, under the circumstances, a fine of $20,000 is assessed.

DGE Complaint, Count III, paragraph 8
- The TV Incident

Risk to the public and to the integrity of gaming operations by BRC's conduct is present in this offense. A request by a Senior Inspector to view the gaming table was not honored immediately. In 13 minutes, thousands of dollars could have been wagered and numerous offenses could have occurred. I believe also that the conduct was purposeful.

The Commission monitors were voluntarily installed in the Commission's booth by BRC so that the Commission could observe its Inspectors in the hard and soft countrooms. Thereafter, BRC surveillance personnel, upon request, would place a table game on the Commission's TV monitors. Some of these requests by Commission personnel may have been made for recreational purposes. Other requests were undoubtedly made to assist the Commission in making its observations when Inspectors were either absent or otherwise committed. Nevertheless, no Commission rules or regulations were in effect during May 1981. Therefore, Mr. Mancari must have believed that he had some flexibility in handling Commission Inspector TV monitoring requests. Currently, BRC has a policy requiring BRC surveillance personnel to honor all table monitoring requests from Senior Inspectors.

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In the absence of a clear Commission policy controlling TV monitor requests, however, it is unjust for BRC to be severely penalized for its actions. In addition, BRC's current policy renders unlikely the reoccurrence of such activity. Because of the seriousness of the offense, and the need for deterrence, however, I believe that a fine is appropriate, and accordingly, I impose a $10,000 fine for this misconduct.

I also bring to the Commission's attention some testimony which indicates BRC's confusion over DGE and Commission TV monitoring roles. I suggest that the Commission determine whether such confusion exists and after consulting with DGE decide whether their mutual interest in TV monitoring can be preserved, coordinated, and handled in a cost-effective manner.

Order

For the reasons explained above, it is on this 8th day of June 1982

Ordered

That the following paragraphs in the DGE Complaint shall be and are hereby dismissed:

Count I, paragraph 19
Count I, paragraph 21
Count II, paragraph 3
Count II, paragraph 7
Count III, paragraph 5; and

Ordered

That BRC shall pay to the Casino Control Commission on or before July 28, 1982 $137,500 as a civil penalty for the various offenses detailed above; and

121.

Ordered

That this opinion shall constitute an appropriate letter of reprimand for the violations mentioned in the DGE Complaint, Count I, paragraphs 17, 18 and 20 and that this opinion shall be made a permanent part of BRC's file in accordance with N.J.S.A. 5:12-129(8).

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

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

June 8, 1982
DATE

STEVEN L. LEFELT, ALJ

Receipt Acknowledged:

June 10, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

June 11, 1982
DATE

Ronald L. Lakey/jsa
OFFICE OF ADMINISTRATIVE LAW

ij

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APPENDIX
A

DGE Witnesses

Doris Garlic (Doris Bessie Rice)
Francis X. Fee, Jr.
Gloria Ford
Sally Scimines
Myrna Rivera
Robert Plumb
Michael Santaniello
Alan Kagen
Joseph A. Mancari

BRC Witnesses

Margaret Jenkins
Joseph Mancari
Larry G. Woolf
Cheryl Hood
John Connors
John William Hessel

Depositions

Alesandro Fornasiero
Charles L. Horton
Bernard W. Resnick
Jess Lenz
George Lincoln Ebert
Lucia Van Pelt
Alfred J. Cade
Larry G. Woolf
Lori Reed

EXHIBITS:

P-1 (Ev.)	Deposition of Alesandro Fornasiero
P-2a (Ev.)	Deposition of Larry Woolf
P-2b (Ev.)	Deposition of Larry Woolf
P-3 (Ev.)	Deposition of Charles Horton
P-4 (Ev.)	Deposition of Bernard Resnick
P-5 (Ev.)	Deposition of Jess Lenz
P-6 (Ev.)	Deposition of George Lincoln Ebert
P-7 (Ev.)	Deposition of Lucia Van Pelt
P-8 (Ev.)	Deposition of Alfred Cade
P-9 (Ev.)	Deposition of Joseph Mancari
P-10 (Ev.)	Blank Patron Credit Reference Card
P-10a (Ev.)	Marker Bank Envelope and Patron Credit Reference Card for G. Caltagirone
P-11d,e,f,g, (Ev.)	Floor person's Rating Cards
P-12 (Ev.)	Deposition of Lori Reed
P-13 (Ev.)	Three Personal Checks (both sides) and Markers or Counter Checks Drawn by Caltagirone
P-14 (Ev.)	Certificate of Operation
P-15 (Ev.)	September 29, 1980 BRC Casino Access Codes Submission to DGE
P-16 (Ev.)	May 17, 1981 BRC Surveillance Log signed by Vince Falcone
P-18 (Ev.)	June 17, 1981 Kagen Memo to Principal Inspector Plumb
P-19 (Ev.)	June 17, 1981 Plumb Memo to Bernard Mormelo, Assistant Chief Inspector
P-20 (Ev.)	May 20, 1981 Fee Memo to Commission (circled sentence)
P-21 (Ev.)	May 19, 1981 Casino Control Commission Violation(s) or Table Inventory Discrepancy(s)

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P-22 (Ev.)	May 18, 1981 Casino Control Commission Violation(s) or Table Inventory Discrepancy(s)
P-23 (Ev.)	May 17, 1981 Casino Control Commission Violation(s) or Table Inventory Discrepancy(s)
P-24 (Ev.)	May 20, 1981 Casino Control Commission Violation(s) or Table Inventory Discrepancy(s)
P-25 (Ev.)	May 21, 1981 Casino Control Commission Violation(s) or Table Inventory Discrepancy(s)
P-26 (Ev.)	May 22, 1981 Casino Control Commission Violation(s) or Table Inventory Discrepancy(s)
P-28,29,30 (Ev.)	Inspector Questionnaires- admitted only those sections of report which were inconsistent with testimony. They were never submitted and presumably withdrawn by DGE.
P31(a) (Ev.)	Inspectors Questionnaire (S. Scimines) with Senior Inspector Ford's May 18, 1981 Daily Narrative - 2 pages with portions redacted; and Senior Inspector Ford's May 17, 1981 Daily Narrative - 2 pages with portion redacted
P-31(b) (Ev.)	Same as P-31(a), except it includes the redacted portions and has another copy of P-23 (Ev.) attached
P-31(c) (Ev.)	Senior Inspector Ford's May 17, 1981 Daily Narrative - 2 pages handwritten with portion redacted. (see P-31(a) (Ev.))
P-31(d) (Ev.)	Senior Inspector Ford's May 18, 1981 Daily Narrative - 2 pages handwritten with portion redacted. (see P-31(a)(Ev.))
P-32 (Ev.)	June 19, 1981 Charles P. Winder Memo to all Surveillance personnel.
R-5 (Ev.)	Procedures for Dealing Roulette (1 page)
R-7 (Ev.)	Margaret Jenkins' Note
R-10 (Ev.)	Roulette table layout
R-11 (Ev.)	Alesandro Fornasiero's Bond
R-12 (Ev.)	Portion of Mr. Reilert's examination of Inspector Ford during a deposition
R-13 (Ev.)	BRC Surveillance Log for May 18, 1981

R-14 (Ev.)	May 18, 1981 BRC date, time and restrictive endorsement
R-15 (Ev.)	Computer transaction Summary Record for Caltagirone (4 pages)
R-16 (Ev.)	Manual IOU Control (BRC) with Caltagirone transactions highlighted (15 pages)
R-17 (Ev.)	Computer Transaction Journal (BRC) with Caltagirone transactions highlighted (27 pages)
C-1 (Ev.)	Photocopy of Scimines' May 17 and 18 notebook entries - 6 pages with excision on 2nd page of the 6 pages
C-1(a) (Ev.)	Photocopy of first 3 pages of Scimines' May 17 notebook entries - containing the portion that had been redacted in C-1
C-2 (Ev.)	Photocopy of Senior Inspector Ford's notebook entries for May 7 and 18, 1981 with a portion redacted on first page
C-2(a) (Ev.)	C-2 containing the portion that had been redacted
C-3 (Ev.)	Ford's Daily Narrative May 17, 1981 - 2 pages with excision on second page
C-3(a) (Ev.)	Unredacted C-3
C-4 (Ev.)	Ford's Daily Narrative May 18, 1981 - 2 pages with excision on second page
C-4(a) (Ev.)	Unredacted C-4
C-5 (Id.)	Original notebook of Scimines
C-6 (Id.)	Inspector Hull's Report
C-7 (Id.)	Ms. Ford's original notebook
C-8 (Ev.)	Lori Reed's Report on 19:45-1.1 including Lori Reed's May 15, 1981 memo to Principal Inspector Bob Plumb - 2 pages and Myrna Rivera's May 15, 1981 memo to Senior Inspector Lori Reed - 2 pages with Casino Control Commission Violations or Table Inventory Discrepancies May 18, 1981. (See P-22 (Ev.) (no redactions).) Portions that had been redacted are bracketed.

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C-9 (Ev.) Lori Reed's Report on Article 7, Sec. 96 paragraph b including Lori Reed's May 15, 1981 memo to Principal Inspector Bob Plumb, 2 pages and Myrna Rivera's May 15, 1981 memo to Senior Inspector Lori Reed, 2 pages with Casino Control Commission Violations or Table Inventory Discrepancies, May 19, 1981. (See P-21 (Ev.) (no redactions).) Portions that had been redacted are bracketed.

C-10 (Id.) Documents reviewed in camera by Steven L. Lefelt, Administrative Law Judge to decide Casino Control Commission privilege question. They contain: C-7 (Id.) and C-5 (Id.) and what has been informally marked P-31 (6 pages); C-3(2 pages); C-4 (2 pages); P-28 (5 pages); P-29 (5 pages); P-30 (5 pages); C-8 (Ev.) and C-9 (Ev.).

APPENDIX B

March 15, 1982 Substantive Order

(attached)

ROBERT E. REILERT
ATTORNEY AT LAW
412 NORTH MANSFIELD AVENUE
MARGATE CITY, NEW JERSEY 08402
(609) 340-5790

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

Plaintiff,

vs.

BOARDWALK REGENCY CORPORATION

Respondent,

STATE OF NEW JERSEY
CASINO CONTROL
COMMISSION

DOCKET NO. 81-32

OAL DOCKET NO.
CCC 6325-81

O R D E R

This matter having been opened to the Court by Charles A. Matison, Esq., of the law firm of Cooper Perskie Katzman April Niedelman & Wagenheim, attorneys for Respondent, Boardwalk Regency Corporation, on its motions for Dismissal of certain paragraphs of the above captioned complaint and by Howard M. Barman, Deputy Attorney General, on behalf of the Division of Gaming Enforcement, on its motion for Summary Judgment as to certain paragraphs of said complaint, and the Court having considered the parties' legal memoranda and having heard oral argument, and for the reasons stated orally on the record on March 11 and 12, 1982, it is

ORDERED, that Summary Judgment is granted to the New Jersey Division of Gaming Enforcement as to the following specified paragraphs of its Complaint:

COUNT I

(a) Paragraph 11. The court finds that this is one (1) violation of N.J.S.A. 5:12-101(c).

(b) Paragraph 12. The court finds that this is one (1) violation of N.J.S.A. 5:12-101(c).

(c) Paragraph 13. The court finds that this is one (1) violation of N.J.S.A. 5:12-101(c).

(d) Paragraph 14. The court finds that this is one (1) violation of N.J.S.A. 5:12-101(c).

(e) Paragraphs 17 and 18. The court finds that the violations of the said paragraphs constitutes a total of three (3) violations of N.J.S.A. 5:12-101(b)(4).

(f) Paragraph 20. The court find that this is one (1) violation of N.J.S.A. 5:12-101(b)(4).

COUNT II

Paragraph 9. The court finds that this is (1) violation of N.J.A.C. 19:41-1.3(d); and it is hereby

FURTHER ORDERED, that Judgment of Dismissal is granted to Boardwalk Regency Corporation as to the following specified paragraphs of the Complaint:

COUNT I

(a) Paragraph 19.

(b) Paragraph 21. (Per March 12, 1982 ruling)

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COUNT II

(a) Paragraph 3.

(b) Paragraph 4.

(c) Paragraph 6.

(d) Paragraph 7.

(e) Paragraph 8.

(f) Paragraph 10.

COUNT III

(a) Paragraph 5; and it is

FURTHER ORDERED, that this Order, being entered pursuant to N.J.A.C. 1:1-9.7(a) of the Uniform Administrative Procedure Rules shall not be effective until March 26, 1982 or until such earlier date as the New Jersey Casino Control Commission may determine that it will not review this order. If, on or before March 25, 1982 the Casino Control Commission makes no determination concerning its intention to review this order, the order shall become final and effective as of March 26, 1982 in accordance with N.J.A.C. 1:1-9.7(a);

and it is

FURTHER ORDERED, that in the event the Casino Control Commission determines, on or before March 25, 1982, that it will review this order, the order shall not become effective for 45 days from the date of entry during which time period the Casino Control Commission may affirm, modify or reject it in whole or in part. If the Casino Control Commission does not so act within 45 days, by April 29, 1982, and unless such time period is otherwise extended in the manner provided by

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law, this order shall become final and effective as of April 29, 1982, in accordance with N.J.S.A. 52:14B-10.

3/15/82
Date of Entry:

Steven L. Lefelt, A.L.J.

131.

FILED
NEW JERSEY
OCT 25 1982
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7452-82
(OAL DKT. NO. CCC 6325-81 ON REMAND)
AGENCY DKT. NO. 81-32

DIVISION OF GAMING ENFORCEMENT,
Petitioner
v.
BOARDWALK REGENCY CORPORATION,
Respondent.

APPEARANCES:

Robert E. Reilert, Esq. for respondent

Charles A. Matison, Esq. for respondent (Cooper, Perskie, Katzman, April, Niedelman & Wagenheim)

Brian J. Molloy, Esq. for respondent (Wilentz, Goldman and Spitzer)

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

Alfred J. Bennington, Esq. for Alessandro Fornasiero (Blatt, Mairone and Biel)

Record Closed September 15, 1982 Decided Oct 21, 1982

BEFORE STEVEN L. LEFELT, ALJ:

On September 15, 1982 in Atlantic County the parties were provided with an opportunity to address the issues raised by the August 2, 1982 Casino Control Commission

New Jersey Is An Equal Opportunity Employer

Order remanding certain portions of Division of Gaming Enforcement v. Boardwalk Regency Corporation, OAL Dkt. No. 6325-81 (June 8, 1982). After the parties presented whatever evidence and oral arguments they could on the remanded issues, I closed the record on September 15, 1982. For the following reasons I now hold that: (1) BRC's failure to deposit the $400,000 undated check in its bank account was a violation of N.J.A.C. 19:45-1.28(b); (2) Mr. Fornasiero, a pit boss licensed in roulette and blackjack, did not violate any regulation or statute when without gambling or wagering he dealt baccarat cards to accomodate a customer; (3) BRC violated condition 29 of its Certificate of Operation when it permitted a customer to enter the pit; (4) BRC's conduct in failing to preclude the customer from continuing to walk across the pit was not a violation of N.J.S.A. 5:12-80(d); and (5) Mr. Fornasiero properly asserted his fifth amendment privilege in this proceeding.

DGE COMPLAINT COUNT I, PARAGRAPH 19
The Failure to Deposit the $400,000 Undated Check in the Casino's Bank Account

Most of this Count's facts are included in the Initial Decision at OAL Dkt. No. 6325-81 and shall not be repeated. However, I had found at page 4 in the Initial Decision that the $400,000 undated check was cashed by Mr. Fornasiero who carried the money from Monte Carlo to New Jersey. R-18 and R-19 admitted into evidence at the September 15, 1982 hearing together with counsels' stipulations indicate that $400,000 minus certain charges was wired from Monte Carlo to BRC's bank. Accordingly, I modify my previous finding to reflect this uncontested fact.

Since the Casino Control Commission has indicated that the applicable regulation is authorized and valid, my previously found facts, as corrected here, compel the conclusion that a violation of N.J.A.C. 19:45-1.28(b) occurred--BRC failed to deposit the $400,000 check in its bank account.

Because of the expeditious, secure and costly manner in which BRC undertook to cash this check, BRC, in my opinion, vigorously protected both its interests as well as the State's. I believe that the public's interest was only minimally endangered by this technical deviation from the regulations. Accordingly, I conclude that a letter of reprimand is an appropriate penalty.

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DGE COMPLAINT COUNT II, PARAGRAPH 7

Pit Boss Performing Curator of the Shoe Function

Here also, the facts previously found need not be repeated, except to note that there was absolutely no evidence of Mr. Fornasiero gambling or wagering. Accordingly, I specifically find that when Mr. Fornasiero dealt from the baccarat shoe he was not gambling or wagering.

The overwhelming weight of the evidence also shows that Fornasiero was not instructing Caltagirone as Mr. Resnick imagined in his deposition. There is no other support in the record for Mr. Resnick's views. Neither Mr. Fornasiero nor any other BRC employee supports the instruction hypothesis. Rather, the record rings with the conclusion that Fornasiero was accomodating Caltagirone who wished to change his luck by having someone else deal the cards, and I so find.

The Commission has determined that "participant" under N.J.A.C. 19:47-3.1 et seq. means a wagering player and that N.J.S.A. 5:12-100(n) prohibits Mr. Fornasiero, a licensed pit boss, from wagering. Thus, there is no statute or regulation precluding Mr. Fornasiero who was neither gambling nor wagering from dealing baccarat cards to accommodate a patron. Technically, Mr. Fornasiero was not curator, since he was not gambling. Just as Mr. Fornasiero assisted Caltagirone by interpreting for him, he also assisted the patron by dealing a few hands of cards. I find neither regulation nor statute precluding this conduct, and thus I conclude that if the Commission wishes pit bosses to perform only those functions for which they are licensed, a regulation must be promulgated. Count II, paragraph 7 should be dismissed.

DGE COMPLAINT COUNT II, PARAGRAPH 3

Traversing the Pit

(Inadvertently Referred to as Count I, paragraph 3
in the Commission Remand Order)

After considering the evidence including the available testimony, depositions and exhibits, I find as uncontested fact that on May 15, 1981 when Mr. Caltagirone was playing roulette, he changed tables often, apparently in a futile attempt to reverse his monumental bad luck. Sometime during this "play," Mr. Caltagirone, holding in his hands

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chips worth thousands of dollars, entered the pit area to obtain access to another roulette table across the pit. As he entered, he unhooked the rope and a security officer followed relatching the rope. Mr. Fornasiero accompanied Mr. Caltagirone across the pit.

Both parties agreed that Caltagirone crossed the pit at least once. The gist of BRC's argument centers around whether Caltagirone placed bets from inside the pit and whether he crossed the pit more than once. There was some confusion in the evidence over whether Caltagirone was to the left or right of the tip box or adjacent to the dealer, when the Commission inspectors observed him placing bets. Furthermore BRC contended that its roulette tables were uniquely designed to permit an additional player at the spot Caltagirone was gambling. Contrary to BRC's arguments, however, I believe that the record demonstrates clearly that the roulette pit in this case was comprised of a number of roulette tables placed back-to-back with the space in between used for supervisory casino personnel, computer terminals and other control activities. Velvet ropes were stretched between the tables to assist BRC in maintaining pit security and demarcating the pit barrier between tables. The evidence is insufficient to conclude that Caltagirone was gambling from a permitted location. On the contrary, the evidence overwhelmingly demonstrates that Caltagirone placed roulette bets from inside the pit whether his exact location was adjacent to the dealer or to the left or right of the tip box.

Furthermore, the record compels a conclusion that high-level casino managers elected not to prevent Caltagirone from traversing the pit. When Fornasiero accompanied Caltagirone across the pit, he did urge Caltagirone not to cross the pit. Unfortunately Caltagirone ignored Mr. Fornaisiero and continued to cross the pit. Thereafter, a security officer, when asked by Inspector Rivera whether Caltagirone had access to the pit area, shrugged his shoulders. Two other casino employees, Mr. Parker and Mr. Siska, did nothing when Inspector Reed informed them of Caltagirone's pit activities. Reed had observed Caltagirone crossing the pit more than once. Parker and Siska attempted to justify Caltagirone's activities by stating "he's a high-roller." Finally, and most tellingly, the record contains another colorful remark by Mr. Resnick. Resnick stated in his deposition that he told Inspector Reed that "if Caltagirone wanted to roller skate around the casino, they would not stop him." Based on this evidence together with the observations by Inspectors Reed and Rivera and other evidence explaining the personality and temperament of Mr. Caltagirone, I find that Caltagirone crossed the pit not once but twice and probably three or more times on May 15, 1981.

135.

The Commission has indicated that a breach of a Certificate of Operation or any condition violates an order of the Commission and is therefore sanctionable. I agree with the parties that a fair reading of condition 29 of BRC's Certificate of Operation prohibits patrons from traversing the pit. Accordingly, from the facts I must conclude that a violation of condition 29 in BRC's Certificate of Operation occurred.

In considering an appropriate penalty for this violation, I have concluded that a very serious infraction occurred. The pit area has limited access to safeguard important casino activities, such as supervision over the casino games and financial controls. Patron entry to the pit might jeopardize control over these important functions and involve substantial risk to the public's interest in casino activities. Good management clearly requires that patrons be totally excluded from the pit area.

Furthermore, in considering penalty, N.J.S.A. 5:12-130 requires me to consider the seriousness of the conduct and whether the conduct was purposeful and with knowledge that it was in contravention of the act or regulations. While Caltagirone's initial entry into the pit area probably was unintentional and unknowing, there is no question that Caltagirone's conduct was condoned and permitted to continue by BRC employees. While I originally concluded that the statutory scheme did not envision disciplinary actions for breaches of Certificates of Operation, there was never any question that BRC knew that entry into the pit by patrons was a violation of its Certificate. BRC thus purposely contravened its Certificate to keep a high-roller gambling. Had Caltagirone bolted once across the pit area, a possible justification or excuse could have been offered, since Caltagirone was clearly a difficult individual to control. However, I must conclude that under these facts there was neither justification nor excuse for BRC's conduct. BRC simply wished to keep Caltagirone gambling at any cost and he in fact "played" whether inside or outside the pit.

I believe that the only mitigating factor is that no further entries into the pit occurred during Caltagirone's "plays" after May 15, 1981. Nevertheless, pit entry by patrons is fraught with danger and the casino industry must understand that such activity will not be condoned. Under the circumstances, particularly because of BRC's flagrant conduct, I believe that a $40,000 fine for this violation is an appropriate penalty.

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DGE COMPLAINT COUNT III, PARAGRAPH 5

BRC's Failure to Cooperate When Caltagirone Traversed the Pit

On the same facts detailed above under Traversing the Pit, DGE also charges BRC with failing to cooperate under N.J.S.A. 5:12-80(d) after the Casino inspectors advised BRC employees of Caltagirone's presence in the pit. It is clear from reviewing the evidence that no inspector explicitly requested or demanded that Caltagirone be removed from the pit. DGE contends, however, that the evidence requires a finding that Inspector Lori Reed impliedly requested that BRC remove Caltagirone from the pit area.

The inspectors informed BRC employees that they had observed Caltagirone in the pit and the evidence is clear that the inspectors were extremely upset by the "defiant" attitude of BRC employees, particularly Mr. Resnick. Inspector Rivera stated that she felt that "Mr. Resnick made a laughingstock out of the Commission. . . ." Lori Reed further comments that:

> There seemed to be no reservations in Mr. Resnick's mind that the Commission's regulations only apply when it is convenient for the Casino to implement them. At all other times there is no reason for the Commission to even be present.
>
> In my opinion, Mr. Resnick's outright display of disrespect for the Commission Regulations should not be tolerated. The fact that 'nothing happens' when violations are written up is an example of Mr. Resnick's write all the violations you want attitude. I feel it makes it that much easier for the casino personnel to make a mockery of the Commission. Maybe an example should be made of the Boardwalk Regency.
>
> May 15, 1982 Reed memo to Principal Inspector Plumb.

I believe that Inspector Reed's statement and Inspector Rivera's testimony indicate that they did not expect BRC to remove Caltagirone from the pit because of any explicit or implicit removal instructions. Rather, the record is clear that the inspectors were upset by the Casino's flagrant violation of its Certificate of Operation. Official notification of alleged wrongdoing by casinos is in writing. Inspectors forward through their chain of command alleged violations which are transmitted by supervisory inspectors to the casino for its written response. Whether further action is taken by the Commission is decided thereafter. No evidence was presented concerning any warnings or violation

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reports which are made by the inspectors directly to casino personnel. In fact, the record indicates that such communication between inspectors and casino personnel is discouraged. Obviously, to permit inspectors to direct casino management on the casino floor would be a power that the Commission would find most difficult to control and supervise. Consequently, I conclude that the evidence does not demonstrate any implicit or explicit inspector demand or request to remove Caltagirone. Furthermore, BRC did not intentionally or unintentionally interfere with the Commission inspector's functions. BRC's misconduct did not impair the Commission's "eyes and ears" on the casino floor. Its investigative functions continued unimpaired.

Did BRC fail to provide any "assistance or information" required by the Commission? BRC breached its duty to operate its Casino in accordance with the law and not to permit patron entry into pit areas. BRC's duty, however, is continually present by virtue of the Commission's regulations and statutes mandating lawful operation. To construe "assistance" in N.J.S.A. 5:12-80(d) as including breaches of the casino's duty to operate lawfully would require an 80(d) violation each time a casino failed to remedy a violation immediately. A casino's failure to correct violations promptly, must be considered under N.J.S.A. 5:12-130(b), (c) and (e) when determining an appropriate sanction for any violated regulation or statute. In fact, the Casino's "defiance" led to my conclusion that BRC's conduct was purposeful and therefore resulted in a substantially increased penalty for Count II, paragraph 3, Traversing the Pit. Had Mr. Caltagirone entered the pit and been properly restrained by BRC, the penalty assessed would have been significantly reduced. To permit a violation of 80(d) in Count III, paragraph 5 would therefore result in punishing the same conduct twice and cause a construction of "assistance" that is overly broad and duplicitous of the general requirement placed upon all casinos to operate lawfully. All sections of the Casino Control Act must be read together in light of the general intent of the act so that the auxiliary effect of each individual part is made consistent with the whole. Febbi v. Bd. of Review, Div. of Employment Security, Dept. of Labor and Ind., 35 N.J. 601 (1961); Abrams v. Dept. of Civil Service, 70 N.J. Super. 559 (App. Div. 1961). I conclude that "assistance" under N.J.S.A. 5:12-80(d) does not include the general requirement placed on all casinos to abide by applicable regulations, statutes and Certificates of Operation. An implicit request which would justify a violation for failing to cooperate if refused by the casino must interfere more directly with specific Commission functions, beyond the Commission's general obligation to ensure lawful casino operation.

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Accordingly, for all of the above reasons I conclude that Count III, paragraph 5 should be dismissed.

FIFTH AMENDMENT AND N.J.S.A. 5:12-80(d)

The evidentiary hearing in this case began and ended in perfect symmetry with A. Fornasiero asserting his fifth amendment privilege, initially on December 29, 1981 when he was called to the stand by DGE and again on September 15, 1982 after having been called to the stand by BRC's counsel.

Apparently, Mr. Fornasiero had agreed to testify on September 15, 1982 on behalf of his employer, BRC. Upon arrival of Mr. Fornasiero's counsel, Mr. Fornasiero was called to the stand by BRC. BRC intended to ask Fornasiero questions relating only to the traversing of the pit incident and I had previously agreed, upon BRC's motion, to restrict cross-examination to the scope of direct examination. Before testifying, Mr. Fornasiero expressed a desire to consult with his counsel. After this consultation with counsel, he rescinded his original agreement to testify voluntarily. Accordingly, at the request of BRC's counsel and with the concurrence of DGE, I issued an oral subpoena, nunc pro tunc, under my derivative subpoena powers, Hayes v. Gulli, 175 N.J. Super. 294 (Ch. Div. 1980), to compel Fornasiero's presence.

Fornasiero's counsel indicated that his client was in a difficult position since Fornasiero was employed by BRC and wished to cooperate, but that he was strongly advising Fornasiero not to testify. Mr. Fornasiero then asserted his fifth amendment right and refused to answer all questions beginning with whether he was employed by BRC on May 15, 1981, the date of the traversing incident. Fornasiero read a statement, written by his attorney, indicating that he would not testify unless immunity was given to him by the Casino Control Commission.

Having observed the situation, I believe that BRC's counsel was surprised by this turn of events. BRC's counsel indicated that his defense was hampered by this action and asserted that there was no other witness who could sufficiently counter the charges. Upon inquiry, counsel indicated that Caltagirone's presence was currently unknown and that his last known address was in New York, beyond New Jersey's subpoena power.

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BRC's counsel placed a proffer of Fornasiero's expected testimony on the record and joined in Fornasiero's request for immunity so BRC could properly defend this matter.

I believe that Mr. Fornasiero properly asserted his fifth amendment privilege and have concluded that unless N.J.S.A. 5:12-80(d) is read to permit such assertions, the statute would be unconstitutional.

While misconduct on the licensee's part might be grounds for a license revocation proceeding, such disciplinary hearings may not entail a forfeiture or penalty. See, Manning Engineering, Inc. v. Hudson Cty. Park Comm., 74 N.J. 113, 136 (1977). However N.J.S.A. 5:12-122 states that "any person who violates any provision of this act the penalty for which is not specifically fixed in this act is guilty of a disorderly persons offense." As used in that section, "act" is not limited to sections 5:12-111-130 as argued by DGE, but refers instead to the entire statute. See, Dept. of Treasury v. Reinking, 109 Ind. App. 63, 67 32 N.E. 2d 741, 743 (1941).

The Division, in reliance on N.J.S.A. 2C:1-4(b), which states that "disorderly persons offenses and petty disorderly persons offenses are petty offenses and are not crimes within the meaning of the Constitution of this State," has argued that the privilege against self-incrimination would not apply where the threatened prosecution is one for a disorderly persons offense. Preliminarily, of course, the fifth amendment is a federal constitutional right that has been applied to the states through the fourteenth amendment. Malloy v. Hogan, 378 U.S. 1 (1964). The fact that our State eliminates disorderly persons offenses from the meaning of crimes in the State Constitution has no bearing on the characteristics of incrimination necessary for a person to invoke his or her federal constitutional fifth amendment privilege. Nevertheless, since criminal statutes must be strictly construed, State v. Carbone, 38 N.J. 19 (1962), I believe that our Legislature intended only what it said in N.J.S.A. 2C:1-4(b), namely, that disorderly persons offenses are not crimes as that word is used in the State Constitution. This conclusion is buttressed by the next sentence of N.J.S.A. 2C:1-4(b) which states that the State constitutional guarantees of a right to indictment by a grand jury and the right to trial by jury for criminal offenses do not apply to disorderly persons offenses. Thus, the Legislature intended only to clarify that the criminal code did not reverse the existing rule which precluded indictment and jury trial for disorderly persons offenses. See, State v. Rodgers, 91 N.J.L. 212, 214 (E. & A. 1917). The Legislature neither intended to preclude

the invocation of the privilege for disorderly persons offenses nor to affect other constitutional rights. For example, "no person may be imprisoned for any offense whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." Argersinger v. Hamlin, 407 U.S. 25 (1972) and Scott v. Illinois, 440 U.S. 367 (1979).

The privilege against self-incrimination in New Jersey is not contained in the State Constitution, State v. Vinegra, 73 N.J. 483 (1977), and in my opinion applies to statutorily defined offenses where there is a possibility of a fine or incarceration. See, E.L.L. v. State of Alaska, 572 P.2d 786, 788 (Alaska Sup. Ct.); Mills v. Munic. Ct., 110 Cal. Rptr. 329, 336, 515 P.2d 273, 280 (1973); People v. Davis, 11 Ill. App. 3d 775, 779, 298 N.E. 2d 350, 353 (1973); City of Chicago v. Berg, 48 Ill. App. 2d 251, 258, 199 N.E. 2d 49, 52 (1964). Evid. R. 25 and N.J.S.A. 2A:84A-19 provide that "every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or forfeiture of his estate . . . ." Conviction on a disorderly persons charge carries with it the possibility of a fine not to exceed $1,000, N.J.S.A. 2C:43-3, and a term of imprisonment not to exceed six months. N.J.S.A. 2C:43-8. Such sanctions constitute sufficient "incrimination" and "penalty" to invoke the fifth amendment protection described in N.J.S.A. 2A:84A-19 and New Jersey Evid. R. 25, made applicable to this proceeding by N.J.A.C. 1:1-15.6.

Fornasiero accompanied Caltagirone as his interpreter almost constantly during Caltagirone's stay at BRC. Fornasiero has already been found to have removed his casino employee's license when he dealt from the baccarat shoe, OAL Dkt. No. 6325-81 at p. 3, a violation of N.J.A.C. 19:41-1.3(d). The Commission inspectors observed Fornasiero accompanying Caltagirone into the pit area and Fornasiero's own deposition confirms this conduct and that Fornasiero knew that Caltagirone should not remain in the pit. Fornasiero's subsequent conduct, after his initial warning of Caltagirone, is not contained in the record. If he were to testify, DGE could question him on these subsequent events, perhaps disclosing whether he aided Caltagirone's presence in the pit. Thus, I believe that Fornasiero reasonably feared further action against him individually, the consequences of which could result in sufficient penalty to invoke his fifth amendment privilege. I hold that N.J.S.A. 5:12-80(d) which requires cooperation with the Commission does not require a waiver of the fifth amendment. In seeking "information or assistance," the Commission must be sensitive to the constitutional rights of persons in the casino industry.

Since Fornasiero in essence was seeking immunity as well as asserting his fifth amendment privilege, I did not rule on whether each question presented a reasonable basis for apprehension or fear of incrimination, as would normally be required. State v. Craig, 107 N.J. Super. 196 (App. Div. 1969). Furthermore I take no position on whether Fornasiero should be granted immunity in this action since no record was developed before me and such a request is beyond the scope of this proceeding. N.J.S.A. 5:12-67. I note however, as DGE argues, that it would be unusual for immunity to be granted in order to facilitate the defense.

In addition, DGE was in a similar position on January 22, 1982 when I ruled that Mr. Fornasiero's deposition would be admissible against BRC. I ruled that under N.J.A.C. 1:1-15.8(a) hearsay evidence is admissible subject to a valid claim of privilege. (There was no serious question that the probative value of the deposition offered against BRC outweighed any risk of undue consumption of time, undue prejudice or confusion, N.J.A.C. 1:1-15.2.) The privilege against self-incrimination cannot be asserted by a corporation. N.J. Builders, Owners and Managers Assoc. v. Blair, 60 N.J. 330, 340-41 (1972). The privilege is personal, Burton v. Sills, 53 N.J. 86, 104 (1968), app. dismissed, 394 U.S. 812 (1969), and thus only Mr. Fornasiero and not the respondent may assert it here. See, State v. Marchese, 14 N.J. 16, 23 (1953).

Since BRC has no fifth amendment rights, I further ruled that it could not suppress the deposition for any alleged fifth amendment violations involving Mr. Fornasiero. That the deposition may have been unconstitutionally obtained did not confer any greater rights upon the respondent. See, United States v. Fredericks, 586 F.2d 470 (5th Cir. 1978), cert. den., 440 U.S. 962 (1979), and Alderman v. United States, 394 U.S. 165, 171-74 (1969).

In declaring this deposition admissible against BRC, I specifically stated for the guidance of any subsequent proceedings, that I did not decide whether Mr. Fornasiero's fifth amendment rights were violated at the deposition or whether he waived his fifth amendment rights at the deposition. I left those questions for Mr. Fornasiero to raise should anyone attempt to use the deposition against him. I noted only that when this deposition would be admitted against BRC in this proceeding, the only damage to Mr. Fornasiero would be publicity; and injury to reputation is not covered by the privilege. In re Vince, 2 N.J. 443, 445 (1949). I further noted that BRC's constitutional rights were not violated at the deposition and that there was no evidence that the Division obtained

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the deposition through an intentional hostility to Mr. Fornasiero's constitutional rights. Cf. Mesarosh v. U.S., 352 U.S. 1 (1956). After this ruling, DGE elected not call Mr. Fornasiero to the stand and presumably elected not to seek immunity for Mr. Fornasiero.

I further note that Mr. Fornasiero's testimony according to counsel's proffer would be merely an elaboration of his deposition which is already in evidence. Thus, DGE and BRC are in similar positions, both relying on Fornasiero's deposition, and I see no inequity in their mutual positions.

ORDER

For the reasons explained above, I order on this 21st day of Oct. 1982 that: (1) Count III, paragraph 7 and Count II, paragraph 5, be dismissed; (2) for the violations of Count II, paragraph 3, Traversing the Pit, BRC shall pay the Casino Control Commission $40,000 as a civil penalty in addition to the $137,500 ordered on July 28, 1982; and (3) this opinion shall along with OAL Dkt. No. CCC 6325-81 constitute an appropriate letter of reprimand for the violations mentioned in the DGE Complaint Count I, Paragraph 19 and that this opinion shall be made a permanent part of BRC's file in accordance with N.J.S.A. 5:12-129(8).

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.

143.

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

10/21/82
DATE

STEVEN L. LEFELT, ALJ

Receipt Acknowledged:

10/25/82
DATE

Bernadette T. Fuqua
CASINO CONTROL COMMISSION Paralegal

Mailed to Parties:

OCT 2 6 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

bm

144.

EXHIBITS:

R-18 (Ev.) Chemical Bank Payment Memorandum for Boardwalk Regency in the amount of $399,580, dated 5/28/81

R-19 (Ev.) Atlantic National Bank Credit Slip, dated 5/28/81, in the amount of $399,575 for Boardwalk Regency

145.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-EA-357
OAL DOCKET NO. CCC 7-82
APP. NO. 20385-21

IN THE MATTER OF THE APPLICATION:
OF CHESTER R. BRATHWAITE FOR : FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :

This matter having been opened to the New Jersey Casino Control Commission upon the initial decision of the Office of Administrative Law filed with the Commission on March 15, 1983, recommending that the casino employee license application of Chester R. Brathwaite be denied; and no exception or objections to the initial decision having been filed; and the Commission having considered the entire record and having resolved at its public meeting on April 20, 1983, to reject the said initial decision and to grant, for good cause shown, the casino employee license application of Chester R. Brathwaite,

IT IS on this 1st day of June 1983 ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is rejected; and

IT IS FURTHER ORDERED that the casino employee license application of Chester R. Brathwaite be and hereby is granted based upon the findings and conclusions as set forth in the

Commission's final decision in this matter, which is incorporated herein 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 and the authorized agents of all currently operating casino's within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
Dennis Daly
Senior Assistant Counsel

DATE: June 1, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-EA-357
OAL DOCKET NO. CCC 7-82
APP. NO. 20385-21

IN THE MATTER OF THE APPLICATION:
OF CHESTER R. BRATHWAITE FOR :
LICENSURE AS A CASINO EMPLOYEE :

FINAL COMMISSION DECISION

Chester R. Brathwaite, appeared Pro Se.

William R. Mountford, Jr., Deputy Attorney General, appeared for the Division of Gaming Enforcement.

This matter arises out of the application of Charles R. Brathwaite[1] ("Applicant") for licensure as a casino employee (craps dealer). See, N.J.S.A. 5:12-7, -90. Mr. Brathwaite's application was filed on July 11, 1980. Thereafter, on December 22, 1981, the Division of Gaming Enforcement ("Division") issued its report to the Commission regarding the Division's investigation of the Applicant's qualifications for licensure. See, N.J.S.A. 5:12-76. In that report, the Division posed an objection to the Applicant's licensure.

1. Throughout the proceedings the Applicant's surname has been incorrectly spelled. The correct spelling of his surname is "Brathwaite," not "Braithwaite."

On December 29, 1981, pursuant to the Applicant's written request for a hearing, the Commission transmitted this matter to the Office of Administrative Law in accordance with N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. A prehearing conference was held on August 16, 1982, and the matter proceeded to a formal hearing before the Honorable Richard L. Voliva, Administrative Law Judge, on November 4 and 15, 1982, and on January 27, 1983.

On March 15, 1983, the Administrative Law Judge ("ALJ") filed his Initial Decision with the Commission, recommending that the application for licensure be denied. A copy of this Initial Decision is appended hereto at A-1 to A-17 for convenience of reference. The Initial Decision was forwarded to the Applicant and the Division on March 18, 1983. The parties were afforded ten working days from receipt of the Decision within which to file written exceptions or objections. No exceptions or objections were filed.

Upon review and consideration of the Initial Decision in this case and the entire record of the proceedings, the Commission determined at its public meeting of April 20, 1983, to reject said Initial Decision and to grant the casino employee license application of Chester R. Brathwaite. More specifically, the Commission adopts all the findings of fact contained in the Initial Decision. However, the Commission rejects Judge Voliva's legal analysis of N.J.S.A. 5:12-86(c)(2), and finds, consistent with its analysis in In the Matter of the

Application of Robert A. Ferrin for Licensure as a Casino Employee, Docket No. 79-EA-207 (1981), that because the Applicant filed his Personal History Disclosure Form after the effective date of N.J.S.A. 2C:1-1 et seq., the list of disqualifying offenses that should be applied is found in N.J.S.A. 5:12-86(c)(1). The Commission also finds that the Applicant has been convicted of N.J.S.A. 2A:141-1 and 2A:151-5, and that the equivalent offense under the New Jersey Code of Criminal Justice is N.J.S.A. 2C:15-1, robbery in the first degree, an offense listed in N.J.S.A. 5:12-86(c)(1). Thus, the Applicant has sustained a conviction for a disqualifying offense. The Commission nevertheless finds that the Applicant has demonstrated his rehabilitation from disqualification by clear and convincing evidence pursuant to N.J.S.A. 5:12-90(h) and has further demonstrated by clear and convincing evidence, his good character, honesty and integrity. See, In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113 (1980). The Commission now sets forth its reasons for rejecting the Initial Decision and for determining that a casino employee license should issue.

The Applicant is 27 years old and a native of the Atlantic City area. For a period of nine months during 1974 he was a member of the United States Army and received an honorable discharge. During most of 1975, the Applicant was employed by the Black Int. Detective Agency.

On December 31, 1975, the Applicant and another individual decided to rob a 7-Eleven store in Northfield, New Jersey. Both went to their respective homes and obtained weapons. The Applicant, who was intoxicated, utilized a 45-caliber automatic handgun to perpetrate the robbery of the store. Approximately $135 in cash and some food stamps were stolen. Over a year later, in February 1977, the Applicant was arrested for the commission of this crime. He pled guilty to the charge of armed robbery, was sentenced to an indeterminate term at the Yardville Correctional Center, served approximately one year and was released on parole.

The licensing criteria for casino employee license applicants is found in Section 90 of the Casino Control Act.[2] Further, N.J.S.A. 5:12-90(e) provides that the Commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in Section 86 of the Casino Control Act.

The ALJ correctly found that the Applicant was convicted of robbery while armed with a weapon in violation of N.J.S.A. 2A:141-1 and N.J.S.A. 2A:151-5. Thereafter, the ALJ noted that N.J.S.A. 2A:141-1 was listed in Section 86(c)(2) of the Act

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2. Throughout this final decision, sections of the Casino Control Act are sometimes cited by section number only. The full citation is found by adding the prefix N.J.S.A. 5:12-___.

as a disqualifying offense and that licensure ought thus be denied. (A-9) However, the ALJ's construction and application of the pertinent provisions of Section 86 appear to be inconsistent with the approach previously endorsed by this Commission.

As we held in the Ferrin case, supra, the Commission should apply the criminal law of New Jersey extant at the time the application is filed with the Commission. Under that thesis, the task is first to determine whether pertinent provisions of Title 2A or Title 2C of N.J.S.A. were in effect at the time the application was filed and then to refer initially to the appropriate list in Section 86(c), as amended. If the application was filed before September 1, 1979, the Title 2A list, i.e., Section 86(c)(2) should be consulted. If the conviction or conduct at issue fits the definition of an offense set forth in the Section 86(c)(2) Title 2A list, the applicant is nevertheless afforded the opportunity by Section 86(c)(4) of the Act to escape disqualification as follows:

> ...provided, further however, that, any applicant ... who is disqualified on the basis of paragraph (2) herein shall not be so disqualified if such applicant ... demonstrates to the commission by clear and convincing evidence that the act or acts which constitute the offense which forms the basis for such disqualification would not form the basis for a disqualification pursuant to paragraph (1) of this section;
>
> * * *

Thus, conduct constituting an offense on the Title 2A list of Section 86(c)(2) is not a disqualification if it is shown not to constitute an offense on the Title 2C list of Section 86(c)(1). If, as in the present case, the application was filed after September 1, 1979, the Title 2C list, i.e., Section 86(c)(1), is controlling.

Here, the Applicant filed his Personal History Disclosure Form in July 1980, nearly one year after the effective date of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., L. 1978, c. 95 (September 1, 1979).

At the time the Applicant filed his application for a casino employee license, the equivalent offense to N.J.S.A. 2A:141-1 and N.J.S.A. 2A:151-5 was, and still is, N.J.S.A. 2C:15-1 (robberies). This Title 2C offense is listed in Section 86(c)(1) as a disqualifying offense. Hence, at the time of Mr. Brathwaite's application, his offense would have resulted in a conviction under N.J.S.A. 2C:15-1. As a result, we agree with the ALJ's conclusion that the Applicant suffered from a disqualifying offense but we reach our finding based on the analysis indicated by Ferrin rather than the ALJ's approach. To this extent, then, the ALJ's opinion is hereby modified.

We note that the ALJ further found that the same 1977 armed robbery conviction constituted an offense which would render the Applicant's licensure inimical to the policies of the

Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4). (A-9 and 10). In light of our finding that this conviction is a disqualifying offense specifically enumerated in Section 86(c)(1) and our conclusion as set forth below that the Applicant is rehabilitated, it is unnecessary to the disposition of this case to address this issue.

The Legislature has determined that the casino gaming industry and those that wish to participate in it must be strictly regulated. The Casino Control Act contains extensive, detailed regulation of every aspect of the industry. See, Uston v. Resorts International Hotel, Inc., 89 N.J. 163, 169 (1982). However, the Legislature has tempered the restrictive effect of this regulatory scheme for individuals seeking certain types of employee licenses. By a January 9, 1980, amendment to the Casino Control Act, L. 1979, c. 285, §§ 25 and 26, a mechanism was created by which an applicant for a casino employee or casino hotel employee license[3], who would otherwise be disqualified from licensure pursuant to the criteria contained in Section 86(c), could overcome that disqualification. The procedure, as outlined in Sections 90(h) and 91(d), requires an applicant to affirmatively demonstrate by clear and convincing evidence his rehabilitation. The factors to be considered by

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3. By an amendment effective February 15, 1982, casino hotel employee licenses were converted to casino hotel employee registrations. See, L. 1981, c. 503, §12.

the Commission in determining whether any applicant has satisifed his burden on this issue are as follows:

> (1) The nature and duties of the position applied for;
> (2) The nature and seriousness of the offense;
> (3) The circumstances under which the offense occurred;
> (4) The date of the offense;
> (5) The age of the applicant when the offense was committed;
> (6) Whether the offense was an isolated or repeated incident;
> (7) Any social conditions which may have contributed to the offense;
> (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.
> [N.J.S.A. 5:12-90(h); See also, N.J.S.A. 5:12-91(d)].

The ALJ correctly recognized that Mr. Brathwaite, as an applicant for a casino employee license, could overcome the effect of his disqualifying conviction by demonstrating his rehabilitation pursuant to Section 90(h). The ALJ concluded, however, that the Applicant had failed to affirmatively demonstrate his rehabilitation. We disagree, and find, based on the following credible evidence in the record, that the Applicant has met his burden of demonstrating his rehabilitation sufficient to surmount his disqualification pursuant to Sections 86(c)(1) and 90(e) of the Act.

The Applicant seeks licensure as a casino employee in the position of craps dealer. A craps dealer works in the casino room, is directly involved in gaming activity and has regular contact with casino patrons. Anyone who is licensed as a casino employee must be a person whom the Commission can be reasonably assured will not erode public confidence in the regulatory apparatus.

It is undisputed that the Applicant was convicted for the offense of armed robbery. The ALJ noted that armed robbery is a very serious and disqualifying offense. (A-11) We agree with this statement. Any person who comes before this Commission for licensure with this kind of conviction in his or her background requires close scrutiny and will not be granted the privilege of participating in the extremely sensitive casino industry unless rehabilitation has been clearly and convincingly established.

The date and circumstances of the robbery offense are clear. In December 1975, almost seven and one-half years ago, the Applicant participated with another in an armed robbery. It is evident from the record that the Applicant was neither the instigator nor the prime mover in the commission of this crime. (T15-15 to T16-4; T17-18 to T18-19; T68-10 to T68-22).[4] While a plainly dangerous situation was created, no one was injured during the robbery.

The Applicant admits that he had been drinking just prior to committing the offense. We concur with the ALJ's finding that the Applicant's intoxication does not in any way mitigate

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4. "T" refers to the transcript of the hearing held before ALJ Richard L. Voliva in this matter on November 4, 1982.

or excuse his conduct. (A-11) However, we reject the conclusion that in light of his intoxication, his conduct should be regarded as more serious than it otherwise would be. The Applicant's participation in this crime remains of grave concern to us, but other factors in his background place this 1975 offense in its proper prospective.

The age of the Applicant at the time of the offense is significant. The Applicant was only 19 when he committed the robbery. He admitted at the hearing before the ALJ to his immature and irresponsible attitude during that period of his life. (T16-6 to T16-15; T17-15 to T18-17). The record is devoid of evidence that the Applicant had engaged in any criminal conduct prior to this incident. In fact, he had served honorably in the United States Army and also had been regularly employed. (R-1, in evidence). The Applicant voluntarily surrendered himself to police in 1977. He pled guilty to the crime and successfully completed both his prison sentence at a minimum security facility and his four year parole.

The armed robbery offense is the Applicant's most serious conviction. We recognize that the Applicant has had subsequent contact with the criminal justice system. We find, contrary to the ALJ's conclusions, that these contacts are of a relatively minor nature. In 1977 the Applicant was charged with breaking and entering, N.J.S.A. 2A:94-1, threats to kill, N.J.S.A. 2A:113-8 and malicious damage to property, N.J.S.A. 2A:170-36. These charges arose out of a domestic dispute with his girlfriend. (R-4, in evidence; T22-2 to T26-17). The first two charges were no-billed by a Grand Jury and the remaining charge was dismissed by the Pleasantville Municipal Court. These events occurred prior to the Applicant's incarceration for the armed robbery charge.

The Applicant was arrested on April 13, 1980, shortly after he and his young son had departed from a Jamesway store. A Middle Township police officer detained the Applicant in the parking lot on a charge of shoplifting a pair of sunglasses. A scuffle ensued when the Applicant attempted to free himself. They both fell to the ground. The Applicant was charged with shoplifting. N.J.S.A. 2C:20-4, resisting arrest, N.J.S.A. 2C:29-2, and assault on a police officer, N.J.S.A. 2C:12-1(b)(5)(a). (R-5, in evidence). The shoplifting charge was dismissed and the Applicant was found guilty on the remaining two charges and fined $100, plus $25 court costs. (Ibid.) The ALJ was persuaded that the Applicant had not shoplifted the item in question. (A-6). We agree. Moreover, we concur in the ALJ's conclusion that based upon the Applicant's testimony as to his conduct and the minimal penalty imposed, these charges are not "overly serious." (Ibid.)

The Applicant's remaining arrest, in December 1980, was for possession of an offensive weapon, N.J.S.A. 2C:39-4. This charge was later downgraded to harassment, a petty disorderly persons offense, N.J.S.A. 2C:34-4a. The Applicant accompanied his friend, Vincent Brown, to a private home. There, Mr. Brown confronted one of the occupants, who allegedly had struck Mr. Brown's girlfriend on an earlier occasion. The Applicant testified that "it wasn't my fight" but he was there to ensure his friend's safety. (T84-3 to T86-24). After a verbal confrontation and a shoving exchange between Mr. Brown and one of the occupants of the house, the Applicant and Mr. Brown fled. (T40-25 to T41-25). On February 11, 1981, the Applicant was found guilty of the downgraded charge of harassment, sentenced to a one year probationary term and assessed fines and costs totaling $125. (R-6) The ALJ found credible and believable the Applicant's testimony on the critical issue of whether he

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possessed a weapon at the time he confronted the residents of the house. The ALJ concluded, contrary to the police report, that the Applicant did not have a weapon. (A-6). We concur in that conclusion.

However, we disagree with the ALJ's characterization of these two post-incarceration convictions as indicative of "the repetitive nature of [the Applicant's] misconduct" and in "disregard of the criminal laws of this State." (A-13,14). These offenses, by their type, number or circumstances, do not evidence a continuation of the Applicant's prior criminal conduct, i.e., the armed robbery. They were not initiated by the Applicant nor did they involve the use of a weapon. The convictions were for disorderly persons offenses which resulted in minimum penalties. Moreover, two and one half years have passed since his last arrest. Therefore, we do not find the Applicant's petty criminal record subsequent to his most serious offense, armed robbery, to be demonstrative of a pattern of misconduct by the Applicant.

As noted earlier, the Applicant served his prison sentence for armed robbery at a minimum security facility during which time he was employed as a cook in the New Lisbon School, a school for retarded men, and ultimately secured a cook's certificate. (T49-18 to T50-17). There is no indication in the record of any problems while incarcerated. Additionally, he successfully completed his parole. (T18-25 to T19-12).

After his release, in 1978, the Applicant satisfied the requirements for, and was awarded, a General Equivalency Degree (G.E.D.). (R-1, in evidence). He also attended a C.E.T.A. funded training program for tractor-trailer driving and received a certificate evidencing successful completion of the course. (T63-5 to T63-13). Further, he attended the Casino Career institute in 1980 and successfully completed a course on craps dealing. (T46-25 to T47-22).

While the Applicant has not been continuously employed since his release, he has actively sought employment. He has striven to improve his skills and prospects for employment as reflected by his completion of the educational and vocational training programs noted previously. Transportation and child care difficulties have, however, hampered his employment in the past. (T55-24 to T58-4). The Applicant has the unqualified recommendation of his most recent employer, Lance Rogers of Atlantic Human Resources, Inc., who found the Applicant's work habits to be "exceptional" and indicated employment would again be available to the Applicant if future funding for the program was obtained. (P-1, in evidence).

Additionally, the Applicant's employment by Bally's Park Place Hotel and Casino and Harrah's Marina Casino Hotel bear positively on his qualifications to work in the casino industry. The Applicant worked as a parking lot attendant at Bally's for eight months, from March to November 1980, while attending dealer's school. (T52-15 to T53-13). There is no evidence to suggest that the Applicant's job performance was anything other than satisfactory.

The Applicant left the Bally job when he was placed on Harrah's payroll as a dealer-trainee. Because he had not been issued a casino employee license by November 1980, when Harrah's temporary casino permit was approved, he was unable to work as a dealer on the casino floor. He left Harrah's voluntarily, a result of his frustration with being unable to procure a license from this Commission. (T53-12 to T54-7; T66-16, to T67-8). No negative inference may be permissibly drawn from this departure.

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The Applicant is now 27 years old. More than seven years have passed since his most serious offense occurred. Subsequent convictions for violations of the law have been minor. He has expressed contrition concerning his prior criminal actions (T17-11 to T17-14; T58-17 to T59-11) and has not had any difficulties with the law for almost two and one half years. As a consequence of his experiences, the Applicant is now a more mature individual. He has acknowledged his responsibilities as an adult, particularly his support obligations to his children. (T58-17 to T59-11; T60-10 to T61-6; T62-9 to T62-24). He has improved his educational and vocational skills in order to be better able to provide for his family, and he has worked without incident in the casino hotel industry in Atlantic City. In light of these considerations, we find sufficient credible evidence to conclude that the Applicant has demonstrated his rehabilitation pursuant to the criteria set forth in Section 90(h).

The ALJ found that the Applicant had failed to establish by clear and convincing evidence his good character, honesty and integrity. That conclusion was based in large measure upon his finding that the Applicant had not demonstrated his rehabilitation. 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, supra at 22. The facts in this case substantiate this principle. The factors that support our finding of rehabilitation are equally supportive of a demonstration of good character, honesty and integrity. Hence, in light of our findings and conclusions on the issue of rehabilitation, we

conclude that the Applicant has demonstrated his good character, honesty and integrity by clear and convincing evidence.

For the foregoing reasons, we find the Applicant, Chester R. Brathwaite, to have established by clear and convincing evidence his rehabilitation from a disqualifying conviction listed in N.J.S.A. 5:12-86(c)(1). See, N.J.S.A. 5:12-90(h). He has further established by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89(b). Therefore, based on those findings, we grant the casino employee license application of Charles R. Brathwaite.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
CARL ZEITZ
Vice-Chairman

_____
JOEL R. JACOBSON
Commissioner

_____
E. KENNETH BURDGE
Commissioner

_____
DON M. THOMAS
Commissioner

DATED: June 1, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0007-82

AGENCY DKT. NO. 81-EA-357

IN THE MATTER OF THE APPLICATION OF CHESTER BRAITHWAITE FOR LICENSURE AS A CASINO EMPLOYEE (CRAPS DEALER)

APPEARANCES:

Chester Braithwaite, Pro Se

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

Record Closed: January 27, 1983 Decided: March 14, 1983

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Chester Braithwaite, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Oivision), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had been convicted of a statutory disqualifier and had committed a disqualifying criminal offense and that the applicant lacked the requisite good character, honesty and integrity for licensure.

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PROCEDURAL HISTORY

Mr. Braithwaite filed his Personal History Disclosure Form - 2 (PHDF-2) with the Commission on July 11, 1980. By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated September 3, 1981, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed with the Commission on December 22, 1981, the applicant requested a hearing. On December 29, 1981, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. After procedural difficulties were resolved, a prehearing conference was held on August 16, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) Undisputed Facts

Mr. Braithwaite is 27 years of age. He has resided in Pleasantville, New Jersey, for his entire life.

The applicant was a member of the United States Army from March 22, 1974 to December 20, 1974, when he received an honorable discharge. The applicant earned a GED degree in 1978.

From January 1975 to January 1976, the applicant was employed by the Black Int. Detective Agency.

On the evening of December 31, 1975, the applicant was involved in an incident at a seven-eleven food store in Northfield, New Jersey. The applicant and a friend decided to rob the store. Each then went to his respective home and secured a weapon. The applicant had a 45-caliber automatic handgun. At approximately 8:27 p.m., they entered the store and committed the robbery. The applicant's accomplice threatened to shoot the manager of the store, while the applicant demanded money. They stole $135 in cash and some food stamps (R-3). The applicant was arrested on February 12, 1977. He was charged with violations of N.J.S.A. 2A:141-1, larceny; N.J.S.A. 2A:151-1, assault with a dangerous weapon; N.J.S.A. 2A:98-1, conspiracy; N.J.S.A. 2A:151-5, armed robbery;

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N.J.S.A. 2A:151-57, carrying a concealed weapon; and N.J.S.A. 2A:151-56, unlawful use of a dangerous weapon. The applicant pled guilty to armed robbery, and, the remaining charges were dismissed. The applicant was sentenced to an indeterminate term at the Yardville Correctional Center. From September 28, 1977 to August 3, 1978, the applicant served his sentence at the New Lisbon State School, where he was a cook. On August 3, 1978, the applicant was paroled. He recently completed his probation. The circumstances underlying the applicant's involvement in the incident were in dispute and will be discussed, infra.

On the evening of August 17, 1977, the applicant went to the home of his former girlfriend, who would not admit him into her home (R-4). The applicant broke in through the front door. When the police arrived he broke out through the back door. The applicant was arrested by the Pleasantville police and was charged with violations of N.J.S.A. 2A:170-36, malicious damage to property, and N.J.S.A. 2A:94-1, breaking and entering. The charges were no billed by an Atlantic County Grand Jury on September 29, 1977. On October 6, 1977, the Pleasantville Municipal Court dismissed the charge. The circumstances underlying the applicant's involvement in the incident were in dispute and will be discussed, infra.

From August 1978 to August 1979, the applicant was employed as a Laborer/Driver for the Sanitation Department of the Atlantic County Department of Public Works.

From October 1979 to March 1980, the applicant was employed as a Truck Driver by the Woodbine State School. He was unable to maintain this employment because of a tardiness problem.

On April 13, 1980, the applicant was involved in an incident at a shopping center in Middle Township, Cape May County. The applicant was at the shopping center with his girl friend, Karen Beachamp, and her two children. At approximately 12:20 p.m. and after the applicant had been in a nearby Jamesway store, a Middle Township police officer attempted to arrest the applicant in a parking lot on a charge of shoplifting merchandise with a value of $5.99 (R-5). There was a scuffle between the applicant and the officer. The applicant was charged with violations of N.J.S.A. 2C:20-11, shoplifting; N.J.S.A. 2C:12-1(b)(5)(a) causing bodily injury to a police officer; and N.J.S.A. 2C:29-2, resisting arrest. The Cape May County Prosecutor's Office returned the matter to the

municipal court. On August 20, 1980, the shoplifting charge was dismissed (R-8). On June 11, 1980, the applicant was found guilty of the remaining two charges by the Municipal Court of Middle Township (R-9). The applicant was fined $50 for each offense. The circumstances underlying the incident were in dispute and will discussed, infra.

During 1980, the applicant successfully completed a craps dealer program of study at the Casino Career Institute. During his course of studies the applicant was employed as a parking lot attendant for approximately one month by Bally's Park Place Casino.

The applicant filed his PHDF-2 from with the Casino Control Commission on July 11, 1980.

From November 3, 1980 to February 5, 1981, the applicant was employed as a dealer-trainee by Harrah's Marina Hotel Casino. He quit this position without notice because of his difficulty in securing a license.

At approximately 11:33 p.m. on the evening of December 15, 1980, the applicant and a friend, Vincent Brown, went to the home of another person in Pleasantville. Their purpose was to confront another person because that person had hit a girl they knew. A confrontation occurred, wherein Mr. Brown struck an occupant of the home (R-6). On December 16, 1980, the applicant was arrested by the Pleasantville Police Department, and was charged with a violation of N.J.S.A. 2C:39-4, possession of an offensive weapon. On January 19, 1981, the Atlantic County Prosecutor's Office remanded the matter to municipal court and downgraded the charges to alleged violations of N.J.S.A. 2C:12-1a(1), assault - attempted bodily injury; N.J.S.A. 2C:12-1a(3), assault - by physical menace; and N.J.S.A. 2C:33-4a, harassment (R-10). On February 18, 1981, the applicant was found guilty of a violation of N.J.S.A. 2C:33-4a, harassment, by the Pleasantville Municipal Court. The applicant was fined $100 and $25 costs. The applicant was found not guilty of the remaining charges. The circumstances underlying the incident were in dispute and will be discussed, infra.

From April 18, 1982 to August 31, 1982, the applicant was employed as an installer by the Energy Department of the Atlantic Human Resources, Inc. This position was terminated because of a lack of funding (P-1).

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Other than the employment stated herein, the applicant has been unemployed.

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

(B) DISPUTED FACTS

In dispute were the applicant's conduct underlying the four occasions on which he was arrested and charged with violations of criminal laws and his good character, honesty and integrity.

Mr. Braithwaite described his conduct during the incident of December 31, 1975. The applicant stated that he was intoxicated and did not recognize the seriousness of his acts. He went along with his friends because he was an only child and wanted to be part of the group, and he did it for fun. The applicant admitted his guilt after his arrest.

Assuming, arguendo, that the applicant was intoxicated, this cannot serve to mitigate the nature of his involvement in the incident. His state of intoxication was voluntary, and he must be held accountable for his actions thereafter. In addition, the applicant testified that he and his accomplice returned to their respective homes to secure a weapon. It is apparent that the applicant had the presence of mind to formulate the plan, to commit the crime, to return to his home in a neighboring town in order to secure a weapon, to return to the store and to commit the crime. Whatever state of intoxication the applicant may have been in, he was fully capable of and had complete recollection of the events leading up to and including the commission of the crime. Accordingly, I am not persuaded that the applicant's state of intoxication exculpates him from his responsibility for the commission of the offense. The fact that he may have admitted his guilt at the time of his arrest, is of little significance given the fact that the arrest occurred 14 months after the crime.

The applicant also described his conduct on the evening of August 17, 1977. Because a friend of his had been killed in a car crash that evening, he and mutual friends were so upset that they drank to forget their sorrows. The applicant did not feel that he could return to his own home due to his state of intoxication. Therefore, he went to his former girl friend's house. Although the applicant admitted breaking into and out of the home, he attributed his conduct to excessive drinking.

Again, there was no evidence offered to refute the explanation offered by the applicant. Nevertheless, the applicant voluntarily became intoxicated and must be held accountable for his actions. It is further noted that the applicant had a full recollection of his conduct.

With regard to the incident of April 13, 1980 in Middle Township, the applicant testified that he had had made a purchase of a hat and two other small items at the Jamesway store. The applicant tried on the hat that he subsequently purchased in front of a mirror in the sunglasses department, because it was the only mirror available. He paid for his purchases and he did not shoplift any item. The applicant returned to the laundromat where his girl friend was washing clothes. The applicant was approached by the police officer, who requested his sunglasses. The applicant claimed that the sunglasses were old, scratched and broken. The officer grabbed him by the throat and he was unable to breathe. As he tried to release himself from the officer's grasp, they fell to the ground. This incident precipitated the charges against him. The applicant claimed that he did not resist arrest. The applicant also stated that his assigned public defender did not appear on his behalf at the municipal court hearing.

I am persuaded to believe the applicant's testimony to the effect that he did not shoplift any merchandise. With regard to the remaining charges, I am bound and compelled by the principles of res judicata and collateral estoppel not to go behind the convictions. Nevertheless, I am persuaded to believe that the applicant's conduct, although it was sufficient for a finding of guilty on the two charges, was not overly serious. This conclusion was based upon the applicant's description of his conduct and upon the minimum penalty imposed.

Last, the applicant described his conduct on the evening of December 15, 1980. Although he knew there was going to be a fight, he accompanied Vincent Brown, ostensibly to guarantee a fair fight. Nevertheless, the applicant claimed that the was surprised when Mr. Brown pushed one of the occupants of the house. Following the shoving incident, Mr. Braithwaite and Mr. Brown ran away from the residence. While retreating, the applicant picked up a stick for self-defense. The applicant stated that he was just there and didn't do anything.

Although the applicant's testimony is at variance with the description of the incident contained in the police report, I am persuaded to believe the testimony of the

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applicant to the extent that he did not possess a weapon at the time of the incident. However, the applicant's explanation of the purpose for his being at that location, i.e., knowing that a fight might take place, was inconsistent with his testimony that he did not expect the shoving incident to occur. The applicant's explanation of his involvement in the incident did not diminish the significance of his conviction. I am persuaded to believe that the applicant knowingly went with Mr. Brown with the expectation that a fight would occur and with the expectation that he would be involved.

The applicant also testified regarding his character, honesty and integrity. The applicant conceded that he was not an "angel," but contended that he was not a criminal, and that he has served his time. The applicant stated that he is now a man and has fathered three children, for which he is responsible. He needs a job and the casino industry provides him the only opportunity for employment.

Aside from his testimony, the only evidence offered in support of his character, honesty and integrity was the letter from Lance Rogers, Energy Manager for the Atlantic Human Resources, Inc. (P-1). Mr. Rogers stated that the applicant's "past work habits were exceptional and he was able to handle any and all responsibilities with great ease."

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

1. On the evening of December 31, 1975, the applicant had voluntarily consumed alcoholic beverages prior to the commission of the robbery.

2. In spite of his consumption of alcoholic beverages, the applicant was fully capable of planning the crime, he returned to his home in a neighboring town to secure a weapon, he returned to the store and he committed the crime.

3. The applicant's consumption of alcoholic beverages does not excuse his conduct, for which he must be fully responsible.

4. The applicant's explanation that he participated in the crime in order to be a member of the group and for fun indicates a serious disregard for the laws of this State.

5. With regard to the incident of August 17, 1977, the applicant voluntarily consumed alcoholic beverages upon learning that a friend had been killed in a car accident.

6. The applicant, believing that he could not return to his home, broke and entered into the home of his former girl friend.

7. The applicant's consumption of alcoholic beverages does not excuse his conduct, for which he must be fully responsible.

8. With regard to the incident of April 13, 1980, the applicant did not shoplift any merchandise from the Jamesway store.

9. The applicant's conduct was mitigated substantially by his unrefuted explanation and by the minimun fine imposed.

10. With regard to the incident of December 15, 1980, the applicant's exculpatory explanation of his presence at and conduct during the incident was inconsistent and unpersuasive.

11. The applicant knowingly and willfully was present at and participated in the incident with the expectation that a fight would occur and with the expectation that he would participate in the fight.

12. Aside from the applicant's testimony and the letter from Mr. Rogers (P-1), there was no other evidence of the applicant's character, honesty or integrity.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(2)

Section 86c(2) of the Casino Control Act (Act) mandates that a person who has been convicted of any offense, which "would be under New Jersey law at the time of application violation of any of the following provisions of law" in regard to Title 2A of the New Jersey statutes be disqualified from licensure.

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It was established that the applicant was convicted of a violation of N.J.S.A. 2A:151-5, additional sentence for armed criminals. However, this offense is not a listed statutory disqualifier. Nevertheless, N.J.S.A. 2A:151-5 only permits an additional sentence for persons who are convicted of the commission of an offensive or who attempt to commit other offenses when a weapon is in their possession. Given the fact that the applicant was charged with a violation of N.J.S.A. 2A:141-1, robbery, and given his concession that he was convicted of armed robbery, it is, by inference, concluded that the applicant was convicted of a violation of N.J.S.A. 2A:141-1 and N.J.S.A. 2A:151-5, i.e., armed robbery. N.J.S.A. 2A:141-1 is an enumerated disqualifying offense.

I **CONCLUDE** that the applicant's conviction for armed robbery mandates that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c (2).

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

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

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operation or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operation," and by the exclusion from participation in casino

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> gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

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

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

The Division contends that the applicant's conduct underlying the incidents in which he was involved on December 31, 1975, August 17, 1977, April 13, 1980 and December 15, 1980, establishes that his licensure would be inimical to the policies of the Act.

With regard to the applicant's conviction for armed robbery, a violation of N.J.S.A 2A:151-5 is not a per se disqualifying offense. Nevertheless, it is evident that the applicant was armed with a firearm during the commission of the disqualifying offense of robbery, in violation of N.J.S.A. 2A:141-1. The fact that the applicant was armed is an aggravating circumstance and makes the robbery offense more heinous. Further, the applicant had a 45-caliber automatic handgun, which is an extremely dangerous firearm. Clearly, his conduct was far more serious than the disqualifying offense of robbery.

However, in regard to the applicant's conduct underlying the other incidents, there was no evidence that his conduct was so aggravating or otherwise serious that it would render his licensure inimical to the policies of the Act.

I **CONCLUDE** that the potential licensure of Mr. Braithwaite in regard to the incident of December 31, 1975, has been established, by the preponderance of the credible evidence, to be inimical to the policies of the Act. I further **CONCLUDE** that the applicant's conduct on August 17, 1977, April 13, 1980 and December 15, 1980, was not established, by the preponderance of the credible evidence, to be inimical to the policies of the Act.

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-80h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

Mr. Braithwaite has applied for licensure to be employed as a dealer. He would have responsibilities for actual gaming activities and would be in substantial contact with patrons of the casino and casino key employees.

In regard to the incident of the December 31, 1975, the applicant was convicted of armed robbery. Robbery alone is a serious and disqualifying offense. Further, armed robbery, especially when the perpetrator is armed with a 45-caliber automatic handgun, is a very serious offense, and establishes that there was a definite threat to the life of another person. Also, based upon the applicant's testimony it was evident that the incident was planned and premeditated. The applicant was 19 years of age at the time. There were no social conditions which contributed to the offense. The fact that applicant had consumed alcoholic beverages prior to the incident does not serve to mitigate, rather it indicates that his conduct was more serious in nature.

With regard to the incident of August 17, 1977, although there was no conviction, the applicant admitted that he broke into and out of the house of his former girl friend. However, there was no evidence that the applicant's conduct was planned or premeditated. The applicant was 21 years of age at the time of the incident. There were no social conditions which contributed to the offense.

With regard to the incident of April 13, 1980, the applicant was convicted of two offenses which involved a police officer attempting to carry out his official responsibilities. Although these offenses are not listed statutory disqualifiers, because they involved the obstruction of a law enforcement officer they are serious. Nevertheless, the applicant's explanation of his conduct and the minimal penalty imposed mitigate in favor of the applicant. There was no evidence that the applicant's conduct was planned or premeditated. The applicant was 24 years of age at the time of the offense. There were no social conditions which contributed to the offense.

Last, in regard to the incident of December 15, 1980, although the offense was not a statutory disqualifier it was serious because of the nature of the applicant's conduct. He knowingly and purposely went to the location of the incident with the expectation that a fight would ensue and with the expectation that he would be a participant in the fight. Clearly, his participation in the incident was serious. The applicant was 24 (almost 25) years of age. There were no social conditions which contributed to the offense.

The applicant has been involved in four incidents of misconduct between December 31, 1975 and December 15, 1980. Although the first incident was the most serious, there is clear evidence of a pattern of misconduct. The applicant has not committed any offense with the use of a weapon since December 31, 1975; however, it is also evident that the applicant has not avoided participation in unlawful conduct, and has participated in such misconduct even when it was planned and premeditated.

There was no evidence that the applicant has made efforts to rehabilitate himself. The mere fact that the applicant has not repeated the most serious of his criminal acts does not establish rehabilitation. Although the applicant has successfully completed a course of study at a licensed gaming school, such is not positive evidence of rehabilitation in light of the fact that the applicant quit his employment as a dealer-trainee, albeit in the face of licensing difficulties. Further, although the applicant professes a strong desire for employment, his work record is not good. In fact, his five

months of employment in 1979-80 at the Woodbine State School, which is the longest period of employment since that time, ended on unfavorable terms.

I **CONCLUDE** that the applicant has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under section 89b(2) of the Act, Mr. Braithwaite was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel., Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory stictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conduct during the four cited incidents.

The applicant's conduct underlying the four incidents in which he was arrested and was charged with criminal violations has been well-documented. It is sufficient to state that such conduct reflects in an extremely negative manner upon the applicant. Clearly, the applicant has not been able to rehabilitate himself from involvement in criminal misconduct. The fact that the more recent of his offenses are less serious than the first does not overcome the repetitive nature of his misconduct. Further, it was evident that the applicant was involved in misconduct subsequent to the filing of his application for licensure, and at the time he was employed as a dealer-trainee in the casino industry. Not only does this indicate a disregard for the criminal laws of this

State, but it evidences a serious lack of recognition of the obligations which casino licensure imposes upon him.

Last, aside from the applicant's testimony, there was no evidence of his good charcter, honesty and integrity. The applicant's testimony was insufficient to meet his burden of proof. This absence of essential proofs mandates disqualification.

I **CONCLUDE** that the applicant has failed to establish, by clear and convincing evidence, his good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2).

DISPOSITION

It is **ORDERED** that the application of Chester Braithwaite 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.

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

March 14, 1983
DATE

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

Receipt Acknowledged:

March 15, 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

March 15, 1983
DATE

Ronald L. Parkinson
OFFICE OF ADMINISTRATIVE LAW

plb/e

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LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

P-1 Letter from Lance Rogers, November 12, 1982

R-1 Personal History Disclosure Form-2, Chester Radcliffe Braithwaite, filed with the Casino Control Commission on July 11, 1980 (27 pages)

R-2 United States Department of Justice, Federal Bureau of Investigation, Identification Division-Rap Sheet (2 pages)

R-3 Northfield Police Department-Arrest Report, February 12, 1977, and Investigation Report, December 31, 1975 (3 pages)

R-4 Pleasantville Police Department-Investigation Report, August 23, 1977 (2 pages)

R-5 Middle Township-Arrest Report, August 13, 1980, and Investigation Report, August 13, 1980, with attachment (4 pages)

R-6 Pleasantville Police Department-Arrest Report, December 16, 1980, Investigation Report, December 16, 1980, and Supplementary Investigation Report, December 17, 1980 (3 pages)

R-8 The State of New Jersey v. Chester R. Braithwaite, Jr., Docket Number C 6026-80, Municipal Court of Middle Township, Complaint and Disposition

R-9 The State of New Jersey v. Chester R. Braithwaite, Jr., Docket Number C 6025-80, Municipal Court of Middle Township, Complaint and Disposition (2 pages)

R-10 Pleasantville Police Department-Arrest Report, December 16, 1980, and The State of New Jersey v. Chester Braithwaite, Docket Number C-16275, Pleasantville Municipal Court, Complaint and Disposition with attachment (3 pages)

EXHIBIT NOT ADMITTED INTO EVIDENCE

R-7 Id. Letter to Martin B. Danzinger from Rosemary Quinn, September 3, 1981 (4 pages)

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WITNESS LIST

For the Applicant:

Karen Beachamp

Chester Braithwaite

For the Division:

Joseph Sgromolo

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-148
LICENSE NO. 10-60

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. CASINO SCHOOLS, INC., PETER G. DEMOS, JR. and JEFFREY GREENHAUSE, Respondents.	FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission (Commission) upon the the filing of a Complaint of the Division of Gaming Enforcement charging that Respondents Peter G. Demos, Jr. and Jeffrey Greenhause did operate Respondent Casino Schools, Inc. in Jersey City, New Jersey prior to Commission approval in violation of N.J.A.C. 19:44-2.1 and 3.1(a); and the parties having filed stipulations on January 28, 1983, wherein Respondents admit to conducting full operations of Casino Schools, Inc. at its Jersey City facility prior to formal Commission approval; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of February 16, 1983, to adopt the stipulations and find that the Respondents had violated Commission regulations, impose a fine of $1,000 against Respondent Casino Schools, Inc. and issue letters of reprimand to Respondents Peter G. Demos, Jr. and Jeffrey Greenhause,

IT IS on this 25th day of April 1983, ORDERED that, pursuant to N.J.S.A. 5:12-129(5), Respondent Casino Schools, Inc. be and hereby is fined $1,000 for conducting operations at its Jersey City facility without prior Commission approval in violation of N.J.A.C. 19:44-2.1 and 3.1(a); and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-129(8), Respondents Peter G. Demos, Jr. and Jeffrey Greenhause be and hereby are reprimanded for knowingly and with conscious disregard of the regulatory process conducting operations of Casino Schools, Inc. at its Jersey City facility prior to Commission approval in violation of N.J.A.C. 19:44-2.1 and 3.1(a); and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 25, 1983

FILED
NEW JERSEY
JAN 28 1983
CASINO CONTROL COMMISSION

IRWIN I. KIMMELMAN
Attorney General of the State of New Jersey
Attorney for Charging Party
Richard J. Hughes Justice Complex
CN 047
Trenton, New Jersey 08625

By: Edward P. Busichio
Deputy Attorney General
(609) 292-9394

State of New Jersey
CCC Docket No. 82-148

STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Charging Party,	:	CIVIL ACTION
v.	:	STIPULATIONS
CASINO SCHOOLS, INC., PETER G. DEMOS, JR. AND JEFFREY GREENHAUSE,	:	
Respondents.	:	

Charging Party, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, and Respondents Casino Schools, Inc., Peter G. Demos, Jr. and Jeffrey Greenhause, hereby stipulate as follows:

1. The Division of Gaming Enforcement (hereinafter referred to as "the Division") is responsible, pursuant to N.J.S.A. 5:12-76, for the enforcement of the provisions of the Casino Control Act and

the regulations promulgated thereunder and for the prosecution before the Casino Control Commission of all proceedings for violations of the Casino Control Act and the regulations promulgated thereunder.

2. Respondent Casino Schools, Inc. (hereinafter referred to as "CSI") is the holder of a valid gaming school license issued by the Casino Control Commission (DGE #10-60). Since November of 1980, CSI has been operating at 1923 Bacharach Boulevard, Atlantic City, New Jersey. Additionally, on November 24, 1981, CSI was authorized by the Casino Control Commission to operate at a facility in Fort Lee, New Jersey.

3. At all times relevant hereto, Peter G. Demos, Jr. is, and has been, President and Resident Director of CSI. Peter G. Demos, Jr. is licensed by the Casino Control Commission as a pit boss (DGE #18-11), an instructor (DGE #38-60) and a resident director (DGE #504-60). As Resident Director of CSI, Peter G. Demos, Jr. is responsible for, pursuant to N.J.A.C. 19:44-1.1, the day-to-day operations of the school. As a licensee, Mr. Demos is also charged with the responsibility of possessing a thorough knowledge of the Casino Control Act and the regulations promulgated thereunder.

4. At all times relevant hereto, Jeffrey Greenhause is, and has been employed as an administrator at CSI. He has been so employed since January of 1982. Mr. Greenhause is licensed by the Casino Control Commission as an administrator (DGE #1029-60). As an administrative employee and a licensee, Mr. Greenhause is charged with

the responsibility of possessing a thorough knowledge of the Casino Control Act and the regulations promulgated thereunder.

5. By petition dated July 29, 1982, CSI applied to the Casino Control Commission for permission to amend its certificate of operation so as to change the location of its northern New Jersey facility from its then Fort Lee, New Jersey location, for which a certificate of operation had been previously issued, to a new location at 590 Newark Avenue, Jersey City, New Jersey.

6. On July 27, 1982, Division of Gaming Enforcement personnel inspected the Jersey City location and found it to be in substantial compliance with the Casino Control Act and the regulations that have been promulgated thereunder. By letter dated September 8, 1982, the Division of Gaming Enforcement interposed no objection to the granting by the Commission of the relief sought by the petition referred to in paragraph five (5) hereinabove.

7. On or about August 2 of 1982 and continuing until approximately September 24, 1982, CSI conducted operations at the Jersey City facility. More specifically, between the two (2) dates mentioned herein, CSI, with knowledge that formal approval had not yet been granted by the Casino Control Commission, enrolled new students at the Jersey City facility, conducted course instructions for those students, completed course instructions for several students who had not yet completed course requirements at the Fort Lee facility and operated the Jersey City facility as fully and completely as would

have been appropriate if the facility had been formally approved.

8. On or about September 23, 1982, the Division of Gaming Enforcement contacted CSI concerning its conducting full operations at its Jersey City facility prior to formal Commission approval. CSI ceased its operations at its Jersey City facility at that time.

9. It was not until November 16, 1982 that the Casino Control Commission formally authorized CSI to operate at 590 Newark Avenue, Jersey City, New Jersey.

Edward P. Busichio
Attorney for the Division
of Gaming Enforcement

Martin L. Blatt
Attorney for Casino Schools
Inc.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-5
OAL DOCKET NO. CCC 3337-81
LICENSE NO. 03500-21
REGISTRATION NO. 04244-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. JOSEPH COHEN, Respondent.	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 March 18, 1982, recommending that the casino employee license and casino hotel employee license (now registration) of Joseph Cohen (hereinafter Respondent) be revoked and further recommending that Respondent be permitted to reapply after April 27, 1983; and neither party having filed exceptions or objections to the Initial Decision; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of April 27, 1982, to modify the Initial Decision of the Office of Administrative Law, and to revoke Respondent's casino employee license, and to waive any disqualification for purposes of registration as a casino hotel employee pursuant to N.J.S.A. 5:12-91(e),

IT IS on this 14th day of April 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) The portion of the Initial Decision recommending that the Respondent's casino hotel employee license be revoked is rejected as inconsistent with the Commission's finding that any disqualification of Respondent by reason of his 1981 conviction for unlawful distribution of a controlled dangerous substance contrary to N.J.S.A. 24:21-19(a)(1) should be and hereafter is waived in light of the "meaningful steps" toward rehabilitation taken by the Respondent as noted in the Initial Decision at 5 and in the interests of justice; and

(2) The portion of the Initial Decision ordering that the Respondent be permitted to reapply for licensure as of April 27, 1983, is rejected as inconsistent with N.J.A.C. 19:41-8.8.

IT IS FURTHER ORDERED that the casino employee license held by Joseph Cohen be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the Order dated April 27, 1981, suspending Respondent's casino employee and casino hotel employee licenses be and hereby is vacated; and

IT IS FURTHER ORDERED that pursuant to N.J.S.A. 5:12-91(e), the Respondent's disqualification from registration as a casino hotel employee be and hereby is waived in the interests of justice; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), the Respondent is not eligible to apply for or obtain any license, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from April 27, 1982, unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the revocation of Respondent's casino employee license shall have no effect on his casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 14, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3337-81

AGENCY DKT. NO. 81-5

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

v.

JOSEPH COHEN,
Respondent.

APPEARANCES:

Alan Lands, Esq. for respondent, Joseph Cohen
(Becker and Lands, attorneys)

Howard M. Barman, Deputy Attorney General, for the Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed March 11, 1982 Decided March 16, 1982

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BEFORE R. JACKSON DWYER, ALJ:

Respondent, Joseph Cohen, was indicted on November 6, 1980, on two counts of unlawful distribution of a controlled dangerous substance (cocaine), a violation of N.J.S.A. 24:21-19a(1) and b(1). On March 20, 1981, respondent pleaded guilty to one count of the indictment. The remaining count was dismissed. Respondent was sentenced to the Atlantic County Jail for a term of six months. The sentence was suspended and the respondent was placed on probation for a term of a year and ordered to pay a fine.

The New Jersey Division of Gaming Enforcement (Division) then filed a complaint with the Casino Control Commission (Commission) on April 21, 1981 seeking suspension and ultimate revocation of respondent's Casino Employee and Casino Hotel Employee Licenses pursuant to Section 129(1) and 129(3) of the Casino Control Act (N.J.S.A. 5:12-1 et seq). By Order dated April 27, 1981 the Commission suspended respondent's licenses pending a plenary hearing. The matter was referred to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was concluded on November 12, 1981.

UNDISPUTED FACTS

We have essentially a stipulated set of facts. Detective Warren Mabey of the New Jersey State Police was assigned to a "sting operation" called "Operation Shoreshore" designed, among other things, to identify distributors of controlled dangerous substances. On January 18, 1980, at approximately 4:45 p.m. Detective Mabey telephoned room service at the Boardwalk Regency Hotel and Casino and spoke to Joseph Cohen, who was previously introducted to him by David Linblad, also a room service waiter at the hotel. During the telephone conversation, Detective Mabey told Cohen that he was interested in purchasing some cocaine. Detective Mabey met Cohen in the hallway of the Boardwalk Regency, and was then taken to the employees' locker room, at which time, Cohen removed a package containing a white powdery substance. After some additional conversation, Detective Mabey eventually paid Cohen $35 for the substance. Detective

Mabey field tested the evidence and it was positive for cocaine. The evidence was ultimately transported to the South Regional Laboratory in Hammonton, a lab number was assigned, and a state police chemist found the specimen positive for cocaine with a total weight of 0.05 grams.

Detective Mabey testified that he had also made other drug purchases from Cohen on January 24, 1980 and February 15, 1980. The drugs were positive for cocaine.

DISPUTED FACTS

The dispute between the parties centered around whether respondent has affirmatively established his rehabilitation and whether he possesses the requisite reputation for good character, honesty and integrity by clear and convincing evidence pursuant to N.J.S.A 5:12-90(h) and N.J.S.A. 5:12-91(h) and (e), and N.J.S.A. 5:12-89(b) and 90(b).

ENUMERATED STATUTORY DISQUALIFIER and NON-PROSECUTED CONDUCT N.J.S.A 5:12-86C and N.J.S.A. 5:12-86g

The parties agreed that respondent's conviction for an offense under the New Jersey Controlled Dangerous Substances Act, N.J.S.A. 24:21-1 et seq constitutes a per se statutory disqualifier under N.J.S.A. 5:12-86C. In light of that legal stipulation. The issue of nonprosecuted conduct becomes moot, and is, therefore, DISMISSED.

REHABILITATION and HONESTY, INTEGRITY and GOOD CHARACTER N.J.S.A 5:12-90(h) and N.J.S.A. 5:12-91(d) and (e) and N.J.S.A. 5:12-89(b) and 90(b)

The rehabilitation sections of the Casino Employee and Casino Hotel Employee Act provide that an applicant or licensee shall not be denied licensure on the basis of a

commission of a disqualifying offense, provided that the employee has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following facts shall be considered:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

Most of these factors have been set forth under the heading of undisputed facts. Respondent produced Daniel Loen, his probation officer, Marjorie Rinebold, a senior drug abuse aide, employed by the Ocean City Resource Center, Ute Sheppard, Atlantic County Probation Officer, Helen and Maurice Cohen, his mother and father, and his own testimony on the subject of rehabilitation.

The witnesses testified that respondent appreciates the seriousness of his past offense, that he has achieved maturation and a sense of responsiblity, that he now has goals, that he has a commitment to a new life style, and that he plans to be married in the near future. The witnesses further agree that it is unlikely that respondent would repeat his prior criminal act. Marjorie Rinebold was especially enlightening about respondent's

conduct since his conviction. She related that he has responded well to behavior modification, and that he has submitted to some 19 urine tests which werefound to be drug free. She also stated that there is a "strong likelihood" that resopndent will not become involved with drugs. Respondent testified that he has not sold or been involved with drugs since his conviction; that he has severed his ties with his former friends; that he plans to marry and he expressed remorse for his past conduct.

Because of the extremely serious nature of respondent's prior conduct, I **FIND** that present relicensure is unwarranted. Respondent will complete his probation some time in March of 1982, and his suspension by the Commission is slightly less than a year old. Resopndent's sale of drugs was to an undercover State Trooper on three separate occasions and his drug conduct terminated not by voluntary action but by arrest and conviction. Respondent had been living at home with his mother and there was no nexus between social deprivation and the need to sell drugs. Respondent's sale of drugs to a State Trooper leads to the conclusion that he was either a dealer or had a drug dependency.

It is equally true that dedicated character witnesses believe in respondent's rehabilitation and present honesty, integrity and good character. However, the greatest evidence of rehabilitation is the passage of time, and the witnesses can only establish that respondent has been law-abiding since his conviction.

Accordingly, I **CONCLUDE** that, while respondent has taken meaningful steps towards his rehabilitation, he has not yet clearly and convincingly established the affiramtive licensing criteria of his rehabilitation, or that he possesses the requisite honesty, integrity and good character under the act.

Judge Fidler, in the companion case of State of New Jersey, Dept. of Law and Public Safety, Div. of Gaming Enforcement, the Charging Party v. David F. Linblad, Respondent, OAL DKT. NO. CCC 3790-81, Agency Dkt. NO. 81-10, decided December 21, 1981, concluded that the licensee should be able to reapply two years from the suspension

of his license by the commission. I feel that such a waiting period would establish whether respondent's prior drug conduct was merely aberrational and whether he is truly rehabilitated.

It is, therefore, **ORDERED** that respondent's Casino License and Casino Hotel Employee License be revoked. It is further **ORDERED** that respondent shall be permitted to reapply for licensure as a Casino Hotel Employee after April 27, 1983.

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

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

March 16, 1982 — R. Jackson Dwyer
DATE — **R. JACKSON DWYER**, ALJ

Receipt Acknowledged:

March 18, 1982 — Nancy C. Finch
DATE — CASINO CONTROL COMMISSION
Assistant Counsel

Mailed To Parties:

March 22, 1982 — Ronald L. Lakewood
DATE — FOR OFFICE OF ADMINISTRATIVE LAW
jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-48
OAL DOCKET NO. CCC 10615-82
LICENSE NO. 06426-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL ORDER
v.	:	
EDWARD W. D'AMICO		
Respondent.	:	

This matter having been opened to the Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on April 26, 1983, recommending that the complaint of the Division of Gaming Enforcement be dismissed with prejudice; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of June 15, 1983, to affirm and adopt the said Initial Decision and to dismiss the complaint of the Division of Gaming Enforcement with prejudice,

IT IS on this 21st day of June 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed with prejudice based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 21, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 10615-82

AGENCY DKT. NO. 81-48

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

Petitioner

v.

EDWARD W. D'AMICO,

Respondent.

APPEARANCES:

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

Edwin J. Jacobs, Jr., Esq., for the respondent (Tort, Jacobs, Gross & Todd, P.C., attorneys)

Record Closed: March 2, 1983 Decided: April 25, 1983

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Edward W. D'Amico, respondent. The Division alleged that Mr. D'Amico had violated N.J.S.A. 24:21-19a(1) and

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b(1), possession with intent to distribute cocaine and distribution of cocaine. The Division seeks revocation of Mr. D'Amico's casino employee license, pursuant to section 129 of the Casino Control Act (Act). The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on August 20, 1981. On August 27, 1981, the Commission suspended the casino employee license held by the respondent pending final disposition of these proceedings. On March 16, 1982, the respondent filed a Notice of Defense and Request for a Hearing. On November 24, 1982, the Commission vacated its order of suspension of the respondent's casino employee license. Also on November 24, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 5, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

During 1980, Mr. D'Amico completed a dealer training program at the East Coast Gaming School. In October 1980, he was hired by Resorts International Hotel, Inc., as a baccarat dealer. Also, the respondent was licensed by the Casino Control Commission as a casino employee. He left Resorts near the end of May 1981 for employment at another casino hotel. At that time, he was 20 years of age.

While in the training program, the respondent became friendly with John DeRichie. Mr. DeRichie was employed by Resorts as a blackjack dealer until mid-1980, when he left the gaming industry for approximately six months. He was rehired by Resorts in early 1981 as a floorperson.

During the spring of 1981, the New Jersey State Police Narcotics Bureau was conducting an undercover operation known as "Operation 21." The purpose of the operation was to infiltrate casino employees and ferret out those persons dealing in

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narcotics (J-1A at T11-23 to 13-11). Detective Andrew Mastella, was assigned to the Narcotics Bureau from March 1979 to late summer 1982, at which time he was reassigned to the Woodstown Barracks, Cape May County. During 1981, the detective's supervisor was Detective Jack Utley.

On or about May 1, 1981, Mr. DeRichie agreed to become a confidential source for the Narcotics Bureau in exchange for assistance on criminal charges for which he was later indicted (distribution of a controlled dangerous substance, that is, cocaine).

At approximately 9:30 p.m. on Thursday, May 7, 1981, Detective Mastella met Mr. DeRichie in the parking lot of the Lucky Seven Tavern in Absecon, New Jersey. State Police barracks were located within one-eighth of a mile from the tavern; however, the barracks are locked at night. The detective and Mr. DeRichie drove in Mr. DeRichie's vehicle to the D'Amico residence at 4106 Stewart Drive, Atlantic City, where the respondent lived with his parents and sister. They arrived at approximately 9:55 p.m.

The respondent admitted Detective Mastella and Mr. DeRichie to the house. The respondent did not know that the detective was a state police officer. Upon their entry to the house, a large German shepherd barked loudly and had to be restrained. The two men were taken by the respondent to his bedroom near the rear of the house. What occurred in the bedroom was in substantial dispute. Nevertheless, it was evident that the detective left the premises with a piece of folded paper, in which was contained cocaine, and that the respondent had received $325 in cash. The cocaine was tested and consisted of 3.18 grams (P-1).

On May 11, 1981, the dectective prepared his investigation report (P-1).

Other than his recollection of the events between 9:30 p.m. and approximately 10:30 p.m., which will be discussed in greater detail, infra, the detective had no recollection of any other event which occurred on May 7, 1981. Detective Mastella did not tape-record any of the alleged meetings with the respondent, did not photocopy the money he allegedly gave to the respondent, did not execute a search warrant for the respondent's bedroom and made no attempt to take fingerprints off the paper allegedly given to him by the respondent. Further, although it is State Police standard operating procedure, there was no effort to make a second purchase from the respondent. Also, there was no record made by the detective of the monies he allegedly gave to the respondent.

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On August 20, 1981, the respondent was indicted by an Atlantic County Grand Jury for "unlawfully, knowingly, and intentionally [distributing] a controlled dangerous substance, that is, cocaine," "unlawfully, knowingly, and intentionally [possessing] with intent to distribute a controlled dangerous substance, that is, cocaine," and "unlawfully, knowingly, and intentionally [possessing] a controlled dangerous substance, that is, cocaine," in violation of N.J.S.A. 24:21-19a(1), N.J.S.A. 24:21-19b(1) and N.J.S.A. 24:21-20a(1) (J-2).

The charges were tried on September 22, 23 and 24, 1982, before a jury (J-1A, B and C). Mr. D'Amico was found not guilty on all counts.

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

(B) DISPUTED FACTS

At the trial Detective Mastella testified that he first met the respondent on or about May 1, 1981, while the respondent was dealing blackjack on the casino floor at Resorts (J-1A at T15-1 to 17). At the time, the detective accompanied Mr. DeRichie. In response to an inquiry from Mr. DeRichie, the respondent stated that no drugs were available but to check with him in a couple of weeks (J-1A at T18-8 to 9).

The detective also testified to the events of May 7, 1981. At approximately 9:30 p.m., Mr. DeRichie placed a telephone call from the Lucky Seven Tavern to the respondent and arranged to meet with him shortly thereafter (J-1A at T20-4 to 21-4). The detective described the residence at 4106 Stewart Drive as a ranch-type house, consisting of one story, with white aluminum siding and a brick front or partial brick front (J-1A at T25-19 to 23 and T112-21 to 113-11). Upon admission to the house, the detective observed two females of approximately 20 to 25 years of age, a German shepherd and the respondent (J-1A at T26-15 to 22). The dog barked loudly at the detective and came toward him, but was restrained by one of the females (J-1A at T116-21 to 117-17). The detective was not introduced to anyone in the house (J1A at T118-7 to 9). The detective testified that Ms. D'Amico, the mother of the respondent, was not one of the two females in the house (J-1A at T119-8 to 10).

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The detective also described the events which transpired in the respondent's bedroom. The detective and Messrs. DeRichie and D'Amico discussed the quality of the cocaine which the detective was to purchase (J-1B at T27-13 to 14). The respondent offered to sell one-eighth of an ounce of cocaine to the detective for $325 (J-1B at T28-9 to 11). The respondent handed the cocaine, which was in a folded-up magazine page, directly to the detective, whereupon the detective handed the respondent $325 in cash (J-1B at T29-20 to 23). The detective looked at the powder and did nothing else (J-1B at T33-12 to 17). The transaction took only a few seconds (J-1B at T31-10 to 12). The detective inquired of the respondent if more narcotics were available, to which the respondent answered in the affirmative (J1B at T30-16 to 18). During the entire transaction, Mr. DeRichie merely stood by and did nothing (J-1B at T140-12 to 24).

At the hearing, Detective Mastella again described, in part, the events which transpired in the respondent's bedroom, which differed somewhat from his testimony at trial. The detective stated that the respondent opened up the magazine page and placed some of the powder on top of his bureau, from which he cut out two lines and invited the detective and Mr. DeRichie to try it. The detective faked using the cocaine, by means of a prearrangement with Mr. DeRichie to block the respondent's view. Mr. DeRichie also used or faked using the cocaine. Also, the respondent removed a .38 caliber revolver from a dresser drawer and placed it on top of the dresser.

The detective had no recollection that the dog lunged at him as he attempted to leave the house (J-1B at 24-17 to 19).

Alice D'Amico, the mother of the respondent, testified on his behalf at the trial and at the hearing. She described the residence at 4106 Stewart Drive as consisting of white cedar shakes with black shutters and not having any aluminum siding or brick (J-1B at T49-19 to 51-11). Pictures of the house were offered at the trial. Ms. D'Amico was present in the residence with a friend, Ms. McCullough, and Ms. D'Amico's brother, Mr. Lonergan (J-1B at T52-20 to 21 and T549). There were no 20- to 25-year-old women in the home that evening (J-1B at T53-13 to 15). Both Ms. D'Amico and Ms. McCullough were 52 years of age (J-1B at T52-13 to 15). Ms. D'Amico recalled that the dog, named Grizzly, barked loudly when the detective and Mr. DeRichie entered the residence, and was restrained by the respondent (J-1B at T56-7 to 11). The respondent introduced Messrs. Mastella and DeRichie to Ms. D'Amico and Ms. McCullough (J-1B at T55-8). Ms. D'Amico recalled that the three men were in respondent's bedroom for approximately two

minutes (J-1B at T55-10 to 12). When Messrs. Mastella and DeRichie proceeded to leave the house, the dog lunged at the detective and had to be restrained by the respondent (J-1B at T56-16 to 22). The detective did not react to the dog.

John Lonergan testified at the trial on behalf of Mr. D'Amico. Mr. Lonergan recalled that on the evening of May 7, 1981, he, Alice D'Amico, Virginia McCullough, the respondent and the dog were present at 4106 Stewart Drive (J-1B at T68-11 to 23). There were no 20- to 25-year-old women present (J-1B at T69-3). The witness described the residence in a manner consistent with the description given by Ms. D'Amico (J-1B at T70-4 to 21). Mr. Lonergan recalled that the respondent introduced the detective and Mr. DeRichie to Ms. McCullough (J-1B at T70-24 to 25). He also recalled that the dog barked loudly at the two men when they entered the home (J-1B at T71-8 to 10). The three men were in the bedroom for a couple of minutes (J-1B at T71-13 to 16). When the detective proceeded to leave the house, the dog barked loudly and lunged at him, and had to be restrained by the respondent (J-1B at T71-18 to 72-1). The detective did not react to the dog.

Virginia McCullough, a close friend of the D'Amico family, testified at the trial and the hearing. Ms. McCullough was present at the D'Amico home on the evening of May 7, 1981, with Ms. D'Amico, Mr. Lonergan, the respondent and the dog (J-1B at T76-15 to 19). She testified that the dog barked loudly when the two men entered the home and had to be restrained by the respondent (J-1B at T78-3 to 4). The respondent introduced the two men to Ms. McCullough (J-1B at T77-12 to 17). The three men were in the respondent's bedroom for only a few minutes (J-1B at T77-20 to 22). Ms. McCullough was 52 years of age on May 7, 1981 (J-1B at T79-6). On that evening there were no 20- to 25-year-old women present in the home (J-1B at T79-2 to 4). When the detective was leaving the house, the dog lunged at him and had to be restrained by the respondent (J-1B at T78-16 to 22). The detective did not respond to the dog.

Mr. D'Amico testified on his own behalf at his trial. Initially, he stated that the purported meeting between DeRichie and Mastella, which occurred on or about May 1, 1981, at Resorts, never took place (J-1B at T138-12 to 23 and T139-25 to 140-5). The respondent stated that he could not look up from his table to speak with anyone at the risk of being "written up" (J-1B at T138-23 to 139-11). Nevertheless, the respondent stated that it was not unusual for someone to approach the side of a dealer's table and to speak with a dealer for a few seconds (J-1B at T177-5 to 11).

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The respondent borrowed $200 from Mr. DeRichie while they were both in dealer's school (J-1B at T144-23 to 145-7). Mr. D'Amico paid the money back after he began working.

Near the end of April 1981, Mr. DeRichie indicated to the respondent that he needed to borrow money from the respondent in order to purchase some jewelry. The respondent offered to purchase the jewelry for Mr. DeRichie, because he knew someone who would sell it at 50% less than retail price. The respondent purchased an 18-inch gold chain for Mr. DeRichie from Creations by Carl in Pleasantville for $325 plus sales tax (J-1B at T145-20 to 147-17). The respondent secured a receipt, dated April 24, 1981, which indicated a sales price of $650 for an 18-inch gold chain, which was reduced to $325 plus $16.25 sales tax (J-1B at T147-18 to 14812 and T152-3). The receipt was admitted into evidence at the trial. The receipt contained a statement "Eddie D'Amico c/o John DeRichie" (J-1B at T186-6 to 8). Mr. DeRichie promised to pay the respondent for the chain within the following two weeks (J-1B at T152-16 to 18).

Mr. D'Amico further testified that on or about the Monday before May 7, 1981, near the end of his shift, he saw Mr. DeRichie at Resorts. Mr. DeRichie called to the respondent and asked the respondent to hold an envelope for him, which looked like a pay envelope folded over, while Mr. DeRichie went to a baseball game (J-1B at T153-2 to 154-13 and T208-22 to 23). Mr. DeRichie did not want to lose the envelope and indicated that he would pick it up at Mr. D'Amico's home that evening. The respondent placed the envelope in the pocket of his tuxedo (J-1B at T204-8 to 10). The respondent was off from work on Tuesday and Wednesday. Mr. DeRichie did not pick up the envelope (J-1B at T154-20 to 21 and T156-17 to 18). The respondent was curious about the contents of the envelope, but not suspicious (J-1B at T154-18 to 19 and T195-19 to 21). The respondent did not look in the envelope, but thought it contained the $325 owed to him by Mr. DeRichie (J-1B at T155-22 to 23, T156-19 to 21 and T203-2 to 9).

On May 7, 1981, and while at work, Mr. DeRichie told the respondent that he would pick up the envelope that evening at the respondent's home (J-1B at T156-6 to 13). The respondent did not receive a telephone call from Mr. DeRichie (J-1B at T143-11 to 16).

Mr. D'Amico also described the events of the evening of May 7, 1981, as he recalled them. When the detective and Mr. DeRichie entered the house the respondent

had to restrain the dog (J-1B at T157-11 to 25). The respondent detected an odor of an alcoholic beverage when the two men entered the house (J-1B at T160-1). Mr. DeRichie introduced the detective as Andy to the respondent (J-1B at T158-8 to 10). In turn, the respondent introduced the two men to Ms. D'Amico and Ms. McCullough (J-1B at T158-12 to 15). There were no 20- to 25-year-old women in the house that evening (J-1B at T158-21 to 23).

The respondent took the two men to his bedroom because he did not want to leave them in the living room with the dog (J-1B at T205-21 to 22). When in the bedroom, the respondent gave the envelope directly to Mr. DeRichie. Mr. DeRichie put the $325 on the respondent's dresser as payment for the chain. The detective stood in the room and did nothing. (J-1B at T159-6 to 25). The three men were in the bedroom for approximately two minutes (J-1B at T162-12 to 22). There was no discussion regarding drugs (J-1B at T163-8 to 11). The respondent did not know that the envelope contained any narcotics (J-1B at T163-1 to 7).

When the two men attempted to leave the house, the dog barked loudly and lunged after the detective, who did not react. The respondent had to restrain the dog (J-1B at T161-4 to 21).

The outcome of this matter depends largely upon the believability of the testimony of Detective Mastella, in the first instance, and, in the second, the believability of the testimony of Mr. D'Amico.

The detective's testimony was seriously challenged by the respondent's presentation at the trial and at the subject hearing. First, the respondent denied that he ever met the detective on or about May 1, 1981, in Resorts. Although the detective's investigative report indicated that he had met the respondent prior to May 7, 1981, it did not recite the purported discussion regarding drugs, nor did it indicate that the detective was accompanied by Mr. DeRichie. Also, the detective's testimony before the grand jury did not reveal this purported meeting or the contents of the discussion. Second, the respondent denied that he had received a telephone call from Mr. DeRichie on the evening of May 7, 1981. The purported telephone call was not included in the investigative report of the detective. Third, the detective's description of the D'Amico residence at 4106 Stewart Drive, Atlantic City, was contradicted by each of the respondent's fact witnesses at the trial and by photographs introduced into evidence. Fourth, the

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detective's testimony that he observed two 20- to 25-year-old females at the D'Amico residence on the evening in question was contradicted at the trial by each of the respondent's fact witnesses. Fifth, the detective's testimony that one of the purported females restrained the dog upon his entry to the house, was contradicted at the trial by the testimony of each of the respondent's fact witnesses. Sixth, the detective's testimony that there were no introductions upon his entry to the D'Amico residence was contradicted at the trial by each of the respondent's fact witnesses. Seventh, the detective's testimony regarding the events which transpired in the respondent's bedroom was contradicted at the trial by the testimony of the respondent. However, and more significant, the detective did not indicate in either his investigative report, in his trial testimony or in his testimony before the grand jury that the purported transaction occurred in the presence of Mr. DeRichie. Similarly, the detective did not indicate in his investigative report, in his trial testimony or in his testimony before the grand jury that he faked taking a sample of the cocaine. Further, the detective did not indicate in his investigative report, in trial testimony or in his grand jury testimony that the respondent purportedly had possession of a .38 caliber revolver. Last, the detective did not indicate in his investigative report, in his trial testimony or in his grand jury testimony that there was any discussion with the respondent regarding the availability of additional drugs. Such factors were revealed for the first time at the subject hearing. It is highly unlikely that the detective ignored these factors previously. Eighth, the absence of any recollection by the detective of the dog upon his leaving the residence was contradicted at the trial by each of the respondent's fact witnesses. Ninth, the detective conceded that he had no recollection of any event whatsoever for the remaining 22 hours of May 7, 1981. Tenth, it was established that the detective did not pursue many of the things during the undercover operation which could easily have been done. More specifically, he did not tape-record any of his purported meetings with the respondent, he did not attempt to take fingerprints from the folded magazine page although it was handled by only two persons that night, he did not attempt a second buy from the respondent, he did not secure a search warrant for the respondent's bedroom and he made no record of the $325 of State funds purportedly given to the respondent. In the final analysis, the detective's testimony was vague and contained very little detail. Further, many elements of the detective's testimony were contradicted by the persuasive testimony of the respondent's witnesses. These factors lead to the inescapable conclusion that the detective's testimony was not believable, and it is not persuasive in any respect.

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The Division called Mr. DeRichie to testify on its behalf. However, Mr. DeRichie asserted his fifth amendment right to remain silent. Upon Mr. DeRichie's assertion of his fifth amendment rights, the Division put no further questions to the witness, from whose silence inferences could have been drawn.

In attempting to assess the credibility of Mr. D'Amico's testimony, it is essential to acknowledge his position in this matter. As the respondent in this matter and as the defendant in the criminal proceedings, he has a direct interest in the outcome and a bias in the proceedings. He did not testify during the hearing. However, Mr. D'Amico's trial testimony was corroborated in large part by fact witnesses offered on his behalf. The fact witnesses included his mother, his uncle and a close family friend. Nevertheless, these witnesses did not testify to the alleged criminal conduct; rather they testified to events which would normally be inconsequential. It is unlikely that their testimony regarding these seemingly innocuous events would be fabricated. The recollections of these witnesses were very precise and detailed. Further, the respondent's trial testimony regarding his purchase of the necklace was corroborated by the receipt produced at trial. That portion of the respondent's testimony regarding the purchase of the necklace and DeRichie's owing him money was extremely critical in the scenario given by the respondent, and the corroborating receipt overwhelmingly enhanced the believability of the version of the events as described by the respondent at the trial. Further, the respondent's testimony was most precise, detailed and plausible. The major problem with assessing the credibility of the respondent's testimony is the fact that it was not live, but was contained in the trial transcript. Although I am persuaded to believe that portion of the respondent's testimony regarding the necklace, the debt owed to him by DeRichie and the events which occurred at the D'Amico residence outside of the respondent's bedroom on the night in question, I was not persuaded to accept, as a finding of fact, the remainder of Mr. D'Amico's trial testimony, because it was not given at the hearing. Nevertheless, I am persuaded to believe that the events as described by Mr. D'Amico were more likely to have occurred than the events as described by the detective.

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

1. The testimony of the detective was not believable or persuasive.

2. Much of the trial testimony given by the respondent was corroborated by the testimony of others.

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3. The testimony of the witnesses called to corroborate the respondent was believable.

4. On April 24, 1981, the respondent purchased a gold necklace for Mr. DeRichie, for which Mr. DeRichie owed the respondent $325 plus $16.25 sales tax.

5. Present at 4106 Stewart Drive, Atlantic City, on the evening of May 7, 1981, were Ms. D'Amico, Ms. McCullough, Mr. Lonergan, the respondent and a dog.

6. When the detective and Mr. DeRichie entered the premises, the respondent restrained the dog.

7. The respondent, the detective and Mr. DeRichie were present in the respondent's bedroom for approximately two minutes.

8. While the detective was leaving the premises, the dog barked loudly and lunged at him and had to be restrained by the respondent. The detective did not notice the dog.

9. The described events as testified to by the respondent were more likely to have occurred than the events as described by the detective.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual license." Section 129(1) of the Act provides for the revocation of or other sanction against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that the respondent's conduct constitutes the commission of the offenses of possession with intent to distribute cocaine and of distribution of cocaine in violation of N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-19b(1), which offenses are high misdemeanors, and which conduct constitutes a violation of section 86c(3) of the Act per section 86g of the Act.

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N.J.S.A. 24:21-19 provides in pertinent part that:

> a. Except as authorized by this act, it shall be unlawful for any person knowingly or intentionally:
>
> (1) To manufacture, distribute, or dispense, or to possess or to have under his control with intent to manufacture, distribute, or dispense, a controlled dangerous substance;
>
> ....
>
> b. Any person who violates subsection a. with respect to:
>
> (1) A substance, in a quantity of less than one ounce including any adulterants or dilutants, classified in Schedules I or II which is a narcotic drug, or in a quantity of 1 ounce or more with there being included less than 3.5 grams of the pure free base Schedule I or II narcotic drug, is guilty of a high misdemeanor and shall be punished by imprisonment for not more than 12 years, a fine of not more than $25,000, or both.

The Division has specifically charged that the respondent possessed cocaine with intent to distribute and distributed cocaine. Accordingly, the Division must establish (1) that the substance was cocaine, (2) that the respondent possessed cocaine, i.e., that there was a knowing and intentional control of the cocaine, (3) that the respondent knew that what he possessed was cocaine, (4) that the respondent intended to possess the cocaine, (5) that the respondent possessed the cocaine with the intent to distribute it and (6) that the respondent delivered the cocaine to the detective with the knowledge of what he possessed. State v. Davis, 68 N.J. 69 (1975); State v. Ruiz, 68 N.J. 54 (1975); State v. Wilkinson, 126 N.J. Super. 553 (App. Div. 1973). Of course, the Division can establish these factors by means of circumstantial evidence. There was no dispute that the substance was cocaine, which is a controlled dangerous substance for purposes of the operation of N.J.S.A. 24:21-19. In dispute was whether the respondent was knowingly and intentionally in control of the cocaine, i.e., whether he knew what it was.

In the first instance, the Division's proofs were insufficient. Given the unbelievability of Detective Mastella's testimony, the Division had no direct evidence of the knowledge or of the intent of the respondent. All that can be said to exist is the circumstantial evidence of the detective and Mr. DeRichie's going to the D'Amico residence, spending less than five minutes in the respondent's bedroom, leaving with a

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substance which was later determined to be cocaine and the respondent's having possession of $325. This evidence is not sufficient to establish that the respondent had knowledge of that which he was purported to have possessed, that he possessed it, that he intended to distribute it or that he did distribute it.

In the second instance, the testimony of the respondent, although not fully persuasive, was sufficient to offset any inference to be drawn from the circumstantial evidence presented by the Division.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent violated N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-19b(1). I further **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent violated N.J.S.A. 5:12-129(1).

DISPOSITION

It is **ORDERED** that the petition of the Division to revoke the casino employee license of Edward W. D'Amico be **DENIED** and **DISMISSED WITH PREJUDICE.**

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

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

April 25, 1983
DATE

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

Receipt Acknowledged:

April 26, 1983
DATE

Bernadette T. Fraga
CASINO CONTROL COMMISSION

Mailed to Parties:

April 28, 1983
DATE

Ronald L. Lakey/fc
OFFICE OF ADMINISTRATIVE LAW

fms/e

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1A The State of New Jersey v. Edward D'Amico, Superior Court of New Jersey - Law Division (Criminal), Stenographic Transcript of Jury Trial, September 22, 1982 (156 pages)

J-1B The State of New Jersey v. Edward D'Amico, Superior Court of New Jersey - Law Division (Criminal), Stenographic Transcript of Jury Trial, September 23, 1982 (216 pages)

J-1C The State of New Jersey v. Edward D'Amico, Superior Court of New Jersey - Law Division (Criminal), Stenographic Transcript of Jury Trial, September 24, 1982 (121 pages)

J-2 State of New Jersey v. Edward D'Amico, Superior Court of New Jersey, Law Division - Criminal, Indictment No. I 1562-80-M-3, filed August 20, 1981 (6 pages)

P-1 New Jersey State Police - Investigation Report, prepared by Detective Andrew Mastella, May 11, 1981 (2 pages); Department of Law and Public Safety, Division of State Police, Special and Technical Services Section, South Regional Laboratory - Request for Examination of Evidence; New Jersey State Police - Property Report, prepared by Detective Andrew Mastella, May 11, 1982; and New Jersey State Police, Special and Technical Services Section, Forensic Science Bureau - Laboratory Report, prepared by Obdulia I. Gamble, May 13, 1981 (5 pages)

WITNESS LIST

FOR THE PETITIONER:

John DeRichie

Andrew Mastella

FOR THE RESPONDENT:

Alice D'Amico

Virginia McCullough

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-60
APP. NO. 21189-21
OAL DOCKET NO. CCC 4531-82

IN THE MATTER OF THE APPLICATION
OF GENE R. DEANGELO FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 11, 1983, recommending that the application of Gene R. DeAngelo for a casino employee license be denied; and Gene R. DeAngelo having filed exceptions to the Initial Decision on February 3, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 23, 1983, to affirm and adopt the said Initial Decision and to deny the casino employee license application of Gene R. DeAngelo,

IT IS on this 25th day of February 1983, 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 Gene R. DeAngelo be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Gene R. DeAngelo is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Gene R. DeAngelo, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: February 25, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4531-82

AGENCY DKT. NO. 82-EA-60

GENE R. DE ANGELO,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

John H. Fitzgerald, Esq., for petitioner (Cape-Atlantic Legal Services, attorneys)

William J. Walsh, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: November 24, 1982 Decided: January 10, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Gene R. DeAngelo 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 petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner, with specific reference to his arrest and conviction record, has failed to reveal any fact material to qualification,

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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.

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

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated March 25, 1982. The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

THE PETITIONER'S MOTION

At the commencement of the hearing in this matter, the petitioner sought by motion an order that the record be kept open until an expungement petition filed by the petitioner in the Superior Court would be either granted or denied. It was the petitioner's contention that if such an expungement order were to be granted, the petitioner's arrest and conviction record would be excluded from consideration in determining whether the petitioner should be granted a casino employee license, and that any defect in his application as a result of his failure to disclose his arrest and conviction record would be cured. The Division of Gaming Enforcement opposed the petitioner's motion and following the hearing the parties were afforded an opportunity to submit letter memoranda on the question.

In essence, the petitioner seeks retroactive relief on the basis of a prospective, contingent application for expungement of his arrest and conviction record. By obtaining such relief, the petitioner would hope to exculpate himself from his failure to reveal his entire arrest and conviction record on his Personal History Disclosure Form. Clearly, the petitioner should have sought expungement of his arrest and conviction record prior to preparing his Personal History Disclosure Form, which requires disclosure

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of his complete arrest and conviction record. The relief which the petitioner seeks is extraordinary and he has failed to demonstrate good cause for granting such a motion at this stage of the proceedings upon his license application. Therefore, the petitioner's motion for an order that the record be kept open until action is taken upon his expungement petition is **DENIED.**

FINDINGS OF FACT

The petitioner is a 46-year-old New Jersey resident who successfully completed the course of instruction for the game of blackjack at the Casino Career Institute, on October 3, 1980 (Exhibit P-1). The petitioner is married and is the father of one child. He is a high school graduate and he participated in a restaurant management correspondence course, in 1969, but he could not afford to complete it.

The petitioner was employed by the Smithville Inn from 1965 until 1973, as a bartender, server and room captain. Testifying on the petitioner's behalf was Robert A. Merrill, who was the general manager of the Smithville Inn for 22 years. According to Mr. Merrill, he indirectly supervised the petitioner and found him to have excellent working habits. He believes the petitioner to be a diligent worker, who is reliable and honest.

In connection with his application for licensure, the petitioner filed Personal History Disclosure Form No. 2 (Exhibit R-1). It is undisputed that the petitioner failed to disclose his criminal and disorderly persons arrest and conviction record in response to question No. 46 of the disclosure form, which inquires as follows: "Have you or has any member of your immediate family, (as defined on page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or in any other jurisdiction?" The petitioner's response to question No. 46 was, "No."

It is undisputed that the petitioner was arrested by the New Jersey State Police in Egg Harbor Township in 1956 for creating a disturbance and using abusive language, in violation of N.J.S.A. 2A:170-29 (Exhibit R-7). This arrest followed the petitioner's argument with a bar owner concerning a ripped coat. The petitioner was jailed overnight and was fined $25 after pleading guilty to the charge against him.

On September 6, 1961, the petitioner was arrested for larceny in Brigantine, New Jersey. This arrest concerned a theft from the Brigantine Hotel where the petitioner was employed as a waiter (Exhibit R-6). After being jailed overnight, the petitioner was released on $100 bail. In municipal court, the petitioner was found guilty of petty larceny, in violation of N.J.S.A. 2A:119-2, and he was fined $100.

The petitioner was also arrested in Atlantic City in 1961 for assault and battery, in violation of N.J.S.A. 2A:170-26. This arrest arose out of a domestic dispute and the charge was dismissed by the Atlantic City Municipal Court (Exhibit R-5).

In 1974, the petitioner was arrested in Northfield, New Jersey, and charged with embezzlement, in violation of N.J.S.A. 2A:102-5 (Exhibit R-4). At that time, the petitioner was working as the manager of a Cumberland Farms store and his arrest occurred after a company investigation revealed inventory shortages. The petitioner pled guilty to a downgraded charge of larceny, in violation of N.J.S.A. 2A:170-30.1, and he was fined $100.

Question No. 31 of the Personal History Disclosure Form No. 2 requires disclosure of an applicant's complete employment history. It is undisputed that the petitioner failed to disclose in response to question No. 31 his employment as a store manager for Cumberland Farms (Exhibit R-1). Question No. 33 of the Personal History Disclosure Form requires disclosure of all discharges and resignations from employment. It is undisputed that the petitioner was terminated from his employment by Cumberland Farms following his arrest for embezzlement. However, it is also undisputed that the petitioner failed to disclose this termination in response to question No. 33 of his Personal History Disclosure Form (Exhibit R-1).

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

The factual dispute in this matter concerns the reasons for the petitioner's failure to disclose on his Personal History Disclosure Form his entire record of criminal and disorderly persons charges and convictions. Testifying on his own behalf, the petitioner stated that he had utilized the services of an agency in Ventnor, New Jersey, to

assist him in preparing his Personal History Disclosure Form. He does not remember the name of the woman who helped him. According to the petitioner, the agency woman told him that if his fines had been paid on his convictions, or if he had been cleared of the charges, he did not have to put down any information in response to question No. 46. The petitioner told her that all of the matters were now off the record because they were small and the fines were paid. After telling the agency woman what he could remember about his arrests and convictions, the petitioner was told that the information did not have to be disclosed.

The petitioner also testified concerning an interview which was conducted by a Division of Gaming Enforcement investigator. According to the petitioner, he was asked by the investigator why he had not disclosed his arrests and convictions. It was the testimony of the petitioner that he told the investigator that his arrests and convictions were not disclosed because he had forgotten them.

Testifying on cross-examination, the petitioner admitted that he had initially denied to the Division of Gaming Enforcement investigator that he had been arrested. When the investigator confronted him with the records of his arrests and convictions, the petitioner then admitted that he had been arrested. The petitioner acknowledged that he had not listed his employment with Cumberland Farms on his Personal History Disclosure Form. The petitioner admitted that he did not disclose this information because he was fearful that revealing it would prevent his employment. The petitioner also admitted that he did not disclose his termination from employment at Cumberland Farms. According to the petitioner, he told the investigator that he had been exonerated concerning the embezzlement charge arising out of his employment at Cumberland Farms. The petitioner acknowledged that he did not mention to the the investigator that he had utilized the services of an agency to assist him in preparing his Personal History Disclosure Form.

Investigator Charles Bergman testified on behalf of the Division of Gaming Enforcement. According to Mr. Bergman, he conducted an interview of the petitioner, at which time he asked the petitioner if he had ever been arrested. The petitioner replied that he had not. The investigator then asked the petitioner if he understood question No. 46 and its additional instructions, which notify an applicant of the necessity to disclose his entire record of arrests and convictions. The petitioner stated that he understood. The petitioner again denied that he had ever been arrested and he did not

admit his arrests until he had been confronted with the details of each arrest individually. Contrary to the information which the investigator had obtained, the petitioner stated that he had been found not guilty concerning his larceny arrest in Brigantine in 1961 and concerning his embezzlement arrest in regard to his Cumberland Farms employment in 1974.

The petitioner offered conflicting explanations for his failure to disclose on his Personal History Disclosure Form his entire record of arrests and convictions. In the first instance, he testified that the woman who assisted him in preparing his disclosure form told him he did not have to disclose any of his arrests and convictions, after he told her all that he could remember concerning the incidents. In conflict with this testimony, the petitioner also testified that he did not disclose his arrests and convictions because he had forgotten them. In addition to these conflicting explanantions, the petitioner also admitted that he did not disclose his termination from Cumberland Farms. He also did not disclose his employment with Cumberland Farms because he feared that to reveal it would prevent future employment. While the petitioner's testimony in explanation for his failures to disclose was inherently inconsistent, the testimony of Investigator Bergman was sincere and entirely worthy of credit.

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

1. The petitioner failed to disclose on his Personal History Disclosure Form No. 2 his complete record of criminal and disorderly persons charges.

2. The petitioner failed to disclose on his Personal History Disclosure Form his employment and termination from Cumberland Farms.

3. The petitioner's record of criminal and disorderly persons charges, and his employment history and record of terminations, were specifically required to be disclosed on his Personal History Disclosure Form.

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4. The petitioner's failure to disclose on his Personal History Disclosure Form his complete record of criminal and disorderly persons charges, as well as his failure to disclose his employment and termination from Cumberland Farms, resulted from a conscious disregard of the request for such information, rather than from inadvertence.

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 subsection 86b of the Casino Control Act, the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. It is undisputed that the petitioner failed to reveal his complete record of criminal and disorderly persons charges on his Personal History Disclosure Form No. 2. He also failed to disclose his Cumberland Farms employment and termination. Having found that the petitioner's failure to disclose resulted from his conscious disregard of the request for such information, I CONCLUDE that the petitioner is disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

Despite evidence in the record which supports the petitioner' reputation for good character, honesty and integrity, his intentional failure to disclose material information prevents the petitioner from affirmatively demonstrating that he actually possesses the degree of good character, honesty and integrity requisite for licensure as a casino employee. Therefore, I further CONCLUDE that the petitioner is disqualified from licensure based upon his failure to prove, by clear and convincing evidence, his qualifications for licensure, within the meaning of N.J.S.A. 5:1286a.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Gene R. DeAngelo 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.

January 10, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

January 11, 1983
DATE

Nancy L. Stahl
CASINO CONTROL COMMISSION
Asst. Counsel

Mailed to Parties:

Jan. 13, 1983
DATE

Ronald L. Parker/sa
OFFICE OF ADMINISTRATIVE LAW

ml

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Certificate of the Casino Career Institute, dated October 3, 1980

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Personal History Disclosure Form No. 2
R-2 SBI Criminal History
R-3 Request for Criminal History
R-4 Investigation Report
R-5 Atlantic City Police Department Record Card
R-6 Investigation Report
R-6A Waiver of Indictment
R-7 New Jersey State Police Arrest Report
R-8 Northfield Municipal Court Conviction Record
R-9 Brigantine Municipal Court Conviction Record
R-10 Egg Harbor Township Municipal Court Conviction Record

WITNESSES

FOR THE PETITIONER:

Robert A. Merrill
Gene H. DeAngelo

FOR THE RESPONDENT:

Charles Bergman

224.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-49
OAL DOCKET NO. CCC 3824-82
APP. NO. 12515-21

IN THE MATTER OF THE APPLICATION OF

MICHAEL D. FERRINO FOR LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on February 18, 1983, recommending that the casino employee license application of Michael D. Ferrino be denied; and neither party having filed exceptions or objections to the Initial Decision; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of March 30, 1983, to modify the said Initial Decision and to deny the casino employee license application of Michael D. Ferrino,

IT IS on this 6th day of June 1983, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is modified as follows:

> That portion of the Initial Decision indicating that Michael Ferrino was found guilty of the offenses of larceny, conspiracy to commit breaking and entering, grand larceny, conspiracy to commit larceny and malicious damage to property; all of which crimes were the subject of two separate indictments handed up on June 24, 1975, shall be

corrected to reflect that, on July 9, 1975, Michael Ferrino pled guilty to one count of breaking and entering with intent to steal and one count of grand larceny; the remaining charges were dismissed. R3 and R4 in evidence.

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

IT IS FURTHER ORDERED that pursuant to N.J.A.C. 19:41-8.8(a), Michael D. Ferrino is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Order be served upon Michael D. Ferrino, the Division of Gaming Enforcement and all currently operating casino hotels within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 6, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3824-82

AGENCY REF. NO. 82-EA-49

MICHAEL D. FERRINO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

William S. Cappuccio, Esq., for petitioner

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

Record Closed: January 4, 1983 Decided: February 18, 1983

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

The Division of Gaming Enforcement objected to Mr. Ferrino's application to the Casino Control Commission for licensure as a casino employee (slot mechanic). Mr. Ferrino requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

Mr. Ferrino has had several arrests and convictions which, the Division contends, prevent him from establishing the reputation for good character, honesty, and integrity required by N.J.S.A. 5:12-89(b)(2). Two of the convictions are alleged to

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constitute automatic disqualification by virtue of N.J.S.A. 5:12-86(c)(1). The allegation raises the final issue, Mr. Ferrino's rehabilitation from those issues, as permitted by N.J.S.A. 5:12-90(h).

Most of the essential facts are not disputed. Mr. Ferrino was convicted of breaking, and entering, N.J.S.A. 2A:94-1, and the disorderly person's offense of larceny under $200, N.J.S.A. 2A:170-30.1. On August 12, 1977, he was sentenced to a suspended term of six months for these offenses the Gloucester County Jail. The offense involved breaking into a barn by cracking the latch to the barn door and stealing one hundred burlap bags and some automobile oil. These events occurred in 1975.

On July 28, 1975, Mr. Ferrino was convicted of the disorderly persons offense of larceny, N.J.S.A. 2A:170-30.1. He had siphoned gasoline from state highway trucks. He was fined $100 and placed on a one year unsupervised probation.

On June 24, 1975, Mr. Ferrino was indicted for breaking and entering with intent to commit larceny, N.J.S.A. 2A:94-1; conspiracy to break and enter, N.J.S.A. 2A:98.1; grand larceny, N.J.S.A. 2A:119-2; conspiracy to commit larceny, N.J.S.A. 2A:89-1; and malicious damage to property, N.J.S.A. 2A:122-7. He was found guilty of these offenses and received concurrent sentences of 364 days in the county jail, all but 90 of which were suspended. He was placed on three years probation and fined $300. These charges stemmed from the theft of an automobile, which Mr. Ferrino characterized as a joy ride.

On November 23, 1980, at approximately 1:00 a.m., Mr. Ferrino was arrested in the parking lot of a bar for possession of marijuana under 25 grams. The offense was conditionally discharged. Mr. Ferrino was behind the wheel of his car and a friend was next to him in the front seat. As the police approached, Mr. Ferrino tried to throw a pipe containing the marijuana out of the car. However, the police recovered it and arrested both parties.

It is apparent that Mr. Ferrino has committed a lengthy series of serious crimes. The number and seriousness of these crimes indicate a certain amount of incorrigibility. The last offense, although discharged, involved marijuana and occurred less than three years ago. In the face of this history it would take very strong affirming evidence of a change in the personality in a relatively brief time for me to consider that

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Mr. Ferrino now possesses requisite good character, honesty and integrity. While Mr. Ferrino was able to produce some evidence which indicates that he is beginning to reform, the quality of the evidence and the period of time of good condition is not sufficient to establish by clear and convincing evidence good character, honesty and integrity.

Mr. Ferrino has worked for four seasons at C & E Canners in Hammonton, New Jersey performing maintenance functions. His employer considered him a good worker who was always polite and never caused problems (P-12). For the last two years he has been working for Atlantic Community College, performing maintenance and repair functions. His supervisor considers him to be a fine employee who would be missed if he leaves that employment. Mr. Ferrino has taken several seminars to advance himself in the business world, including fundamental air filtration, water treatment, investing for the layman, real estate and others. He has received letters of recommendation from Mayor Gandolfi, Clerk Srangler of the Borough of Folsom and Kenneth LeFevre, Vice Chairman of the Atlantic County Board of Freeholders. These three people have known Mr. Ferrino and his family for many years. They are aware of his problems with the law and consider them to be a part of the past and no longer representative of Mr. Ferrino's character.

The Casino Control Act requires that the proof of good character, honesty and integrity be clear and convincing. As in this case, where crimes are serious and numerous, evidence of rehabilitation must be strong in quality and substantial in duration. The proofs here fall short of those standards. Perhaps a different conclusion would be reached if Mr. Ferrino continues on his present course for a few more years.

The convictions for larceny and conspiracy constitute automatic disqualification. N.J.S.A. 5:12-86(c)(1). Rehabilitation from such crimes must be affirmatively shown. N.J.S.A. 5:12-90(h). For the same reasons that good character, honesty and integrity have not been established, the proofs also fail to establish rehabilitation.

In summary, I **CONCLUDE** that Mr. Ferrino has not established, by clear and convincing evidence, his good character, honesty and integrity, nor his rehabilitation from offenses that constitute automatic disqualification. Therefore, the application of Michael D. Ferrino for licensure as a casino employee (slot mechanic) is **DENIED.**

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

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

2/18/83
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Feb. 24, 1983
DATE

Ronald L. Parker/ph
OFFICE OF ADMINISTRATIVE LAW

fms/e

230.

WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript.

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-101
OAL DOCKET NO. CCC 5996-82
APP. NO. 31421-21

IN THE MATTER OF THE APPLICATION
OF DEAN RICHARD FUCCELLO FOR
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 24, 1983, recommending that the application of Dean Richard Fuccello for a casino employee license be granted; and neither party having filed exceptions to the Initial Decision; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 9, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Dean Richard Fuccello,

IT IS on this 11th day of March 1983, 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 Dean Richard Fuccello 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 Dean Richard Fuccello and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 11, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5996-82

AGENCY DKT. NO. 82-EA-101

IN THE MATTER OF THE APPLICATION OF DEAN RICHARD FUCCELLO FOR LICENSURE AS A CASINO EMPLOYEE (SLOT ATTENDANT)

APPEARANCES:

Dean Richard Fuccello, Pro Se

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

Record Closed: December 7, 1982 Decided: January 21, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Dean Richard Fuccello, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (slot attendant), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant lacked the requsite good character, honesty and integrity required for licensure because of the applicant's prior use of drugs and alcohol.

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PROCEDURAL HISTORY

Mr. Fuccello filed his Personal History Disclosure Form-2 (PHDF-2), with the Commission on May 26, 1981. By letter, the Commission advised the applicant that based upon information received in a report from the Division, dated April 26, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. On June 9, 1982, the applicant requested a hearing. On June 14, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. A prehearing conference was held on August 30, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

Mr. Fuccello is 28 years of age. The applicant is a lifelong resident of New Jersey. He attended but did not complete high school.

The applicant served in the United States Coast Guard from September 22, 1972 to September 23, 1978, and achieved the rank 3rd Class Petty Officer (J-1). The applicant earned an honorable discharge. The applicant was employed on a part-time basis by Bayer Aspirin/Sterling Drugs, Inc., as a cook for a period of two years while he served in the Coast Guard (J-1).

From June to October 1978, the applicant was employed by Valley Pools as a laborer. From February 11 to August 17, 1980, the applicant was employed by New Jersey Electronics Technology Development Corporation as a mechanical assembly apprentice.

From August 18, 1980 until the present, the applicant has been employed by Boardwalk Regency Corporation. He was first employed as a pantry worker. Six months following his employment, the applicant was promoted to the position of cook (P-1). This was the minimum period of employment necessary to qualify for a promotion. The applicant has earned good work evaluations during the past two and one-half years.

On June 2, 1974, the applicant was arrested by the Hamilton Township Police Department (Mercer County) and was charged with violations of N.J.S.A. 24:21-20a(3), possession of marijuana, N.J.S.A. 2A:190-25, producing marijuana, N.J.S.A. 24:21-20a(3), possession of hashish, and N.J.S.A. 24:21-20a, possession of mescaline. On September 12, 1975, the applicant was found guilty and received a six-month suspended sentence, a $150 fine and probation for a period of one year. The applicant testified that at the time of the incident he shared an apartment with a girl friend. Although he conceded that the marijuana was his, the applicant claimed that the hashish and mescaline were the property of his girl friend and that he did not know that they were present in the apartment. Shortly after his girl friend had moved from the apartment, the police conducted a raid and discovered the drugs. The applicant pled guilty to the charges because he was unable to prove that they were the property of his former girl friend.

The applicant was arrested on April 27, 1975, and was charged with violations of N.J.S.A. 24:21-20a(3), possession of marijuana, and N.J.S.A. 2A:170-3, possession of a concealed weapon. On July 7, 1975, the applicant was found not guilty of the charges. The applicant explained that on the date of the incident he was a passenger in the vehicle of a female companion and both were drinking. The marijuana in the vehicle was the property of his female companion. The purported weapon consisted of a pocketknife he regularly carried in his pocket.

On July 3, 1976, the applicant was arrested by the Hamilton Township Police Department and was charged with a violation of N.J.S.A. 24:21-20a(3), possession of marijuana. On November 19, 1976, the applicant was convicted, and he received a three-month suspended sentence, one year probation and a $100 fine. The applicant stated that on the date in question he had been drinking with some companions and had decided to smoke some marijuana.

On May 18, 1978, the applicant was arrested by the Hamilton Township Police Department and was charged with a violation of N.J.S.A. 2A:90-4, aggravated assault on a police officer (R-4 and R-5). The applicant explained that he was a passenger in the rear seat of a motor vehicle operated by a friend. The friend was intoxicated and almost caused an accident. The vehicle was stopped by the police. The driver and the passenger in the front seat argued with the police and were arrested. When the applicant's brother,

who was also a passenger in the rear seat, argued with the police he was arrested. Upon exiting the vehicle, the applicant attempted to run away from the scene. When the police caught him, he was charged with eleven counts of assault on a police officer. At the municipal court hearing, ten of the charges were dropped and the applicant pled guilty to one count of assault. The applicant denied that he ever struck a police officer. The applicant also testified that the police officer whom he purportedly assualted was subsequently his employer and supervisor at Valley Pools.

On February 16, 1978, the applicant was arrested by the Mt. Laurel Township Police Department (Burlington County), and was charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana, under 25 grams (R-2). On April 17, 1978, the applicant pled guilty and received a $500 fine, a 180 day suspended sentence and a one-year period of probation. The applicant stated that at the time of the incident he was intoxicated.

On May 5, 1978, the applicant was arrested by the Chesterfield Township Police Department (Burlington County), and was charged with violations of N.J.S.A. 24:21-20a(1), possession of cocaine, and N.J.S.A. 24:21-20a(4), possession of marijuana (R-1). On February 5, 1979, the applicant was found guilty of a violation of N.J.S.A. 24:21-20a(4) and a downgraded charge of N.J.S.A. 24:21-20(b). The applicant was fined $700 and $50 court costs. The applicant testified that during the evening preceding his arrest he had been drinking heavily and was unable to drive home. He parked his vehicle in a school yard and went to sleep, where he was subsequently arrested.

As a result of the conviction in the Chesterfield Township Municipal Court, the applicant was charged with a violation of N.J.S.A. 2A:168-4, violation of probation. On April 10, 1979, the applicant was found guilty and was sentenced to 180 days. The applicant served 130 days in the Burlington County Jail. The applicant was "a model inmate" (P-1).

Mr. Fuccello described the circumstances underlying his use of drugs, which he attributed to his alcoholism. The applicant testified that he began drinking alcoholic beverages at age 16. From that time until his incarceration, he consumed substantial quantities of alcoholic beverages on a daily basis. The applicant stated that he used drugs, primarily marijuana, only in small amounts, when he was intoxicated. The

applicant did not use marijuana while he was on duty with the Coast Guard, and he had no disciplinary problems of any kind. Essentially, the applicant claimed that his life consisted of two separate parts, his Coast Guard obligations and his life away from the Coast Guard. The applicant stated that he occasionally purchased drugs from friends and shared any drugs he might have had with friends, but he never sold drugs.

The applicant further testified that his incarceration in the Burlington County Jail was the turning point in his life. During the early stages of his incarceration he incurred extreme suffering because of his withdrawal from alcohol. The applicant candidly stated that this was a very painful and humiliating experience. Second, the applicant stated that his incarceration with murderers, robbers and rapists was a very frightening experience. He did not consider himself to be a criminal and vowed to himself that he would never return to a prison.

These factors caused the applicant to recognize that his problems were alcohol-related. On his own initiative, he became a member of Alcoholics Anonymous while in prison and regularly attended meetings (P-1). Subsequent to his release, the applicant sought to continue his alcohol counselling through the Catholic Guidance Center. However, after approximately six months the applicant concluded that this program did not offer him the appropriate assistance. Subsequently, the applicant participated in counselling with the Bureau of Alcohol Countermeasures of the Division of Motor Vehicles, which program he successfully completed (P-1 and P-3). The applicant first participated in this program solely for the purpose of securing counselling, although the program is a designated means of reacquiring a suspended driver license. In fact, the applicant had to repeat his attendance at a portion of the program in order to receive proof of attendance credits, which were applied toward the reissuance of his license.

The applicant also testified that since completion of the Bureau of Alcohol Countermeasures Program he has attended Alcoholics Anonymous meetings when he feels a need to do so. Attending these meetings enables the applicant to maintain his abstinence from alcohol. He last attended a meeting approximately one year ago.

The applicant stated that he has not consumed alcoholic beverages or used drugs since his incarceration in early 1979. The applicant also stated that he no longer associates with his former friends, with whom he consumed alcoholic beverages and used drugs. The applicant considers this disassociation to be the key to his rehabilitation.

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The primary determinative factor in this matter was the credibility of Mr. Fuccello. As the applicant for licensure, he had a direct interest in the outcome and a bias in these proceedings. However, the applicant's testimony was candid, embarrassing, believable, consistent with all of the documentatary evidence presented and most persuasive. Further, there was no witness or any evidence offered to refute any fact to which the applicant testified. In the final analysis, I am persuaded to accept his testimony in full.

The applicant also offered the testimony of Donald Muschal, who is employed by the Princeton Plasma Physics Laboratory of Princeton University. The applicant was a close friend of Mr. Muschal's sons while they were in high school together. During that time Mr. Muschal was aware of Mr. Fuccello's conduct, which caused him great concern regarding the potential effect upon and the well-being of his sons. The witness stated that he frequently instructed his children to disassociate themselves from Mr. Fuccello. Subsequent to the applicant's incarceration, Mr. Muschal has observed a dramatic change in the applicant's behavior. The witness corroborated the applicant's testimony regarding his participation in Alcoholics Anonymous programs. Mr. Muschal stated without reservation that the applicant has overcome his past problems. Mr. Muschal and the applicant have become close and have frequently discussed Mr. Fuccello's career aspirations. The witness stated that the applicant is now welcome in his home at any time. The witness further stated that he volunteered to testify on behalf of the applicant and that he fully supported licensure.

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

DISCUSSION OF LAW AND CONCLUSIONS

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

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

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

Under section 89b(2) of the Act, Mr. Fuccello was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 190 N.J. Super. 324 (App. Div. 1981); In the Matter of the

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Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's criminal record, albeit for nondisqualifying offenses, concerning his use of drugs.

There is no question that the applicant lacked the requsite degree of good character, honesty and integrity required for licensure prior to his incarceration in 1979. Nevertheless, it must be recognized that his misconduct did not involve the sale of drugs or his addiction thereto. Therefore, the issue regarding his present character is whether he has successfully rehabilitated himself from alcoholism and drug use.

It was clearly demonstrated that the core of the applicant's problems was his abuse of alcohol. However, the applicant has affirmatively demonstrated by means of his successful completion of an Alcoholics Anonymous program and his conduct since his incarceration that he is fully rehabilitated from alcoholism. It is also evident that the applicant's use of drugs was directly related to his use of alcohol, and since his rehabilitation he has not used drugs.

The applicant has managed to turn his life around completely. He disassociated himself from his former companions and has completely changed his lifestyle. The applicant is also very serious in regard to his career. He has matured. It is further evident from the applicant's successful employment within the casino industry for the past two and one-half years that he presents no risk to the public or to the integrity of gaming operations. An examination of the "whole man" clearly and convincingly establishes that Mr. Fuccello is a person of good character, honesty and integrity and is suitable for licensure in this state. Boardwalk Regency Corporation, Casino Control Commission, supra, at 51, 52.

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

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ORDER OF DISPOSITION

It is **ORDERED** that the application of Dean Richard Fuccello for licensure as a casino employee be **GRANTED.**

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

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

January 21, 1983
DATE

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

Receipt Acknowledged:

January 24, 1983
DATE

Bernadette T. Frigo
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 26, 1983
DATE

Ronald L. Lakey
OFFICE OF ADMINISTRATIVE LAW

ij

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure From-2, Dean Richard Fuccello, May 22, 1981 (29 pages)

P-1 Letter from Stephen Fletcher and Mr. Williams, August 14, 1979

P-2 Agreement to Participate in Alcoholics Anonymous, Dean R. Fuccello, December 17, 1980

P-3 Letter to Dean R. Fuccello from Robert E. Green, April 10, 1981

P-4 Letter from Jeffrey Phillips

R-1 Municipal Court of Chesterfield Township, County of Burlington, State of New Jersey v. Dean Richard Fuccello, Transcript of Docket

R-2 State of New Jersey v. Dean R. Fuccello, Notice of Violation of Probation; State of New Jersey v. Dean R. Fuccello, Complaint, February 16, 1978; and State of New Jersey v. Dean R. Fuccello, Committment-General, April 10, 1979 (3 pages)

R-3 Letter to Division of Gaming Enforcement from Marie Kornfeld, August 30, 1982

R-4 Letter to Division of Gaming Enforcement from Marie Kornfeld, August 30, 1982

R-5 Letter to Division of Gaming Enforcement from Marie Kornfeld, August 30, 1982

R-6 Letter to Division of Gaming Enforcement from Marie Kornfeld, August 30, 1982

WITNESS LIST

For Applicant:

Dean R. Fuccello

Donald Muschal

For Respondent:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-83
OAL DOCKET NO. CCC 05222-82
LICENSE NOS. 00602-11 and 01549-21

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

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law with the Commission on April 5, 1983, recommending that the casino key employee license and casino employee license issued to Vincent C. Giovinetti be revoked; and Vincent C. Giovinetti having filed exceptions to the initial decision on April 20, 1983; and the Commission having considered the entire record in this matter and having resolved at its public meeting of June 1, 1983, to affirm and adopt the said initial decision and to revoke the aforementioned licenses of Vincent C. Giovinetti,

IT IS on this 9th day of June, 1983, 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 Vincent C. Giovinetti be and hereby is found not qualified to hold either a casino key employee or casino employee license 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 any outstanding casino key employee or casino employee licenses held by Vincent C. Giovinetti be and hereby are revoked; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Vincent C. Giovinetti is not eligible to apply for or obtain any license, registration, qualification or approval required under the Casino Control Act until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Vincent C. Giovinetti, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY:
DENNIS DALY
SENIOR ASSISTANT COUNSEL

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DATED: June 9, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5222-82

AGENCY DKT. NO. 81-83

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

Petitioner

v.

VINCENT C. GIOVINETTI, ATLANTIC CASINO TRAINING ACADEMY AND ANTHONY STOLFO,

Respondents.

APPEARANCES:

Edward P. Busichio, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Vincent C. Giovinetti, Pro Se

Record Closed: February 18, 1983 Decided: April 4, 1983

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

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Vincent C. Giovinetti, Atlantic Casino Training Academy (ACTA) and Anthony Stolfo, respondents.

New Jersey Is An Equal Opportunity Employer

The Division alleges that Mr. Giovinetti had secured from Mr. Stolfo a false certification of successful course completion regarding a course given by ACTA, which Mr. Giovinetti had submitted to the Casino Control Commission. The Division seeks revocation of Mr. Giovinetti's casino employee licenses and casino key employee licenses, ACTA's gaming school license and Mr. Stolfo's status as a qualifier thereof, pursuant to section 129 of the Casino Control Act (Act). The respondents oppose the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on December 18, 1981. On March 23, 1982, all three respondents filed an answer and requested a hearing. On May 19, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 13, 1982, which only Mr. Giovinetti and the Division attended. Respondents Stolfo and ACTA abandoned their request for a hearing, and on March 28, 1983, an initial decision was issued which revoked the gaming school license held by ACTA.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Giovinetti held various licenses from the Casino Control Commission (Commission). He was a licensed casino employee (license no. 1549-21); more specifically, on September 6, 1978, he was licensed as an alcoholic beverage employee, on September 11, 1978, he was licensed as a slot attendant and on August 1, 1979, he was licensed as a slot attendant supervisor. The respondent was also a licensed casino key employee (license no. 602-11); more specifically, on December 8, 1980, he was licensed as a coin cage supervisor and on March 8, 1981, he was licensed as a slot shift manager.

On or about December 18, 1981, Mr. Giovinetti began employment with Resorts International Hotel, Inc. He was a slot attendant for approximately one year. He was promoted to slot attendant supervisor, and in or about September 1979, he was

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promoted to assistant shift manager. As assistant shift manager, the respondent had approximately 35 slot attendants under his supervision.

On or about September 20, 1979, the respondent applied to the Commission for licensure as a casino key employee in order to become a slot shift manager. However, the respondent did not meet the experiential requirements for the license (P-1 at T51-10 to 15). Nevertheless, the Commission issued the respondent a casino key employee license as a coin cage supervisor. This was not the license the respondent wanted or needed as an employee in Resorts' slot department. The respondent would have qualified for a conditional slot shift manager license if he had completed satisfactorily a course of instruction at a licensed gaming school for a specific type of slot machine and if he certified that he intended to qualify for licensure in a second type of slot machine within one year of the issuance of the conditional license.

Accordingly, and in late 1980, the respondent enrolled in an electro-mechanical slot mechanic course of instruction offered by ACTA. This course required the completion of 200 hours of instruction prior to the issuance of the certificate of successful course completion. Upon completion of a course by a student, the licensed gaming school forwards to the Commission a certificate of completion which bears the name of the student, the course of instruction and the date of completion as proof of such completion.

At the time the course concluded, the respondent had not completed the 200 required hours of instruction (P-1 at T53-3 to 23). However, Mr. Giovinetti approached Mr. Stolfo, an administrator of ACTA, and requested that he be given the certificate of successful course completion upon the promise that he would make up the incomplete hours (P-1 at T64-17 to 65-6, T68-4 to 6, T70-5 to 7 and T55-11 to 56-2). Mr. Stolfo resisted the request; however, he later provided the certificate, dated December 19, 1980, upon Mr. Giovinetti's express promise to make up the hours (P-1 at T64-17 to 65-6, T69-8 to 9 and T70-5 to 7 and P-3B). The respondent knew that it was wrong for him to secure the certificate (P-1 at T69-23 to 25). In addition to the certificate, Mr. Giovinetti received a letter, also dated December 19, 1980, from ACTA and addressed to then Chairman Joseph P. Lordi, which stated that the respondent had successfully completed the course and had attended 200 hours of instruction (P-3B). The respondent needed the certificate and letter in order to secure his conditional key employee license as a slot shift manager (P-1 at T65-7 to 19).

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On either December 19 or 22, 1980, the respondent gave a copy of the certificate and letter to Diana Farinelli, Administrative Assistant of the Casino Licensing Department at Resorts. Her duties and responsibilities included processing licensing matters for employees. The communication between the respondent and Ms. Farinelli regarding the documents was in dispute and will be discussed, infra. In any event, Ms. Farinelli prepared a letter to Christopher Storcella, Chief-Employee Licensing Section with the Commission, from the respondent, dated December 22, 1980 (P-3B). Attached to the letter were affidavits made by the respondent and Robert E. Peyton, Slot Department Manager at Resorts, the subject certificate and the letter from ACTA (P-3B). The letter stated that the respondent had successfully completed the electro-mechanical slot mechanic course at ACTA, stated his qualifications and requested the issuance of a conditional slot shift manager license upon the representation that the respondent would complete a second slot mechanic course within the following year (P-3B). The respondent admitted that the purpose of the letter was to secure from the Commission a conditional casino key employee license as a slot shift manager, based upon the claimed partial satisfaction of the experiential requirements for licensure. The respondent read the letter and signed it on December 22, 1980 (P-1 at T81-2 and T85-22 to 25). The respondent knew that the statements in the letter were untrue (P-1 at T81-3 to 4). He also conceded that he knew the information contained in the letter and in the attachments to the letter were material to his application for licensure (P-1 at T82-8 to 11). The respondent further conceded that his purpose in enrolling in the electro-mechanical slot mechanic course of study was intended to overcome his experiential deficiencies. Further, the statements contained in the December 22, 1980 letter and in the attachments were made in order to obtain a license that the respondent knew he was not qualified for (P-1 at T834 to 8).

The respondent's December 22, 1980 letter and attachments were reviewed by the Commission upon their submission. Janice Longini, Principal Analyst for the Commission, was unable to locate the original certificate, which should have been filed with the Commission by ACTA. Ms. Longini contacted Mr. Stolfo and was advised that the original certificate had not been filed because the respondent had not completed the total hours required for graduation (P-3A).

On February 27, 1981, Mr. Giovinetti completed satisfactorily a slot department management course at the Atlantic Community College - Casino Career Institute. This course required the completion of 40 hours of instruction. The respondent testified

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he opted for this mini-course in lieu of completing the required hours for the electro-mechanical slot mechanic course offered by ACTA.

On March 8, 1981, the respondent was licensed by the Commission as a casino key employee, slot shift manager.

The Division scheduled a sworn interview of Mr. Giovinetti for 10:15 a.m. on June 8, 1981. The respondent did not appear. The respondent was notified by telephone that the interview had been rescheduled for June 9, 1981, at 10:15 a.m. Again, the respondent did not appear. The respondent was again notified by telephone that the interview had been rescheduled for 10:15 a.m. on June 15, 1981. However, the respondent did not appear. The respondent was again notified that the interview was rescheduled for 2:00 p.m. on June 16, 1981. He did not appear. The respondent did appear for his interview at 2:00 p.m. on June 19, 1981. The reasons for the respondent's failure to appear for an interview on the first four scheduled dates were in dispute and will be discussed, infra.

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

(B) DISPUTED FACTS

In dispute were the instructions Mr. Giovinetti claimed to have given to Ms. Farinelli at the time he gave her his course certificate, and the respondent's reasons for his failure to appear at the first four scheduled interviews.

Ms. Farinelli testified that between December 19 and December 22, 1980, she received from the respondent the course certificate and letter from ACTA. Ms. Farinelli advised the respondent that she would compose a transmittal letter to the Commission and would prepare other necessary documents in order that he could secure his temporary license. This was done. At no time did the respondent advise Ms. Farinelli that he had not graduated from ACTA, that he needed to make up course hours or that the materials should not be mailed to the Commission. Ms. Farinelli stated that she had no reason to believe that the respondent had not satisfactorily completed the course; if she had she would not have submitted the materials to the Commission.

The respondent testified, both at the hearing and during his sworn interview, that he had instructed Ms. Farinelli to prepare the necessary paperwork for transmittal to the Commission, which was to be sent after he made up the necessary hours (P-1 at T78-4 to 14). The respondent also testified that he did not make up the hours necessary to earn the certificate because he learned that he could attend the slot department management mini-course offered by the Casino Career Institute in lieu thereof, which he did.

The resolution of the discrepancy in the testimonies of Ms. Farinelli and the respondent depends largely upon their credibility. Ms. Farinelli was a non-party witness and, as such, had no direct interest in the outcome of the proceedings. Her recollection of the events was precise and detailed. Further, her testimony was corroborated in every regard by the testimony of others, except for the testimony of the respondent. Further, Ms. Farinelli's recollection of the events was consistent with the documentary evidence. On the other hand, Mr. Giovinetti's position in this matter must be recognized. As the respondent, he has a direct interest in the outcome and a bias in these proceedings. Further, his testimony regarding the entire circumstances surrounding the certificate consisted of a series of incomplete and inconsistent explanations. Also, the exculpatory nature of the respondent's testimony was not consistent with the documentary evidence, which consisted of a letter he signed and an affidavit he made, as well as other documents (P-3B). The conflicting explanations were also highly evident during the respondent's sworn interview on June 19, 1981, which occurred some six months after the events (P-1). The testimony of Ms. Farinelli was far more consistent, reasonable, believable and persuasive. In the final analysis, I am persuaded to accept Ms. Farinelli's testimony in all respects and to disbelieve that portion of the respondent's testimony which was in conflict therewith. Accordingly, I am persuaded to believe that Mr. Giovinetti knowingly and willfully secured the certificate and submitted the certificate to the Commission for the express purpose of securing a temporary license, which he knew he was not qualified to hold.

With regard to the scheduled interview on June 8, 1981, the respondent testified that although he knew of it, he did not know what it was about and he overslept (P-1 at T3-13, T3-24 and T4-14 to 19). With regard to the interview scheduled for June 9, 1981, the respondent admitted knowing that it was scheduled (P-1 at T9-24 to 10-12). However, the respondent claimed that he was unable to attend the interview because of car trouble (P-1 at T10-18). The respondent also conceded that he was aware of the interview scheduled for June 15 (P-1 at T13-2), and that he had learned of it from

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Robert E. Peyton, Slot Department Manager for Resorts (P-1 at T13-5 to 7 and T14-2). However, the respondent did not appear because he did not feel well and was nervous about the interview (P-1 at T15-18). The respondent was also aware of the interview scheduled for June 16, 1981. However, he did not appear because of a lack of transportation (P-1 at T22-15 to 25).

The respondent's explanations of his failures to appear for the scheduled interviews were inconsistent and extremely vague. However, the explanations were unrefuted. It was evident that the respondent was apprehensive about the interview because he had no prior knowledge of the subject matter about which he would be questioned. Understandably, this made him nervous and reluctant to so submit. In fact, even after the applicant did appear for an interview and upon his request, he was not informed of the areas about which inquiry would be made. Clearly, the "secretive" character of the interview justifiably contributed to the respondent's anxieties.

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

1. Between December 19 and December 22, 1980, the respondent gave a copy of his certificate of successful course completion and a letter from ACTA regarding same (P-3B) to Diana Farinelli for the purpose of the preparation of additional documentation and transmittal correspondence to the Commission so that the respondent could obtain a conditional casino key employee license as a slot shift manager.

2. The applicant signed the December 22, 1980 transmittal letter and the affidavit in support of his application for the express purpose of their submission to the Commission in support of his application.

3. The respondent did not advise Ms. Farinelli that he had not completed the requirements for graduation from the course, nor did he instruct her to withhold transmittal of the materials until he had completed the course requirements.

4. The respondent knowingly and willfully made a false submission to the Commission in support of his application.

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5. At the time of the submission to the Commission, the applicant intended to complete the electro-mechanical slot mechanic course requirements.

6. The applicant chose not to complete the electro-mechanical slot mechanic course requirements because of the opportunity to satisfy the experiential requirements for licensure by the successful completion of the slot department management course offered by the Casino Career Institute.

7. The respondent never advised Ms. Farinelli or any other person to withdraw his December 22, 1980 submission to the Commission.

8. The respondent knew that the information contained in his December 22, 1980 submission to the Commission contained many statements of fact which were untrue and which were material to his application for a conditional license.

9. The applicant failed to appear for an interview on June 8, 1981, because he overslept.

10. The applicant failed to appear for an interview on June 9, 1981, because he had car trouble.

11. The applicant failed to appear for an interview on June 15, 1981, because he did not feel well and because he was nervous.

12. The applicant failed to appear for an interview on June 16, 1981, because he had no transportation.

13. The applicant also failed to appear for the four scheduled interviews because he was nervous, since he had no knowledge of the subject matter about which he was to be questioned.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the

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individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that Mr. Giovinetti's conduct constitutes a violation of sections 80d and 86b of the Act, and, accordingly, establishes that he no longer possesses the requisite degree of good character, honesty and integrity required for licensure, under section 89b(2).

(A) N.J.S.A. 5:12-80d

Section 80d of the Act provides:

> All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this Act shall have the continuing duty to provide any assistance or information required by the Commission or Division, and to cooperate in any inquiry or investigation conducted by the Division and any inquiry, investigation, or hearing conducted by the Commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, and the applicant, licensee, registrant or any other person who shall be qualified pursuant to this Act refuses to comply, the application, license, registration or qualification of such person may be denied or revoked by the Commission.

The Division contends that the respondent's failure to appear for a sworn interview on June 8, 9, 15 and 16, 1981, constitutes a violation of section 80d.

It was evident that the respondent had written notice of the Division's request to appear for the interview on June 8, 1981, and that he had telephone notice for the remaining dates. He did appear for an interview on June 19, 1981. The respondent testified to various reasons for his failures to appear, which were plausible and unrebutted. Nevertheless, it was apparent that the overriding reason for the respondent's failure to appear was his nervousness and apprehension regarding the interview because of his lack of knowledge of the interviews and of the subject matter. This apprehension is entirely understandable; however, it cannot excuse completely the respondent's failure to appear.

Although the respondent's conduct constitutes a violation of section 80d, his appearance on June 19, 1981, essentially cured the violation. Further, the respondent's

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failure to appear caused the Division a minimal degree of inconvenience. Also, the nonappearance did not have any negative impact on licensed gaming in this State.

I **CONCLUDE** that the Division has established that the respondent's failure to appear for an interview on June 8, 9, 15 and 16, 1981, constitutes a violation of N.J.S.A. 5:12-80d.

(B) 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), mod., 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 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

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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), mod., 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), mod., 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 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 to excuse 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. Providing misleading information material to licensure is similarly offensive.

The Commission has also held in In the matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 2252-1979 (November 15, 1979), mod., Casino Control Commission, 79-EA-10 (March 20, 1980), at 7-10, that applicants 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.

The respondent's submission to the Commission in an effort to get his casino key employee license as a slot shift manager contained false and, therefore, misleading information which was material to licensure. The respondent knew that he had not earned the certificate when he received it from Mr. Stolfo and when it was submitted to the Commission. Although the respondent may have intended to cure the deficiency in his hours of study, he did not do so. Also, he made no effort to withdraw the submission from the Commission.

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The respondent attempted to avoid responsibility for his conduct by claiming that Ms. Farinelli had submitted the materials to the Commission over his express instructions to the contrary. This testimony was not believable or persuasive.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's submission of December 22, 1980, to the Commission contained false and misleading statements, in violation of section 86b of the Act.

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

Under section 89b(2) of the Act, Mr. Giovinetti was required to maintain, by clear and convincing evidence, good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

The Commission has held that the disqualification criterion found in section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). Therefore, the conclusion that Mr. Giovinetti provided false and misleading information to the Commission in violation of section 86b automatically precludes him from meeting his burden under section 89b(2) of the Act.

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In addition, it was evident that respondent's misconduct was knowing, intentional and designed to mislead the Commission in the performance of its official functions. The respondent's conduct exhibits a callous and serious disregard for the regulation of casino gaming in this State. Accordingly, it was clear that the respondent has failed to maintain the requisite degree of good character, honesty and integrity.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he possesses the requisite degree of good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89(b).

(D) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. The Division would not make a recommendation of the penalty to be imposed.

The question of penalty is complicated by the respondent's being the holder of five licenses. The violation of section 80d does not provide for a mandatory penalty; however, violation of section 86b and the failure to maintain his qualifications under section 89b(2) of the Act appear to mandate revocation without regard to the number of licenses held. In any event, the determinative factor is the nature of the respondent's misconduct.

In the first instance, I was not persuaded to believe the respondent's version of the incident as it involved Ms. Farinelli. Also, the applicant never made any attempt to cure the deficiency in his hours of attendance of the course or to otherwise correct the false filing with the Commission. These factors combined with the respondent's actions during December 1980 establish that he committed a fraud upon the Commission.

It is also important to examine the effect of the respondent's provision of false information to the Commission. Such conduct was intended to circumvent the Commission's enforcement of the regulatory scheme and, thereby, defeat the purpose of such strict regulation. This strikes at the very heart of the regulatory scheme, which is designed to maintain the integrity of licensed gaming. If such conduct were tolerated to

any degree, it would clearly undermine "the public confidence and trust in the efficacy and integrity of the regulatory process." N.J.S.A. 5:12-1b(6).

Further, the penalty in this matter must represent a clear and unequivocal message to all licensed employees in this State that no licensed employee can be permitted to obstruct or otherwise frustrate the regulatory process. Rather, the regulatory process must be allowed to work in the manner in which it was intended. An essential factor in the regulatory process is that each licensee comply with the requirements thereof and possess good character, honesty and integrity.

I **CONCLUDE** that each and every one of the respondent's casino employee and casino key employee licenses must be revoked.

DISPOSITION

It is **ORDERED** that the casino employee licenses (alcoholic beverage employee, slot attendant and slot attendant supervisor - license number 1549-21) and the casino key employee licenses (coin cage supervisor and slot shift manager - license no. 602-11) held by Vincent C. Giovinetti be **REVOKED.**

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

260.

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

April 4, 1983
DATE

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

Receipt Acknowledged:

April 5, 1983
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

APR 7 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

ij/e

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LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE:

P-1 Transcript of Vincent C. Giovinetti, June 19, 1981 (109 pages)

P-3A Memorandum from Janice A. Longini to Christopher D. Storcella, February 27, 1981 (2 pages)

P-3B Letter to Christopher Storcella from Vincent C. Giovinetti, December 22, 1980; Affidavit of Vincent C. Giovinetti, December 22, 1980; Affidavit of Robert E. Peyton, December 22, 1980; Atlantic Casino Training Academy - Certificate of Completion, December 19, 1980;and letter to Joseph P. Lordi, Chairman, from William H. Rogers, December 19, 1980 (5 pages)

EXHIBIT NOT ADMITTED INTO EVIDENCE:

P-2 Id. Atlantic Casino Training Academy - Graduation List, December 19, 1980

WITNESS LIST

FOR THE DIVISION:

Diana Farinelli
Janice Longini

FOR THE RESPONDENT:

Vincent C. Giovinetti

262.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-54

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

Complainant,

v.

GOLDEN COACH A.C., INC.; LEISURE TIME TOURS, INC.; GOLDEN NUGGET, INC.; GNAC, CORP. AND GERALD MERCADANTE

Respondents.

FINAL ORDER

This matter having been opened to the Casino Control Commission upon the Complaint of the Division of Gaming Enforcement filed with the Commission on June 30, 1982, which alleged that political contributions made by Respondents Golden Coach A.C., Inc. and Leisure Time Tours, Inc., wholly owned subsidiaries of Golden Nugget, Inc., which is the holding company of GNAC, Corp., the casino licensee, were prohibited pursuant to N.J.S.A 5:12-138; and the parties having filed a jointly executed stipulation of facts, briefs and reply briefs; and the Commission having considered the entire record of these proceedings and having determined that the political contributions at issue were not made in violation of N.J.S.A. 5:12-138, and having resolved at its public meeting of March 9, 1983, to adopt the stipulation of facts and to dismiss the complaint,

IT IS on this 27th day of April 1983, ORDERED that the complaint in this matter be and hereby is dismissed; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 27, 1983

FILED
NEW JERSEY
FEB 3 1983
CASINO CONTROL

ALFRED J. LUCIANI, ESQUIRE
Luciani and Wilson, P.A.
14 South California Avenue
Atlantic City, NJ 08401
(609) 347-7301
Attorney for Respondents,
Golden Coach, A.C., Inc.;
Leisure Time Tours, Inc.;
Golden Nugget, Inc.; GNAC,
CORP.; and Gerald Mercadante

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-54

IN THE MATTER OF STATE V. GOLDEN COACH, A.C., INC.; LEISURE TIME TOURS, INC.; GOLDEN NUGGET, INC.; GNAC, CORP.; AND GERALD MERCADANTE

STIPULATIONS

Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, and Respondents, Golden Coach, A.C., Inc.; Leisure Time Tours, Inc.; Golden Nugget, Inc.; GNAC, CORP.; and Gerald Mercadante, hereby stipulate as follows:

COUNT I

1. The Division of Gaming Enforcement is responsible, pursuant to P.L. 1977, c. 110, subsection 76, for the enforcement of the provisions of the Casino Control Act and the regulations promulgated thereunder and for the prosecutions before the Casino Control Commission of all proceedings for violations of the Casino Control Act and the regulations promulgated thereunder.

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2. Respondent GNAC, CORP., t/a Golden Nugget (GNAC), is now and was, at all times relevant to this matter, a corporation organized and existing under the laws of the State of New Jersey wholly-owned by respondent, Golden Nugget, Inc. (GNI), (except for the period during which GNAC was temporarily licensed, when GNI's interest in GNAC was held in trust pursuant to N.J.S.A. 5:12-95.1 et seq.)

3. GNAC, at all times relevant to this matter, has had its principal place of business located at Boston and Pacific Avenues, in the city of Atlantic City, County of Atlantic, and State of New Jersey.

4. GNAC is currently the holder of a plenary casino license issued by the Casino Control Commission authorizing it to operate a casino hotel under the Casino Control Act and the regulations promulgated thereunder, said license having been issued to GNAC on October 13, 1981. Prior to that date, GNAC operated its casino hotel facility under a temporary casino license and operation certificate effective December 12, 1980.

5. Respondent, Golden Coach, A.C., Inc. (Golden Coach), with offices in the City of Ventnor, County of Atlantic, State of New Jersey, and in the City of Mahwah, County of Bergen, State of New Jersey, was incorporated in this State in July, 1980.

6. Respondent, Golden Coach, at the time of its incorporation, was a wholly-owned subsidiary of GNAC. Subsequently, Golden Coach became a wholly-owned subsidiary of GNI, having

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become such a subsidiary on or about December 4, 1980. In addition, Golden Coach is an applicant before the Casino Control Commission for licensure as a casino service industry.

7. At all times relevant hereto, the officers and directors of Golden Coach were Respondent Gerald Mercadante, President/Director; Daniel Mercadante, Executive Vice-President/Director; Bruce A. Levin, Secretary/Director; Clyde T. Turner, Treasurer/Director; Kenneth R. Wynn, Chairman of the Board of Directors; and Shannon L. Bybee Jr., Assistant Secretary. Messrs. Levin, Turner, Wynn and Bybee hold the following positions with GNI and GNAC:

	GNI	GNAC
Levin	Vice President & General Counsel/Assistant Secretary	Assistant Secretary
Turner	Senior Vice President and Treasurer	Director
Wynn	Vice President of Design, Secretary/Director	Secretary/Director
Bybee	Vice President	President

8. Respondent, Golden Coach, through its corporate checking account, purchased, at a cost of $250, two tickets to a party and buffet held to aid and promote the election of Michael Matthews to the public office of Mayor of the City of Atlantic City, County of Atlantic, State of New Jersey. Said corporate check of Golden Coach was made out to "Friends of Matthews," located

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at 45 North Aberdeen Place, in the City of Atlantic City, County of Atlantic, State of New Jersey, which at all times relevant to this matter, was a political committee organized to aid and promote the election of Michael Matthews to the public office of Mayor of the City of Atlantic City. Said party and buffet referred to herein was a cocktail party and hors d'oeuvre buffet held on March 31, 1982, at the Sands Hotel and Casino.

9. The Casino Control Commission (Commission) has previously determined that Golden Coach is neither a holding, intermediary, or subsidiary company of GNAC. Rather, Golden Coach has been identified as an entity affiliated with GNAC by virtue of it being a wholly-owned subsidiary of GNI.

10. Depositions of Messrs. Levin, K. Wynn, S. Wynn, Bybee and Turner were taken by the Division of Gaming Enforcement and they do not reflect any prior knowledge on their part of Golden Coach's purchase of two tickets to promote the election of Michael Matthews. Further, the Division of Gaming Enforcement has no information to the contrary.

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11. As a member of the corporate family and a wholly-owned subsidiary of GNI, Golden Coach, as all other subsidiaries, is included in consolidated financial statements and federal consolidated tax returns prepared by GNI. However, Golden Coach is required by New Jersey law to file its own New Jersey corporate tax return.

12. Golden Coach is funded through operating revenues generated by its bus operation resulting principally from ticket sales, bus charters, and miscellaneous repair income. Golden Coach is not allocated general corporate funds of GNI or GNAC for its use although there are intra-corporate transfers based upon GNAC's utilization of Golden Coach's equipment on a charter basis and other perchases of services offered by Golden Coach, as well as intra-corporate loans by GNI to Golden Coach. Golden Coach's operating revenue for 1981 and 1982 is more specifically detailed as follows:

	Year-to-Date 1982 10/31/82	1981 12/31/81
Charter	$ 379,811	$ 147,387
Intercompany Revenue Leisure Time	447,243	275,580
Other Income	8,160	5,044
ticket (A.C. Line	-	1,990,733

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12. con't -- (chart of operating revenue for 1981 & 1982)

	Year-to-Date 1982 10/31/82	1981 12/31/82
ticket (Philadelphia Line	$ 2,943,161	--
(Delaware Line	277,641	--
(N.Y. Line	340,141	--
(South Jersey Line	48,261	--
TOTAL Golden Coach Revenue	4,444,422	$ 2,418,744
TOTAL Revenue of GNAC		191,819,816
TOTAL Revenue of GNI and subsidiaries		258,670,353

13. The average daily bus trips provided by Golden Coach based upon actual operations from June through October, 1982 are:

Total line buses from Philadelphia, Delaware and South Jersey to Atlantic City	19 round trips
Line buses to GC	13 round trips
Charter buses to GNAC	1 round trip

COUNT II

1. Respondent, Leisure Time Tours, Inc. (Leisure Time), lcoated in the City of Mahwah, County of Bergen, State of New Jersey, was incorporated in this state in 1970.

2. Respondent, Leisure Time, at all times relevant to this matter, was and is a wholly-owned subsidiary of respondent GNI.

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3. Leisure Time is an applicant before the Casino Control Commission for licensure as a casion service industry, but was not an applicant at the time of the occurrences in paragraph five hereof.

4. At all times relevant hereto, the officers and directors of Leisure Time were Respondent Gerald Mercadante, President/Director; Daniel Mercadante, Exeuctive Vice-President/Director; Bruce A. Levin, Secretary/Director; Clyde T. Turner, Treasurer/Director; Kenneth R. Wynn, Chairman of the Board of Directors; and Shannon L. Bybee Jr., Assistant Secretary. Messrs. Levin, Turner, Wynn and Bybee hold the following positions with GNI and GNAC:

	GNI	GNAC
Levin	Vice President and General Consel/Assistant Secretary	Assistant Secretary
Turner	Senior Vice President and Treasurer	Director
Wynn	Vice President of Design, Secretary/Director	Secretary/Director
Bybee	Vice President	President

5. Respondent Leisure Time, through its corporate checking account made a contribution of $100 to "Friends of Matty Feldman" on or about August 17, 1981. "Friends of Matty Feldman," located at 10 Depot Square in the City of Englewood, County of Bergen, State of New Jersey, at all times relevant to this matter, was a political committee organized to aid and promote the election of Matthew Feldman to the public office of

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State Senator of the State of New Jersey.

6. The Casino Control Commission has previously determined that Leisure Time is neither a holding, intermediary, or subsidiary company of GNAC. Rather, Leisure Time has been identified as an entity affidliated with GNAC by virtue of it being a wholly-owned subsidiary of GNI.

7. Depositions of Messrs. Levin, K. Wynn, S. Wynn, Bybee and Turner were taken by the Division of Gaming Enforcement and they do not reflect any prior knowledge on their part of Leisure Time's contribution to "Friends of Matty Feldman." Further, the Division of Gaming Enforcement has no information to the contrary.

8. As a member of the corporate family and a wholly-owned subsidiary of GNI, Leisure Time, as all other subsidiaries, is included in the consolidated financial statements and federal consolidated corporate tax returns prepared by GNI. However, Leisure Time is required to file its own New Jersey corporate return.

9. Leisure Time is funded through operating revenues generated by its bus operations resulting principally from ticket sales,

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bus charters, and miscellaneous repair income. Leisure Time is not allocated general corporate funds of GNI or GNAC for its use although there are intra-corporate transfers based upon GNAC's utilization of Leisure Time's equipment on a charter basis and other purchases of services offered by Leisure Time, as well as intra-corporate loans by GNI to Leisure Time with specific purposes. Leisure Time's operating revenue for 1981 and 1982 is more specifically detalied as follows:

	Year-to-Date 1982 10/31/82	1981 12/31/81
Charter	$ 2,470,385	$ 1,198,861
Group Tour	30,040	178,012
(N.Y. Franchise ticket(	519,893	511,376
(A.C. Line	5,599,679	4,623,139
Other income	70,212	20,295
Intercompany revenue GNAC	589,591	511,382
TOTAL LTT REVENUE	$ 9,279,803	$ 7,043,065
TOTAL Revenue of GNAC		191,819,816
TOTAL Revenue of GNI and subsidiaries		258,670,353

10. The average bus trips provided by Leisure Time, based upon actual operations from June through October, 1982 are:

Total regular route buses to Atlantic City	38 round trips

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Regular route buses to GNAC	10 round trips
New York commuter/regular route service	12 round trips
Total Atlantic City charters	21 round trips
Charter to GNAC	4 round trips

LUCIANI & WILSON, P.A.

BY: _____
CHARLES D. SAPIENZA, ESQ.
on behalf of Respondents:
Leisure Time Tours; GNI;
GNAC, Corp.; Gerald
Mercadante

IRWIN I. KIMMELMAN
Attorney General of New Jersey

By: _____
R. Lane Stebbins
Deputy Attorney General

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-134
OAL DOCKET NO. CCC 8022-82
APP. NO. 32536-22

IN THE MATTER OF THE APPLICATION
OF LEE GORDON FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on May 3, 1983, recommending that the casino employee license application of Lee Gordon be denied; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on June 8, 1983, to affirm and adopt the said Initial Decision and to deny the casino employee license application of Lee Gordon,

IT IS on this 8th day of June 1983, 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 Lee Gordon be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Lee Gordon is not eligible to apply for or obtain any license, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the denial of the casino employee license application of Lee Gordon shall have no effect on his registration as a casino hotel employee; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Lee Gordon, the Division of Gaming Enforcement and the authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 7, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8022-82

AGENCY DKT. NO. 82-EA-134

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

APPEARANCES:

Lee Gordon, Pro Se

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

Record Closed: March 18, 1983 Decided: May 2, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Lee Gordon, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had been convicted of a disqualifying criminal offense and that the applicant lacked the requisite good character, honesty and integrity.

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PROCEDURAL HISTORY

Mr. Gordon filed his Personal History Disclosure Form-2 (PHDF-2) with the Commission on July 6, 1981. By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated July 8, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter, dated August 10, 1982, the applicant requested a hearing. On August 18, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 30, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Gordon is 52 years of age. He has been a resident of New Jersey since 1967.

From July 24, 1963 to December 24, 1976, the applicant was employed by the Carver Hill Apartments as a Maintenance Worker.

On April 29, 1967, the applicant was arrested by the Atlantic City Police Department. He was charged with violations of N.J.S.A. 2A:90-1, atrocious assault and battery, and N.J.S.A. 2A:90-3, assault with a dangerous weapon (R-1). On June 7, 1968, the applicant pled guilty to a violation of N.J.S.A. 2A:90-1. The remaining charge was dismissed. The applicant was sentenced to two to three years in the State Prison at Trenton, suspended, fined $1,000 and placed on two years probation. In addition, the applicant was ordered to refrain from using intoxicating beverages.

The applicant explained the circumstances underlying the incident. He admitted that he consumed a great amount of alcoholic beverages at that time. The applicant was the manager of the Carver Hill Apartments. Frances Davis, a former girlfriend, lived with the applicant for a period of time. They had a dispute, and the applicant left the apartment. Within several days after his departure, Ms. Davis emerged from a bar and approached the applicant as he was walking down a street. Ms. Davis had

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a knife. Ms. Davis attacked the applicant and cut his coat. The applicant next stated that "she got hurt." The applicant did not intend to harm Ms. Davis.

The applicant was married on June 17, 1967. He is the father of three children, ages 15, 14 and 10. In 1977, the applicant and his wife purchased a house at 116 Gray Avenue, Cardiff, Egg Habor Township. The applicant and his wife were divorced on April 23, 1980.

From March 1977 to March 1979, the applicant was employed by the South Jersey Window Cleaning Company, in a maintenance and cleaning capacity. Also, from November 1978 to September 1979, the applicant was employed by the Shore Motor Buick Company.

During 1979, the applicant's wife admitted herself into the Women's Abuse Center. She remained there for approximately one month. The applicant's wife initiated an action against him in the Chancery Division of the Superior Court, Atlantic County, in which she sought restraints against the applicant.

On July 27, 1979, an Order to Show Cause with Temporary Restraints was issued against the applicant (R-3). In pertinent part, the Order provided:

> 1. Defendant is restrained from entering the premises at 116 Gray Avenue, in the City of Cardiff, County of Atlantic, State of New Jersey.
>
> 2. Defendant is restrained from interfering with, molesting or abusing plaintiff and her children.

On August 27, 1979, the Court entered an Order of Continuance (R-4), which continued the restraints as indicated above and additionally provided:

> . . . .That defendant is entitled to retrieve his personal belongings by providing plaintiff's counsel with a list of the items sought whereupon plaintiff's counsel will arrange for defendant to retrieve same.

Pursuant to the Order, the applicant also turned over a 1972 Cadillac to his wife. The applicant stated that he understood the meaning and purpose of the Orders.

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On September 15, 1979, the applicant was involved in an incident at the family residence at 116 Gray Avenue, Cardiff. As a result of the incident, his wife suffered two gunshot wounds. The applicant was arrested and was charged with violations of N.J.S.A. 2C:39-4, possession of weapon for unlawful purposes, N.J.S.A. 2C:39-5(b), possession of a handgun without a permit, N.J.S.A. 2C:12-1(b)(1), aggravated assault, and N.J.S.A. 2C:5-1 and N.J.S.A. 2C:11-3, attempted murder (R-2). On February 19, 1980, the applicant pled guilty to a violation of N.J.S.A. 2C:12-1(b)(1), aggravated assault. The remaining charges were dismissed. The applicant was sentenced to seven years in the State Prison. In its sentencing report, the Court stated that it had considered the applicant's prior record, the nature of the offense, the seriousness of the injuries, the risk that another such offense would occur and the applicant's past history. Further, the Court stated that it imposed the maximum penalty because there was no evidence of provocation.

The applicant served 21 months at Leesburg State Prison, and was released on June 16, 1981. He received an early release for good behavior. During the latter part of his incarceration, the applicant was assigned to the Camden Halfway House. He participated in the Community Release Program, and on April 11, 1981, he commenced employment with the Golden Nugget of Atlantic City (GNAC) as a housekeeper. The applicant will remain on parole until October 29, 1983. He has met all of his parole obligations, including attendance at a mental health clinic. At the clinic, the applicant learned how to deal with his problems and with other people.

The applicant has remained employed at the GNAC, and currently is a bathroom attendant. He has had consistently good employment evaluations, and received a commendation on February 13, 1983 (P-1). The applicant presently holds a hotel employee registration, for which he made application on April 4, 1981.

The applicant's former spouse is presently employed at Bally's Park Place Casino Hotel. The applicant pays approximately $100 every two weeks for child support.

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

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(B) DISPUTED FACTS

In dispute were the circumstances underlying the incident of September 15, 1979, and the applicant's good character, honesty and integrity.

The applicant described the incident. At an earlier date, he had found a gun while he was cleaning an apartment. The applicant testified that (1) that he had possession of the gun for nine to ten months and he found it before he and his wife were separated, and (2) that he had possession of the gun for two months and he found it in the apartment he had moved into. In any event, the applicant stated that he retained possession of the gun because he was afraid to turn it into the police and that he intended to throw it away. The applicant had left it in the trunk of the vehicle which was turned-over to his wife. The applicant claimed that he did not know the gun was loaded and further claimed that he had no knowledge of the source of a box of bullets which were found in the trunk of the automobile on September 15, 1979.

Early in the morning on the date in question, the applicant went to a bar to get cigarettes. His wife was there and was drinking alcoholic beverages. At that time, they were separated and the Court Orders restraining the applicant from being at the family residence or from harassing his wife had been issued. The applicant's wife stated that she wanted him to transfer ownership of the family residence to her. A very serious argument ensued after which the applicant's wife threatened to retrieve the gun from the car and shoot him. Mr. Gordon returned to his apartment.

At approximately 8:30 to 9:00 p.m., Mr. Gordon unsuccessfully attempted to contact his wife's uncle, Horace C. Sims, in order to discuss the matter. Thereafter, the applicant went by bus and foot to the family residence. He intended only to retrieve the gun from the car and to dispose of it. He had no intent to harm his wife. As the applicant took possession of the gun, his wife surprised him outside of the house and wrestled with him. The gun went off twice and struck his wife. These events occurred in the presence of their three children. A neighbor called the rescue squad. The applicant remained with his wife and children until he observed what he believed to be the Egg Harbor Township Police Department approaching. He then ran from the scene through woods, where he dropped the gun. The applicant ran approximately one mile to the Pleasantville Police Department, where he turned himself in and confessed his involvement in the incident. The applicant stated that he fled from the scene because he was afraid of the Egg Harbor Township Police, but he believed that they would get assistance for his wife.

The applicant testified that his incarceration, the assistance he received from the mental health clinic, his divorce and his abstinence from alcoholic beverages have together created an environment in which he can live and work without repetition of his prior misconduct.

The applicant produced Horace C. Sims to testify on his behalf. Mr. Sims is the uncle of the applicant's former wife and has known the applicant for a period in excess of 17 years. Mr. Sims visited the applicant regularly and was of the opinion that he was a gentleman, a hard worker and an intelligent person. The witness was of the opinion that the applicant is a good friend, father and husband. Mr. Sims further stated that his niece is a very emotional person, which contributed to substantial marital discord. The applicant would call Mr. Sims to discuss his marital difficulties when situations became very stressful. However, the applicant was unable to contact Mr. Sims on September 15, 1979. Mr. Sims further testified that the applicant, as well as anyone else, could be pushed to a breaking point, i.e., a person would incur a temporary mental imbalance. Mr. Sims attributed this condition to the applicant on September 15, 1979.

Despite the fact that the Division produced no witnesses to refute the applicant's description of the events of September 15, 1979, the applicant's version is questionable. In the first instance, the applicant provided inconsistent statements regarding the length of the time for which he had had possession of the gun. Second, if the applicant had no intent to harm his wife, it is inconceivable that he would flee from the scene without seeking medical assistance and that he would leave his three minor children with their stricken mother. Although human beings can panic under such circumstances and can react in a totally irrational manner, one would expect a husband and a parent to overcome his personal concerns with his feelings for a stricken spouse and his children. Third, the applicant's explanation of the event is not consistent with the Court's statement at sentencing. In addition to the existence of the Orders prohibiting the applicant from appearing at the family residence, the court concluded that there was no provocation and imposed the maximum sentence (R-2). Further, the description of the marital relationship provided by Mr. Sims was insufficient to excuse the applicant's conduct. Therefore, although the applicant's testimony regarding the incident of September 15, 1979, appeared to be credible, it was not fully believable nor was it persuasive.

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

1. The applicant's explanation of his conduct on September 15, 1979, and the circumstances leading thereto, were not fully believable nor persuasive.

2. The applicant is considered by Mr. Sims to be a good friend, father and husband.

3. The applicant is considered by his present supervisors to be a good employee.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) of the Casino Control Act (Act) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Mr. Gordon pled guilty to a violation of N.J.S.A. 2C:12-1(b)(1), aggravated assault with a deadly weapon, which is an enumerated disqualifying offense.

I **CONCLUDE** that Mr. Gordon's conviction for a violation of N.J.S.A. 2C:12-1(b)(1) mandates that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(1).

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

First, Mr. Gordon has applied for licensure in a maintenance and cleaning capacity, and has indicated that he would be employed by the Engineering Division. He would not have any responsibilities for actual gaming activities, nor would he have substantial contact with patrons of the casino.

Second, the applicant was convicted of a violation of N.J.S.A. 2C:12-1(b)(1), aggravated assault. Under section 86c(1) of the Act, this is a statutory disqualifier. The applicant committed the offense at the family residence, from which he was barred by a Court Order. Further, the applicant conceded that he had possession of a gun without a permit, which weapon caused the injuries to his ex-wife. Last, the applicant received the maximum sentence permissible. Therefore, the offense was extremely serious.

Third, the applicant's actions were not planned or premeditated, and appeared to be the result of substantial marital discord. Also, the incident occurred in the presence of the applicant's three minor children and at a place from which the applicant was barred by Court Order.

Fourth, the applicant committed the offense on September 15, 1979, approximately three and one-half years ago.

Fifth, at the time of the offense, the applicant was 48 years of age; his conduct was not the result of immaturity.

Sixth, the applicant's conduct on September 15, 1979, was not isolated. The applicant was convicted of similar misconduct for an incident which occurred on April 29, 1967. That incident was also involved a dispute between the applicant and a female companion and involved a dangerous weapon. I acknowledge that the applicant disclaimed

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responsibility for both incidents. Nevertheless, the similarity between both incidents is striking.

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

Eighth, the applicant has made rehabilitative efforts. The applicant pled guilty to the charge, and served his time. He participated satisfactorily in a work-release program, which led to his present employment position. Further, the applicant has satisfactorily performed the terms of his parole to date and has attended a mental health clinic as required. Also, the fact that the applicant is now divorced from his wife and is no longer consuming alcoholic beverages is a positive sign. Last, the applicant has established a positive employment record.

Nevertheless, I am not convinced that the applicant has met his statutory burden in regard to his purported rehabilitation. The applicant's misconduct was a violent crime and there was a seriously injured victim. As such, it raises a greater risk to the public and requires a substantial showing of rehabilitation. Further, given the facts that the applicant's misconduct occurred only three and one-half years ago and that he only recently sought assistance from the mental health clinic, a greater amount of time must pass before an accurate assessment of the applicant's rehabilitation can be made.

I **CONCLUDE** that the applicant has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90(h).

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

Under section 89b(2) of the Act, Mr. Gordon was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, for a Casino License, Casino Control Commission (February 26, 1979), at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to

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licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's convictions in 1967 and 1979.

The applicant's conduct underlying the two incidents in which he was convicted was extremely serious and reflects in a very negative manner upon the applicant. The applicant's misconduct in 1979 indicates that he has not rehabilitated himself from involvement in such incidents. Further, it is only recently that the applicant has made rehabilitative efforts and has sought what would appear to be much needed assistance from outside sources. In addition, the applicant's successful employment in the gaming industry during the past two years, while most positive, is not alone sufficient to establish his rehabilitation or otherwise satisfy his burden of proof.

I **CONCLUDE** that the applicant has failed to establish, by clear and convincing evidence, his good character, honesty and intregrity, pursuant to N.J.S.A. 5:12-89b(2).

DISPOSITION

It is **ORDERED** that the application of Lee Gordon for licensure as a casino employee (maintenance and cleaning) be **DENIED.**

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

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

5/2/83
DATE

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

Receipt Acknowledged:

May 3, 1983
DATE

Christina K. Weaver Asst Counsel
CASINO CONTROL COMMISSION

Mailed to Parties:

May 6, 1983
DATE

Ronald L. Lakerson
OFFICE OF ADMINISTRATIVE LAW

bm/e

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-2, Lee Gordon, filed July 6, 1981 (26 pages)

P-1 Golden Nugget - Official Notice of Commendation Or Unsatisfactory Performance, Lee Gordon, February 13, 1983

P-2 Letter from Jerome Conforto, December 5, 1982

P-3 Letter from Mary Morrison, January 21, 1983

R-1 Atlantic County Superior and County Court Criminal Record, State v. Lee Gordon, Docket No. I-423-66-M (4 pages)

R-2 State v. Lee Gordon, Indictment No. I-317-79-S-4, Indictment, December 4, 1979; Judgment of Conviction and Order for Committment, February 19, 1980; Statement of Reasons, February 28, 1980 (8 pages)

R-3 Aleiaue Gordon v. Lee Gordon, Superior Court of New Jersey - Chancery Division, Atlantic County, Docket No. M-28607-78, Order to Show Cause with Temporary Restraints, July 27, 1979 (3 pages)

R-4 Aleiaue Gordon v. Lee Gordon, Superior Court of New Jersey - Chancery Division, Atlantic County, Docket No. M-28607-78, Order of Continuance, August 27, 1979 (2 pages)

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WITNESS LIST

Petitioner:

Lee Gordon

Horace C. Sims

Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-EA-71
OAL DOCKET NO. CCC 2314-81
APP. NO. 19241-21

IN THE MATTER OF THE APPLICATION :
OF DONNA E. HARRIS FOR LICENSURE :
AS A CASINO EMPLOYEE : FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission (Commission) upon the Initial Decision of the Office of Administrative Law filed with the Commission on November 29, 1982, recommending that the casino employee license application of Donna E. Harris (Applicant) be denied based upon (1) her convictions in 1976 and 1982 for violations of N.J.S.A. 2A:111-2 and N.J.S.A. 2C:20-4, respectively, which are disqualifying offenses under N.J.S.A. 5:12-86(c), and (2) her consequent failure to establish by clear and convincing evidence her good character, honesty and integrity as required under N.J.S.A. 5:12-89(b)(2) and 90(b); and the Applicant having filed exceptions to the Initial Decision on December 20, 1982; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of January 11, 1983, to modify the Initial Decision and to deny the application of Donna E. Harris for a casino employee license,

IT IS on this 18th day of January 1983 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) On the issue of rehabilitation, which passed without specific mention in the Initial Decision, the Commission, upon consideration of the record and each of the eight factors listed in N.J.S.A. 5:12-90(h), finds that the Applicant failed to affirmatively demonstrate her rehabilitation from the two disqualifying offenses.

IT IS FURTHER ORDERED that the casino employee license application of Donna E. Harris be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified herein, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Donna E. Harris is not eligible to apply for or obtain any license, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this order unless she obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the denial of this casino employee license application shall not restrict Donna E. Harris from obtaining registration as a casino hotel employee pursuant to N.J.S.A. 5:12-91.

IT IS FURTHER ORDERED that copies of this Final Order be served upon Donna E. Harris, the Division of Gaming Enforcement and the authorized agents of all currently operating casino hotels within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 18, 1983

FILED
NOV 29 1982
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2314-81

AGENCY DKT. NO. 81-EA-71

IN THE MATTER OF THE APPLICATION OF DONNA E. HARRIS FOR LICENSURE AS A CASINO EMPLOYEE (BLACKJACK DEALER)

APPEARANCES:

John H. Fitzgerald, Esq., for the applicant, Donna E. Harris (Cape-Atlantic Legal Services, Inc., attorneys)

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

Record Closed October 12, 1982 Decided November 29, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Donna E. Harris, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (blackjack dealer) pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had been convicted of two statutory disqualifying offenses; lacked the requisite financial stability, integrity and responsiblity required for licensure; and lacked the requisite good character, honesty and integrity required for licensure.

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PROCEDURAL HISTORY

Ms. Harris filed her Personal History Disclosure Form-2 (PHDF-2), with the Commission on June 18, 1980. By letter, dated March 26, 1981, the Commission advised the applicant that, based upon information received in a report from the Division, dated February 25, 1981, there was a "substantial possibility" that the Commission would deny licensure and that she had a right to a hearing. On April 10, 1981, the applicant requested a hearing. On April 16, 1981, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 6, 1981, and the matter was scheduled for hearing. Upon application made by Ms. Harris, an order of inactivity was entered on January 22, 1982, and the matter was placed on the Inactive List for a period of six months. Thereafter, the matter was again scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Harris is 28 years of age (J-7). She has been a resident of Atlantic City for her entire life. She is a single parent of two children, ages nine and four.

The applicant is a 1972 graduate of Atlantic City High School.

From late 1972 until early 1974, the applicant was employed at the Shelbourne Hotel as an office clerk. She worked 35-40 hours per week. The applicant's first child was born in 1973. At or about that time, the applicant began to receive welfare benefits.

From 1975 until 1976, for a period of approximately one year, the applicant was employed as a waitress by White Tower. She worked 40 hours per week. Also, during the holiday season of 1974-75, the applicant was employed by Spencer Gifts on a part-time basis at night. She continued to collect welfare benefits; however, she did not report her income from the White Tower or Spencer Gifts to the Atlantic County Welfare Board (ACWB). The applicant conceded that she knew it was wrong not to report her employment to the ACWB. The applicant stated that had she reported her income, she

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still would have qualified for partial benefits; however, at that time, the applicant was unaware that she could receive partial benefits.

On March 2, 1976, the applicant was indicted by a grand jury and charged with a violation of N.J.S.A. 2A:111-2, welfare fraud (J-1). This charge concerned the applicant's nondisclosure to the ACWB of income earned from her several places of employment. On June 16, 1976, the applicant retracted her plea of not guilty and entered a guitly plea (J-2). She received a three-month sentence of which she served 30 days with the balance suspended, was placed on probation for a period of two years and was ordered to make restitution in the amount of $750. The applicant made restitution in the amount of $500. In May 1981 the balance of the restitution was vacated because of financial hardship.

From 1977 until 1978, the applicant was employed at the Apollo Diner as a waitress.

In 1978, the applicant was employed by the J. M. Field Company as a cashier. She was terminated because of lateness. During this time, the applicant received a partial welfare grant.

Also during 1978, the applicant had her second child.

From 1978 until 1979, the applicant was employed by Frank H. Wilson Construction Company as a secretary. She was laid off from this position because of economic factors. During this period, the applicant continued to receive a partial welfare grant from the ACWB.

In 1979, the applicant was employed by Joe Kornblaus' Restaurant as a waitress on a part-time, summer basis.

During the late summer-early fall of 1980, the applicant attended and successfully completed a blackjack dealer course at the Casino Career Institute. Her tuition, transportation and baby-sitting expenses were paid for by a grant from the State of New Jersey. She filed her PHDF-2 with the Commission on June 2, 1980.

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From October until December 1980, the applicant was employed by the Golden Nugget Casino Hotel. She was employed as a blackjack dealer and worked in the "mock casino." She worked approximately 30 hours per week, and commencing in November was paid the minimum wage. For the six-week period beginning in November and ending on December 21, 1980, the applicant's gross income was $813.72, of which she took home $697. She also continued to collect unemployment benefits from the State of New Jersey, Department of Labor and Industry, Division of Unemployment and Disability Insurance in an amount of $984. The applicant did not disclose her earned income to the unemployment office, although she admitted that she knew that it was unlawful not to do so.

On November 26, 1980, Ms. Harris appeared at the Division of Unemployment and Disability Insurance offices to claim unemployment benefits. The applicant made the following voluntary statement, under oath, regarding her claim:

> I am ready, willing and able to work & in past 2 wks. have looked for work as follows--
>
> I have applied at Golden Nugget and will start as blackjack dealer when license is rec'd.
>
> I have no work restrictions & have not refused work. [R-1]

On December 10, 1982, the applicant again appeared at the offices of the Division of Unemployment and Disability Insurance and made the following voluntary statement, under oath, regarding her claim:

> I am ready, willing & able to work & in the past two wks. have looked for work as follows: Ramada, Playboy and Golden Nugget casinos-also applied for £2 casino license. I have no limits & have not refused work. [R-2].

In February 1981, the applicant disclosed her earned income to the unemployment office and began making restitution. Restitution was made in full.

On January 14, 1982, the applicant was indicted by a grand jury and charged with a violation of N.J.S.A. 2C:20-4, theft by deception, in regard to the unemployment benefits she unlawfully received during the period from November 12, 1980 to January 7, 1981 (J-4 and J-5). On March 8, 1982, the applicant pled guilty to the charge (J-6). On March 19, 1982, the applicant was sentenced to one year probation and a $25 fine.

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From April 6, 1982 until the present, the applicant has been employed by Mutual Taxi as a taxi driver. She works three days per week (6 hours per day) and is paid $25 per day. The applicant also currently receives a partial welfare grant in an amount of $136 per week.

During the winter of 1979-80, the applicant was unemployed. She and her two children lived in an apartment. For the majority of the winter season, the apartment did not have heat or running water, and roaches and rats were present. The applicant sought and won a 50 percent rent abatement. During the winter, her children were sick a great deal.

In April 1980, the applicant moved her family to a rented house. During the next month the applicant filed her PHDF-2, and in July she began studies at the Casino Career Institute. In September and October, although there was no heat, living conditions were acceptable. In November, the winter season began. The oil burner in the house was in an extreme state of disrepair. The applicant incurred heating bills well in excess of $100 per month. For the January 1981 heating season, the applicant expended $412 for oil (P-1). Ms. Harris made an application to the Department of Human Services for Home Energy Assistance Payments. She was advised that she was eligible to receive benefits. However, because of administrative delays in the program, she never received her benefits.

The applicant testified that, because of the substantial heating oil expenses with which she was faced and her determination not to allow her children to suffer the illnesses which they had the previous winter, she consciously decided not to disclose her employment at the Golden Nugget to the Division of Unemployment and Disability Insurance even though she knew that she was required to do so by law.

The applicant presently has outstanding debts in an amount of $1,000, which are owed to several different creditors. The applicant testified that these debts were incurred during the years 1974 and 1975, for such items as furniture, maintenance of a car and the purchase of a television. The applicant stated that she intends to pay off the debts when she is employed and able to do so.

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

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(B) DISPUTED FACTS

In dispute were the reasons why Ms. Harris failed to report her income earned from several places of employment in 1974 and 1975 to the ACWB, the reasons why the applicant failed to report in a timely manner her income earned at the Golden Nugget to the Division of Unemployment and Disability Insurance, and her character, honesty and integrity.

The applicant's failure to report her receipt of earned income to the ACWB was undisputed. By way of explanation, the applicant stated that she needed the additional money because of poor living conditions. Further, the welfare benefits were not sufficient to purchase clothing or to have fun.

The applicant's failure to timely report her employment at the Golden Nugget to the Division of Unemployment and Disability Insurance was also attributed to poor living conditions. Primarily, the applicant contended that she needed the additional monies in order to meet the high costs of fuel oil. This was corroborated by the testimony of Heather Delmar, the applicant's probation officer, and David Harris, the applicant's brother. Nevertheless, the applicant also testified that she needed the money in order to buy a Christmas tree and toys for her children.

Ms. Harris called four witnesses to testify in regard to her character, honesty and integrity. The first, Heather Delmar, is the applicant's probation officer. Ms. Delmar acknowledged that the applicant had knowingly solicited and received welfare and unemployment benefits to which she was not entitled. However, the witness attributed this conduct to the applicant's needs, which stemmed from poor living conditions. The witness held the opinion that the applicant is an honest and trustworthy person.

Vera Bayton, the applicant's second witness, is a neighbor of the applicant. Ms. Bayton is of the opinion that the applicant is an honest and trustworthy person.

The applicant called Lucretia Bell as her third witness. Ms. Bell is a dispatcher employed by Mutual Taxi. She has known the applicant for a substantial period of time in the neighborhood and in an employment capacity. Ms. Bell considers the applicant to be a hard worker and to be reliable. The witness attributed the applicant's problems to motherhood.

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The applicant's last witness, David Harris, her brother, is an arson inspector in Atlantia, Georgia. Mr. Harris testified that the applicant's problems stemmed from difficulty supporting two children as a single mother. The witness held the the opinion that the applicant is a hard worker.

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

1. The applicant used her earned income and welfare benefits received in 1973, 1974, and 1975, in part, for the purchase of clothing and entertainment.

2. The applicant used her earned income and unemployment benefits recieved in 1980 to meet her fuel oil expenses and to purchase a Christmas tree and toys for her children.

3. The applicant was held in high regard by close friends and neighbors. These opinions are based upon friendships of a personal nature and upon employment relationships.

DISCUSSION OF LAW AND CONLUSIONS

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

Section 86c(1) of the Casino Control Act (Act) mandates that a person who has been convicted of any offense "which would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. Ms. Harris pled guilty to a violation of N.J.S.A. 2C:20-4, theft by deception, which is an enumerated disqualifying offense. Because the amount which the applicant unlawfully received exceeded $500, her conduct constituted a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(a).

I **CONCLUDE** that Ms. Harris' conviction for a violation of N.J.S.A. 2C:20-4 mandates that she be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(1).

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(B) N.J.S.A. 5:12-86c(2)

Section 86c(2) of the Act mandates that a person who has been convicted of any offense "which would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2A of the New Jersey Statutes be disqualified from licensure. Ms. Harris pled guilty to a violation of N.J.S.A. 2A111-2, welfare fraud, which is an enumerated disqualifying offense.

I CONCLUDE that Ms. Harris's conviction for a violation of N.J.S.A. 2A:111-2 mandates that she be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(2).

(C) N.J.S.A. 5:12-89b(1)

Under Section 89b(1) of the Act, Ms. Harris was required to establish, by clear and convincing evidence, that she possesses financial stability, integrity and responsibility. The applicant's present debt is in an amount of $1,000, which stemmed from an injudicious use of credit during the period from 1973 until 1975. The debt is owed to various creditors. The monies were used to purchase nonessentials such as furniture and a television. Nevertheless, these items are frequently found in a home. At the time the applicant incurred these debts, she was a 20-year-old single parent of one child. Although the applicant has not been able to retire the obligations, she has not incurred new debt. Further, the applicant has professed, and convincingly so, her intent to repay the debt when she is able.

The applicant has clearly and convincingly established that she possesses the requisite degree of financial stability for licensure. Although there can be no doubt that the applicant lacked financial stability during the period 1973-75, she has overcome that minor period of instability as evidenced by the absence of any new debt. The debt previously incurred is clearly attributable to immaturity and inexperience. The unrefuted evidence revealed that the applicant has maintained a sufficient degree of financial stability i.e., an ability to satisfy her financial obligations since that time.

I CONCLUDE that Ms. Harris has established, by clear and convincing evidence, her financial stability, integrity and responsibility.

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

Under Section 89b(2) of the Act, Ms. Harris was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability: In re Boardwald Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

The applicant was convicted of two stautory disqualifiers, in 1976 and 1982. Her conduct underlying both convictions was extremely serious. The applicant knowingly and intentionally solicited and received substantial sums of monies to which she was not entitled. In each instance, the applicant's misconduct covered a substantial period of time. Her conduct underlying each offense was also similar in nature. In regard to her 1982 conviction, the applicant submitted false statements, made under oath, in order to secure the benefits. Further, the applicant committed the second offense just four years after she had been incarcerated for the first offense, she was 26 years of age and she clearly understood the significance of her acts. In addition, at the time the applicant committed the second offense in 1980, she had made application to the Commission for licensure, had attended and successfully completed dealer school, had received an offer of employment and was temporarily employed in the gaming industry. In this regard, the applicant's conduct not only reflects a callous and intentional disregard of the law, but occurred at a time when the applicant should have been most sensitive to her need to establish a law-abiding character in order to secure licensure.

301.

The applicant contended that social conditions, i.e., poor living conditions, explained away the significance and disqualifying nature of her misconduct underlying both convictions. There is no question that the applicant's living conditions were less than desirable. If Ms. Harris' 1976 conviction had been her only offense it might have been overlooked in regard to her application; however, she substantially repeated the same unlawful conduct in 1980 and at a most sensitive time concerning her application for licensure. This second instance of misconduct occurred at very time when the applicant anticipated the commencement of the career she so deeply professed to desire. Of great significance is the fact that the applicant received $1,681 as take-home income from her employment and from unemployment benefits over a six-week period, an average of $280 per week. This amount of income was well in excess of the minimum wage. The evidence of social considerations, which would mitigate the significance of the applicant's conduct, especially in regard to the 1980 offense, were nonexistent. In any event, the social considerations described by the applicant were not sufficient to relieve her of responsibility for her intentional acts. In addition, the applicant's conduct underlying the two offenses far outweighs any social considerations which may ensure to her benefit.

I **CONLUDE** that Ms. Harris has failed to establish, by clear and convincing evidence, her good character, honesty and integrity, under Section 89b(2) of the Act.

DISPOSITION

I **ORDER** that the application of Donna E. Harris for licensure as a casino employee (blackjack dealer) be **DENIED.**

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

302.

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

November 29, 1982
DATE

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

Receipt Acknowledged:

November 29, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Dec. 1, 1982
DATE

Ronald L. Lakey/pa
OFFICE OF ADMINISTRATIVE LAW

fms

303.

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 The State of New Jersey v. Donna Harris, Indictment No. I.497-75-J, filed March 2, 1976 (3 pages)

J-2 The State of New Jersey v. Donna Harris, Indictment No. I.497-75-J, Judgment, July 12, 1976 (2 pages)

J-3 Record of Hearing, Donna E. Harris, April 29, 1981

J-4 The State of New Jersey v. Donna E. Harris, Atlantic City Municipal Court, Docket Nos. C-10580 and C-10581, Criminal Complaints, November 12, 1981 (3 pages)

J-5 The State of New Jersey v. Donna E. Harris, Indictment No. 574-81-J-B, filed January 14, 1982 (2 pages)

J-6 The State of New Jersey v. Donna E. Harris, Indictment No. I.574-81, Judgment of Conviction (2 pages)

J-7 Personal History Disclosure Form-2, Donna Evelyn Harris, April 10, 1980 (28 pages)

P-1 Strickland & Son Fuel Oil Co., Statement for Donna Harris, August 3, 1981

R-1 State of New Jersey, Department of Labor and Industry, Division of Unemployment and Disability Insurance-Record of Claim Interview and Determination, Donna Harris, November 26, 1980 (2 pages)

R-2 State of New Jersey, Department of Labor and Industry, Division of Unemployment and Disability Insurance-Record of Claim Interview and Determination, Donna Harris, December 10, 1980 (2 pages)

R-3 State of New Jersey, Department of Labor and Industry, Employment Security Agency, Check Nos. 811222134, 811230285, 811233580, 811225963 and 811227612, payable to D. E. Harris (4 pages)

304.

WITNESSES

For the Applicant:

Vera Bayton

Lucretia Bell

Heather Delmar

David Harris

Donna E. Harris

For the Respondent:

Lena Boles

305.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 81-18; 82-L-13
REG. NO. 9081-40
OAL DOCKET NO. 3038-81
SUPERIOR COURT DOCKET NO. A-3774-81T2

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	ORDER
Complainant,	:	
v.	:	
WYNETTE HARRIS,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission as the result of an order of remand issued by the Superior Court of New Jersey, Appellate Divison, on March 1, 1983, directing the Commission to reconsider our prior determination that the casino hotel employee registration held by Respondent Wynette Harris should be revoked; and the Commission having reconsidered the entire record of these proceedings, and having resolved at its public meeting of June 15, 1983, to iterate its decision of March 9, 1982, as reflected in the final order dated March 18, 1982, and to revoke the casino hotel employee registration of Wynette Harris,

IT IS on this 5th day of July 1983, ORDERED that the casino hotel employee registration of Wynette Harris be and hereby is revoked as of March 9, 1982, for the reasons stated in the Commission's final decision in this matter which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Order be served upon Wynette Harris, the Division of Gaming Enforcement and the authorized agents of all currently operating casino hotels within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 5, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 83-RA-3/81-18;82-L-13

IN THE MATTER OF THE PETITION
OF WYNETTE HARRIS FOR
EARLY REAPPLICATION

ORDER PERMITTING
EARLY REAPPLICATION

This matter having been opened to the Chairman of the Casino Control Commission at the request of Wynette Harris for permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g) for registration as a casino hotel employee; and the Chairman having determined at the public meeting of June 15, 1983, that extraordinary facts and circumstances exist which warrant the granting of this petition,

IT IS on this 5th day of July 1983, ORDERED that the request of Wynette Harris for permission to make early reapplication for registration as a casino hotel employee be and hereby is granted; and

IT IS FURTHER ORDERED that any restriction heretofore imposed on Wynette Harris' ability to apply or reapply for registration as a casino hotel employee be and hereby is removed; and

IT IS FURTHER ORDERED that copies of this Order be served upon Wynette Harris, the Division of Gaming Enforcement, and the authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 6, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-18
OAL DOCKET NO. CCC 3038-81

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL COMMISSION DECISION
v.	:	
WYNETTE HARRIS,	:	
Respondent.	:	

Sonia G. Wagner, Esq., appeared for the Respondent.

Howard M. Barman, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

Introduction

This matter comes before the New Jersey Casino Control Commission (Commission) as a result of an order of remand issued by the Superior Court of New Jersey, Appellate Division, on March 1, 1983.[1] At issue is the propriety of our decision on March 9, 1982, to revoke the casino hotel employee credential of respondent Wynette Harris based upon her conviction for welfare

1 State v. Wynette Harris, Docket No. A-3774-81T2 (unpublished opinion decided March 1, 1983).

fraud, an automatic disqualifying offense under section 86(c) of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq.[2]

In addition, as an alternative should the Commission not resolve the issues raised by the remand in favor of the respondent, Ms. Harris has filed a petition for early reapplication pursuant to N.J.A.C. 19:41-8.8(g).[3]

We now iterate our previous decision to revoke Ms. Harris's casino hotel employee registration. We note, though, that the petition for early reapplication, which is solely for the Chairman of the Commission to resolve, has been granted for good cause shown.

Procedural History and Facts

On March 24, 1981, Wynette Harris was indicted by the Atlantic County Grand Jury for welfare fraud and theft by deception contrary to N.J.S.A. 2A:111-2 and N.J.S.A. 2C:20-4. On April 27, 1981, the Division of Gaming Enforcement (Division)

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2 Throughout this opinion various provisions of the Act will be referred to by section number only. The correct citation may be obtained by adding the prefix N.J.S.A. 5:12- to the cited section.

3 Under N.J.A.C. 19:41-8.8(a) any natural person, whose licensure is revoked by the Commission due to a finding that such person is disqualified under the criteria of section 86 of the Act, may not reapply for licensure until five years have elapsed from the date of revocation. However, subsection (g) of the regulation provides that any such person may petition the Chairman of the Casino Control Commission to permit early reapplication at any time. Such petitions will be granted only if the Chairman finds "that there exists extraordinary facts and circumstances warranting early reapplication." N.J.A.C. 19:41-8.8(g).

filed both an application for suspension and a complaint seeking, respectively, the immediate suspension and ultimate revocation of Ms. Harris's casino hotel employee license[4] on the basis of the allegations contained in the indictment.

On April 29, 1981, pursuant to N.J.S.A. 5:12-109, the Commission resolved to suspend Harris's casino hotel employee registration pending final disposition of the revocation proceeding. An order reflecting this resolution was entered on May 1, 1981.

Upon receipt of Harris's request for a hearing, the matter was transmitted to the Office of Administrative Law (OAL) with instructions to expedite the hearing. The respondent moved both in the OAL and before the Commission for preliminary relief from the order of suspension. Both agencies denied the various motions and respondent's motion for leave to appeal was denied by the Superior Court of New Jersey, by order dated November 9, 1981.

During the course of these proceedings, Harris was admitted into a Pretrial Intervention (PTI) program by order dated May 29, 1981. Pursuant to the terms of the program, Harris was required to make restitution payments of $56 per week

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4 Effective February 15, 1982, N.J.S.A. 5:12-91, the central provision of the Casino Control Act governing casino hotel employee licenses was amended to reflect that such employees were subject to a registration process rather than licensing. L. 1981, c. 503. Accordingly, reference hereafter will be made to respondent's casino hotel employee registration.

for one year. However, because she failed to make certain payments and to meet with or otherwise contact PTI personnel at required intervals, Harris was subsequently ejected from the program. The indictment was reactivated and, on October 19, 1981, Harris entered a plea of guilty to welfare fraud contrary to N.J.S.A. 2A:111-2. The second count in the indictment charging theft by deception in violation of N.J.S.A. 2C:20-4 was dismissed. Ms. Harris was placed on probation for one year, required to volunteer 100 hours to community service and pay a penalty of $25 to the Violent Crimes Compensation Board. No restitution of the monies fraudulently received was required.

A plenary hearing was conducted in the OAL by an Administrative Law Judge (ALJ) on November 18, 1981. In the course of the hearing, Harris admitted fraudulently collecting approximately $2,900 in welfare benefits from June 20, 1979, until April 9, 1980, while employed by Resorts International Hotel, Inc. These acts constitute an automatic disqualifying offense under sections 86(c)(1), 86(c)(2) and 86(g) of the Casino Control Act.[5]

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5 The unlawful conduct spanned a period of time both before and after the adoption of the New Jersey Criminal Code (Title 2C), effective September 1, 1979. Thus both the welfare fraud (N.J.S.A. 2A:111-2) and theft by deception (N.J.S.A. 2C:20-4) statutes were cited in the indictment and both paragraphs (1) and (2) of the section 86(c) are cited here. The dismissal of count 2 of the indictment warrants the citation to section 86(g) which covers offenses not prosecuted.

The ALJ filed an initial decision with the Commission on January 4, 1982 (copy attached as A1 through A8), in which he found Ms. Harris had committed a disqualifying offense and recommended that her casino hotel employee registration be suspended for a period of three years. Ms. Harris filed exceptions to the initial decision on January 19, 1982, contending, among other things, that the period of suspension should be limited to coincide with her period of probation.

On March 9, 1982, the Commission resolved to revoke Harris's casino hotel employee registration, which determination was reflected in an order dated March 18, 1982. The matter was thereafter appealed to the Superior Court, Appellate Division. In a decision issued on March 1, 1983, the court rejected Ms. Harris's contention that the suspension procedures were constitutionally infirm and noted that, in any event, the emergency order of suspension dated April 29, 1981, had subsequently been supplanted, after a plenary hearing, by the final order of revocation. However, the court, after determining that it believed "that the Commission acted on the understanding that it was limited to the alternatives of withholding penalty entirely or imposing a revocation," Harris, supra (slip opinion at 4), ruled that the authority to revoke implied the authority to withhold revocation and to impose instead a suspension for a designated period. Accordingly, the

court remanded the case to the Commission "for reconsideration as to penalty." Ibid.

After reconsideration of the entire record of this case, including the arguments of counsel at the Commission's public meeting of June 15, 1983, we maintain our position that an order of revocation is the appropriate disposition of the violation complaint against Ms. Harris. We take this opportunity to correct any misconception which may have been conveyed in earlier proceedings on this case. Contrary to the Appellate Division's impressions, our earlier determination to revoke Ms. Harris's casino hotel employee credential was not the product of misapprehension concerning our authority. We have on a number of occasions in the past advanced the position, now confirmed by the Appellate Division, that the power to revoke implies the power to suspend. However, where a licensee, registrant or person subject to the disqualifying criteria of section 86 of the Act is found to be disqualified thereunder, and in the absence of a finding of rehabilitation (sections 90(h) and 91(d)), or a waiver (section 91(e)), revocation is the only appropriate sanction. The rationale underlying this conclusion follows.

Legal Analysis

Section 63 of the Act requires the Commission to conduct hearings on violation cases and authorizes the imposition of fines and other penalties. Section 107 of the Act permits the

transference of contested cases to the OAL for the conduct of a hearing pursuant to N.J.S.A. 52:14B-1 et seq., as was done in this case. While we are in complete accord with the ALJ's finding that Ms. Harris was guilty of disqualifying conduct by reason of her fraudulent collection of welfare benefits from June 1979 to April 1980 while employed at Resorts International, a casino licensee, our reading of the statute constrains us to conclude that revocation is demanded where the respondent is unfit to hold the license or registration.

In section 86 of the Act, the Legislature has set forth the disqualifying criteria for casino licensees. Section 86 is made applicable to other participants in the casino industry such as casino key employees (section 89(d)), casino employees (section 90(e)), and casino hotel employees (section 91(b)). Framed to literally apply to applicants for licensure, the disqualifying criteria are expressed in mandatory terms: "The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria..." N.J.S.A. 5:12-86. Among the criteria is the conviction of any offense listed in subsection (c) which includes welfare fraud in violation of N.J.S.A. 2A:111-2 and theft by deception contrary to N.J.S.A. 2C:20-4 where the crime is of the second or third degree. Section 86(g) mandates disqualification for the commission of any offense listed in subsection (c) "even if such conduct has not or may not be

prosecuted under the criminal laws of this State." N.J.S.A. 5:12-86(g).

Section 91(d) of the Act permits a registrant who is disqualified on the basis of an enumerated offense in section 86(c), to avoid revocation by affirmatively demonstrating his or her rehabilitation. Thus, the concept of rehabilitation may be applied to registration revocation proceedings in the same manner and circumstances that it is applied in licensure cases. However, we note that here we are considering the record as it existed on March 9, 1982, the date of our initial determination to revoke Ms. Harris's casino hotel employee registration.

The factors to be considered on a claim of rehabilitation are:

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

(2) The nature and seriousness of the offenses;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the registrant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

(8) Any evidence of rehabilitation, including good conduct in prison or in

> the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

The ALJ did not find Ms. Harris rehabilitated, though he noted that she had taken some steps in that direction. In light of the temporal proximity of her conviction, her status as a licensee at the time of the offense, and, most significantly, the fact that she had not then completed the probationary term imposed by the sentencing court, we hold that Ms. Harris had not, as of March 1982, sufficiently demonstrated her rehabilitation from a disqualifying offense.

While the law is otherwise with respect to casino key employees and casino employees, section 91(e) of the act permits the Commission to waive any disqualification criterion for a casino hotel employee registrant upon a finding "that the interests of justice so require." N.J.S.A. 5:12-91(e). As with the rehabilitation provisions, we hold that the waiver provisions of 91(e) are applicable to revocation proceedings. However, we find, as of March 9, 1982, no interests of justice which would require waiver of the disqualification in this instance.

Ms. Harris having been found disqualified, it only remains to determine the appropriate sanction. Section 91(b)

indicates that the Commission may "revoke, suspend, limit or otherwise restrict the registration" of a hotel employee with a disqualification under section 86. No standards appear in Section 91 itself for the choice of sanctions. However, as noted, sections 91(d) and (e) strongly imply that revocation is the necessary response to a section 86(c) offense unless rehabilitation is demonstrated or a waiver is granted.

Section 129 lists the variety of sanctions which the Commission may generally impose in violation proceedings.[6]

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6 Section 129 provides:

> In addition to any penalty, fine or term of imprisonment authorized by law, the commission shall, after appropriate hearings and factual determinations, have the authority to impose the following sanctions upon any person licensed or registered pursuant to this act:
>
> (1) Revoke the license or registration of any person for the conviction of any criminal offense under this act or for the commission of any other offense or violation of this act which would disqualify such person from holding his license or registration;
>
> (2) Revoke the license or registration of any person for willfully and knowingly violating an order of the commission directed to such person;
>
> (3) Suspend the license or registration of any person pending hearing and determination, in any case in which license or registration revocation could result;
>
> (4) Suspend the operation certificate of any casino for violation of any provisions of this act or regulations promulgated hereunder related to the casino operation, including games, internal and accountancy controls and security;

Of particular significance is the first sanction: "Revoke the license or registration of any person for the conviction of any criminal offense under this act or for the commission of any other offense or violation of this act which would disqualify such person from holding his license or registration." Section 130 enumerates the factors we are to consider in determining

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Footnote 6 continued

(5) Assess such civil penalties as may be necessary to punish misconduct and to deter future violations, which penalties may not exceed $10,000 in the case of any individual licensee or registrant, except that in the case of a casino licensee the penalty may not exceed $50,000.

(6) Order restitution of any moneys or property unlawfully obtained or retained by a licensee or registrant;

(7) Enter a cease and desist order which specifies the conduct which is to be discontinued, altered or implemented by the licensee or registrant;

(8) Issue letters of reprimand or censure, which letters shall be made a permanent part of the file of each licensee or registrant so sanctioned; or

(9) Impose any or all of the foregoing sanctions in combination with each other.

an appropriate sanction.[7]

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7 Section 130 provides:

In considering appropriate sanctions in a particular case, the commission shall consider:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;

b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;

c. Any justification or excuse for such conduct by the licensee or registrant;

d. The prior history of the particular licensee or registrant involved with respect to gaming activity;

e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

The seriousness of the conduct is one of the paramount concerns. Where the conduct constitutes a disqualifying offense, its seriousness has been legislatively determined. While some disqualifying offenses listed in section 86 are more serious than others, the least serious among them nevertheless renders a licensee or registrant presumptively unqualified to retain his or her privilege to participate in the casino industry in this State. See, N.J.S.A. 5:12-1(b)(8).

That the proper response to a disqualifying offense by an unrehabilitated registrant is revocation gathers additional support from section 64 of the Act which provides in pertinent part:

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

Here, in mandatory terms, the Legislature has decreed that licenses shall not be held by persons found disqualified pursuant to, among others, section 86(c) and (g).

Footnote 7 continued

> g. It shall be no defense to a disciplinary action before the commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself.

Admittedly, registrations are not expressly mentioned in the excerpted portions of section 64. Nevertheless, the unwavering policy of the Act is manifest. Persons convicted of disqualifying offenses are, unless rehabilitated or granted a waiver, not suitable for employment in the industry.

Again, it was stipulated at the OAL hearing that Ms. Harris had committed acts which constitute an automatic disqualifying offense. Thus, she was not qualified to hold a registration unless she could demonstrate her rehabilitation or grounds for a waiver of the disqualification.[8] This conclusion harmonizes the handling of registration revocation proceedings with that of license applications and revocations. If an applicant for licensure is found disqualified, the application is denied and the applicant is thereby denied the privilege of holding a license. By the same token, if a licensee is found disqualified, we act to revoke the license. Suspension of a license is singularly inappropriate when a disqualifying offense is involved. Suspension of a license for a specified period of time has been imposed by this Commission in the past only where the proscribed activity fell short of a disqualifying event.

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8 In recommending a three year period of suspension, the ALJ sought to estimate the time it would take for Harris to mend her ways and to establish her rehabilitation. Obviously, such predictions are, at best, speculative. The approach we take today avoids much of this uncertainty and permits the Commission and the Division the opportunity to review the individual's actual conduct between the time of revocation and reapplication. Indeed, as the present case illustrates, the sanction of revocation combined with the potential for early reapplication may be less severe on the individual than the imposition of a fixed long-term period of suspension.

For example, in State v. Paul-Son Dice and Card Company, Paul Endy and Carol Kangieser, Docket No. 80-23 (1982), the Commission approved a settlement calling for a three week suspension of a casino key employee license. The important distinction is that the violation was not an automatic disqualifying offense; rather it was the failure of a licensee to cooperate in an investigation conducted by the Division of Gaming Enforcement in contravention of section 80(b). Similarly, in State v. Joseph Becker, Docket No. 80-15 (1981), the respondent was given a one year suspension and a letter of reprimand for committing an offense (possession of cocaine) which is not a listed statutory disqualifier, but which was recognized as a serious violation of the criminal law which merited a strong sanction against a casino employee licensee.

Thus, we believe that revocation is the appropriate sanction to impose when we find that a hotel employee registrant is disqualified. In so ruling, we seek to effectuate the obvious purposes of the Act. We do not believe that this conclusion conflicts with section 91(b), which, as noted, authorizes the Commission to revoke, suspend, limit or otherwise restrict a registration upon a finding of disqualification under section 86. Suspension may be appropriate, as in this case, during the period when charges are pending final resolution. Similarly, a restriction or limitation on the registration may enable the Commission to find rehabilitation or to grant a

waiver in light of the circumscribed functions of the registrant and the relation of those functions to the offense in question. While these other options exist, therefore, the statutory scheme compels revocation where the Commission is unable to find that the public interest is sufficiently protected to allow the registrant to continue holding registration. Absent rehabilitation or cause for waiver, continued registration would simply not be in the public interest where the registrant has committed an offense listed in section 86. This legislative intent is further evidenced by the fact that section 91(b) refers to all section 86 disqualification criteria while section 91(d) permits avoidance of revocation for conviction of a disqualifying offense upon proof of rehabilitation. Sensibly read, these provisions demand that, in a case where the section 86 disqualification is one of the listed offenses, the registrant must shoulder the burden of rehabilitation or must persuade the Commission to grant a waiver. There would have been little reason for the inclusion of the waiver and rehabilitation alternatives in section 91 if the Commission were free to simply ignore these standards and to excuse disqualifying offenses at will.

We do not believe, however, that this approach constrains our ability to achieve equity where the circumstances warrant it. As mentioned herein, the potentially harsh effects of an automatic disqualifying offense may be mitigated or

avoided by use of rehabilitation, waiver or early reapplication where warranted.

A casino employee licensee or hotel registrant who has committed a disqualifying offense can attempt to demonstrate that he or she has been rehabilitated in the interim. Of course, given the usually prompt disposition of revocation proceedings, it is a rare case where sufficient time will have elapsed, from the date of the offense to the date of final Commission action, to warrant a finding of rehabilitation. Nevertheless, it is not inconceivable that such a case might arise. For the reasons previously noted, however, this is not such a case.

Secondly, the waiver provision of section 91(e) could be applied in appropriate hotel employee cases. Again, we have held that this is not such a case.

Lastly, N.J.A.C. 19:41-8.8, the reapplication regulation, which generally bars an individual from reapplying for five years following a denial or a revocation, provides an adequate means for alleviating any unduly severe consequences of a revocation. Persons who have had their credentials revoked can, as Ms. Harris has done, file a petition for an early reapplication at any time. While the standard for granting early reapplication is not insubstantial, the concept of "extraordinary facts and circumstances" connotes a broad range of discretion sufficient, we believe, to meet the equities in

any given situation. In the case of Ms. Harris, the Chairman has determined (and the remaining Commissioners concur), that the standard has been met; hence the petition has been granted.

We are aware that this decision may appear to be in conflict with the Appellate Division's opinion of March 1, 1983, which suggests that we have the authority to suspend Ms. Harris's registration for a designated period rather than revoke it. As noted above, our determination to the contrary is predicated upon our understanding of the nature of a disqualifying offense. Assuming arguendo we are wrong in this determination, we nevertheless conclude that revocation of the casino hotel employee registration held by Ms. Harris is appropriate under the circumstances presented.

CONCLUSION

For the reasons stated, we conclude that where a licensee or registrant under the Casino Control Act has committed a disqualifying offense enumerated in N.J.S.A. 5:12-86(c), and absent rehabilitation from or a waiver of that disqualification, the appropriate response is revocation. Accordingly, the casino hotel employee registration of Ms.

Harris was properly revoked in March 1982. Her petition for reapplication, however, has been granted.

NEW JERSEY CASINO CONTROL COMMISSION

BY: _____
WALTER N. READ
Chairman

_____
CARL ZEITZ
Vice-Chairman

_____
JOEL R. JACOBSON
Commissioner

_____
E. KENNETH BURDGE
Commissioner

_____
DON M. THOMAS
Commissioner

DATED: June 29, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-18
OAL DOCKET NO. 3038-81

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party,	:	
v.	:	FINAL ORDER
WYNETTE HARRIS, Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on January 4, 1982 recommending that the Respondent's casino hotel employee license be suspended for a period of three years; and the Commission having considered the Initial Decision, the exceptions and comments made by the parties and the entire record of this matter; and the Commission having resolved at its public meeting on March 9, 1982 to reject the Initial Decision of the Administrative Law Judge and to revoke the Respondent's casino hotel employee license,

IT IS on this 18th day of March, 1982, 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 Respondent's casino

hotel employee license be and hereby is revoked for the reasons stated in the Final Commission Decision to be issued by the Commission, which is incorporated herein by reference and made a part hereof; and

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

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

BY: _____

DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 18, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3038-81

AGENCY DKT. NO. 81-18

DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

WYNETTE HARRIS,

Respondent.

APPEARANCES:

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

David G. Sciarra, Esq. for the respondent (Cape-Atlantic Legal Services)

Record Closed November 30, 1981 Decided January 4, 1982

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

The Division of Gaming Enforcement (Division) seeks revocation of the casino employee license issued by the Casino Control Commission (Commission) to Wynette Harris. The basis for the relief sought by the Division is Ms. Harris' admitted conviction on November 6, 1981, of welfare fraud, a violation of N.J.S.A. 2A:111-2.

After Ms. Harris was indicted by the Atlantic County Grand Jury, the Division sought a temporary suspension of her license pending the final administrative hearing, and the Commission, on April 29, 1981, granted the temporary suspension. Thereafter, Ms. Harris, through counsel, sought relief from that temporary suspension, as well as

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other relief, by way of a petition to the Office of Administrative Law. In a Decision on Application for Interim Relief, issued by this judge on August 24, 1981, the requested relief was denied. The procedural history concerning the events surrounding the temporary suspension, transmittal of the contested case to the Office of Administrative Law, and other procedural matters relevant thereto, are contained in said Decision on Application for Interim Relief and are not repeated herein. However, it should be noted that at the hearing on the Division's application for permanent revocation, which was held before this judge in Atlantic City on November 18, 1981, counsel for the respondent renewed all of his arguments concerning purported improprieties in the proceedings prior to and after the temporary suspension, in order to preserve those arguments for appeal. It is this court's understanding that following my decision on application for interim relief, Mr. Sciarra sought leave to appeal from the Appellate Division, which leave was denied.

As noted above, the conviction is not in issue. Initially, Ms. Harris, who had no prior criminal record of any kind, was indicted on March 24, 1981, on an indictment which charged her with welfare fraud under N.J.S.A. 2A:111-2 and theft by deception under N.J.S.A. 2C:20-4. Ms. Harris sought to enter the pre-trial intervention (PTI) program and was accepted therein upon the entrance of an order by Honorable Paul C. Porreca on May 29, 1981. According to testimony received from Ms. Harris at the hearing, she was required, as part of the PTI program, to pay $56 per week into a bank account established in her own name for a period of one year in order to make restitution for the welfare monies which she had received while employed as a porterette at Resorts International. However, Ms. Harris testified that she was unable to keep up with the payments because she was not making enough money and began to miss her appointments, her payments and her required telephone calls to the PTI personnel. As a result, she was removed from the PTI program and the criminal indictment was reactivated. She ultimately entered a plea of guilty to the count charging her with welfare fraud, and she was sentenced by Judge Porreca to one-year probation with a condition that she volunteer for 100 hours in a community service project and pay a penalty of $25 to the Violent Crimes Compensation Board. The count charging theft by deception was dismissed. The court did not order Ms. Harris to make restitution.

At the prehearing, held before this judge on July 15, 1981, the Division asserted as the issue to be decided whether the acts which constituted violations of N.J.S.A. 2A:111-2 which, by means of the amendment to the penal code, has become N.J.S.A. 2C:20-4, require a revocation of licensure, pursuant to N.J.S.A. 5:12-86(g) and

whether the actions are inimical to the policies of the Casino Control Act, thus requiring revocation, pursuant to N.J.S.A. 5:12-86(c).

In her testimony, Ms. Harris agreed with the contention of the Division that the acts which constituted violations of the criminal statute arose when Ms. Harris received welfare during the entire time that she was employed at Resorts International. Ms. Harris explained her criminal conduct by stating that she "wanted her kids to have things and they didn't have things."

I agree with the Division that accepting welfare illegally while working for a casino and failing to report that employment constitutes a serious act which, because it is connected with casino employment, not only reflects adversely on the good character, honesty and integrity of the individual convicted, but also has implications of inimicality with respect to the policies of the Casino Control Act. Surely, in establishing the casino industry in New Jersey through referendum and subsequent legislation, the Legislature intended that one benefit of the industry's introduction into New Jersey would be increased employment opportunities for persons who otherwise might find it difficult, if not impossible, to obtain meaningful employment. Clearly, this has been at least one affect of the approximately four year experiment. However, where individuals take advantage of the system by obtaining employment in this industry, and at the same time, continue to take from the public treasury funds which they are not legally entitled to, these individuals ill serve the industry with respect to its attempt to present an acceptable public image and ill serve the policy of the Legislature, as expressed in the Casino Control Act, to have the entire casino industry and all its components operate in a lawful and law abiding manner.

I **CONCLUDE** that where an individual, such as the respondent here, has, while employed in the casino industry, used her casino employment as a tool in a scheme to obtain income to which she is not lawfully entitled by means of welfare fraud, that her actions are inimical to the policies of the Casino Control Act and the operations of the casino industry. Therefore, I **CONCLUDE** that action must be taken against the respondent's license.

N.J.S.A. 5:12-129 sets forth the authority of the Commission to impose sanctions upon a licensed individual, following appropriate hearings and factual determinations. The authorized sanctions are listed as follows:

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(1) Revoke the license of any person for the conviction of any criminal offense under this Act or for the commission of any other offense or violation of this Act which would disqualify such person from holding his license;

(2) Revoke the license of any person for willfully and knowingly violating an order of the Commission directed to such person;

(3) Suspend the license of any person pending hearing and determination, in any case in which license revocation could result;

(4) Suspend the operation certificate of any casino for a violation of any provisions of this Act or regulations promulgated hereunder related to the casino operation, including games, internal accountancy controls and security;

(5) Assess such civil penalties as may be necessary to punish misconduct and to deter future violations . . .

(6) Order restitution of any monies or property unlawfully obtained or retained by a licensee;

(7) Enter a cease and desist order which specifies the conduct which is to be discontinued, altered or implemented by the licensee;

(8) Issue letters of reprimand or censure, which letters shall be made a permanent part of the file of each licensee so sanctioned; or

(9) Impose any or all of the foregoing sanctions in combination with each other.

Counsel for the respondent has argued that revocation of the respondent's license would be too severe a penalty, considering the nature of the offense and the circumstances of the respondent. He points to the standards for determining appropriate sanctions which are set forth in N.J.S.A. 5:12-130. Among these are the risk to the public and the integrity of gaming operations created by the conduct of the licensee, the seriousness of the conduct and whether it was purposeful and with knowledge that it was in contravention of the Act; any justification or excuse for the conduct; the prior history of the licensee with respect to gaming activities; the corrective action taken by the licensee to prevent future misconduct.

There is no question that the nature of welfare fraud is such that it does pose a risk to the public, but the risk is limited in nature, being directed mostly toward the general public as the fraud affects the public treasury. It is clear that the respondent is

paying for the consequences of her conduct in that she has suffered a criminal conviction, is on probation and must do public service work. With respect to the reasons for the fraud, the reason stated is one that on its face certainly tugs at the heart strings of any sensitive individual, but clearly constitutes no justification for violating the law, particularly where, as here, the record indicates that the respondent is not incapable of earning a living, albeit a very modest one. There is no question that the conduct involved was serious and purposeful. The licensee has no prior criminal record and no prior record of violations in a casino related context.

Given the nature of the offense, a review of the sanctions listed in Section 129 of the statute indicate that the Commission can revoke the license. The statute says that the Commission has the authority to do so, but does not say that it must do so. It is my determination that a revocation of the license would be an overly severe reaction to a serious and yet limited type of violation, which while it does clearly reflect against the character of this respondent does not rise to such a level as to indicate that employment of this individual in the industry in the future should be totally barred. Under applicable regulations issued by the Casino Control Commission, a person whose license is revoked may not, unless extraordinary circumstances be shown, reapply for licensure for five years. N.J.A.C. 19:41-8.8(a) While the record does reflect that the licensee has been able to obtain employment in other fields, and indeed was working in other employment prior to the temporary suspension of her license, I believe that she should be given the opportunity to establish that she has corrected her ways and reobtain her license well before the end of a five year wait.

The power to revoke a license implies the power to suspend that license. The clear intent of the Legislature in providing the sanctions listed in Section 129 was to give the Casino Commission the authority to punish those who commit acts offensive to the Act in a variety of degrees. Thus, the sanctions can go from the rather minimal, such as letters of reprimand and cease and desist orders, through such more severe actions as orders of restitution and minimal civil penalties, up to such drastic measures as substantial civil penalties and suspensions of operating certificates of casinos (significantly, however, revocation is not listed in this section with respect to casinos themselves), and to the ultimate penalty of revocation of the license of a person. Within this gamut of possible sanctions, a suspension short of revocation surely must fall. The obvious intent of the Legislature was to arm the Commission with the power to sanction as it deemed appropriate in the particular case. Since a suspension falls well within the

range of penalties provided, I **CONCLUDE** that the law permits a suspension in lieu of a revocation, and therefore, permits the license to be reinstated, upon fulfillment of such reasonable conditions as may be set, without having to wait for five years, barring extraordinary circumstances, and then meet the tests applicable to one seeking a license following revocation.

The permissibility of a suspension in lieu of a revocation appears to be in accord with past agency practice, as shown in the unreported decision of the Commission in State of New Jersey v. Paul Scott Cavalier, Docket No. 78-31, in which then Commissioner Merck, sitting as a hearing officer before the establishment of the Office of Administrative Law, recommended the revocation of the license of a casino employee who had been found to have violated a criminal statute. The Commission, without explanation, modified the penalty to a six month suspension.

In addition to the above noted prior interpretation of the Commission, N.J.S.A. 5:12-75 provides that the Commission

> may exercise any proper power or authority necessary to perform the duties assigned to it by law, and no specific enumeration of powers in this Act shall be read to limit the authority of the Commission to administer this Act.

This section of the Act seems to comport with my view that given the broad scope of the penalties set forth in Section 129, and the clear legislative intent, the power to suspend is an option available to the Commission.

In light of the above, I **CONCLUDE** that the respondent's casino employee license should be suspended for a period of 3 years, effective upon the issuance of a final decision in this matter. Reinstatement of the license shall be conditioned upon the respondent completing satisfactorily all terms and conditions of her probation and her establishing, at the time of the reinstatement, that she has not been guilty of any further criminal violations or any other actions which would bar licensure. At the time of application for reinstatement, if no further matters are brought to the attention of the Commission which reflect adversely on the applicant's good character, honesty and integrity, proof of successful completion of the probationary period should constitute a sufficient basis for permitting relicensure, at least with respect to the requirements for good character, honesty and integrity and rehabilitation.

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In making the above determination, I have expressly determined that, given the nature of the offense involved, a serious penalty is required but a revocation, with the implication of what would generally be a five year wait before relicensure might be permitted, is too severe. This decision is not in any way intended to indicate that the penalty for one who commits welfare fraud would always be something short of revocation. Obviously, all circumstances of any particular case must be considered in determining how severe any penalty must be. While the offense here was clearly criminal in nature and involved an intentional withholding of information, I do not believe that the ultimate sanction should be invoked against this respondent. I believe that the period of suspension imposed, with the conditions set forth, serve the public by indicating to this respondent and all others within the industry and without, that the Commission will deal seriously and severely with individuals who commit welfare fraud while employed in the industry. At the same time, this imposed suspension serves the public by assuring that, if she can successfully fulfill her obligations, this respondent will have the opportunity to return to employment in the industry, should she so desire. Given the economic situation, particularly in the Atlantic City area, I believe that such an opportunity should be afforded this respondent, if she demonstrates that she is worthy of it by means of fulfilling all the terms and conditions set forth herein.

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

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

January 4, 1982
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

January 4, 1982
DATE

Bernadette T. Frigen
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 7, 1982
DATE

Ronald L. Parker for
OFFICE OF ADMINISTRATIVE LAW

ms

338.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-EA-165
OAL DOCKET NO. CCC 3338-81
APP. NO. 00522-11

IN THE MATTER OF THE APPLICATION
OF JESS W. HINKLE FOR LICENSURE
AS A CASINO KEY EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission December 6, 1982, recommending that the application of Jess W. Hinkle for a casino key employee license be granted to which neither party excepted or objected; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on January 18, 1983, to affirm and adopt the said Initial Decision and to grant the application of Jess W. Hinkle for licensure,

IT IS on this 20th day of January 1983 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 Jess W. Hinkle 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 Jess W. Hinkle and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 20, 1983

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
DEC 07 1982
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 3338-81
AGENCY DKT. NO. 81-EA-165

IN THE MATTER OF THE APPLICATION OF JESS W. HINKLE FOR LICENSURE AS A CASINO KEY EMPLOYEE

APPEARANCES:

Martin L. Greenberg, Esq. and **Richard E. Mischel**, Esq. for the applicant, Jess W. Hinkle (Greenberg, Margolis, Ziegler & Schwartz, attorneys)

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

Record Closed October 21, 1982 Decided December 6, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Jess W. Hinkle, applicant, for licensure by the Casino Control Commission (Commission) as a casino key employee, pursuant to N.J.S.A. 5:12-89. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, took no position regarding the application. However, the Division raised issue with the applicant's ability to establish his qualifications for licensure under sections 89b(1), (2) and (3) of the Casino Control Act (Act).

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PROCEDURAL HISTORY

Mr. Hinkle filed his Personal History Disclosure Form-1 (PHDF-1), with the Commission on July 31, 1979. By letter, dated March 30, 1981, the Commission advised the applicant that, based upon information received in a report from the Division, dated March 30, 1981, there was a "substantial possibility" that the Commission would deny licensure and that he had the right to a hearing. On May 18, 1981, the applicant requested a hearing. On May 26, 1981, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. After several adjournments, a prehearing conference was held on September 13, 1982, and the matter was scheduled for hearing.

At the commencement of the hearing, the issues set forth in the original prehearing order were amended by consent of the parties. The issues, as amended, are as follows:

A. Whether, under section 89b(1) of the Act, the applicant can establish his financial stability, integrity and responsiblity in consideration of:

1. The applicant's alleged failure to include monthly reimbursements for household expenses paid to him by the Del E. Webb Corporation on the applicant's 1974 and 1975 federal income tax returns.

2. The applicant's denial to the Division of a conversation between himself and Richard Ferry on the subject of skimming in regard to a polygraph test the applicant took during the fall of 1978.

3. The circumstances underlying the offer of employment made on or about August 12, 1975, by the applicant to Herbert Eugene Clark to become the corporate director of security for the Del E. Webb Corporation.

B. Whether, under section 89b(2) of the Act, the applicant can establish his good character, honesty and integrity in consideration of:

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1. The applicant's denial to the Division of knowledge of the alleged practice of payment by the Del E. Webb Corporation for "escort services" (prostitution) for customers, while the applicant was the general manager of The Mint Hotel and Casino, a subsidiary of Del E. Webb Corporation.

2. The applicant's denial to the Division of a conversation between himself and Richard Ferry on the subject of skimming in regard to a polygraph test the applicant took during the fall of 1978.

C. Whether, under section 89b(3) of the Act, the applicant can establish that he has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency as a casino key employee, i.e., that he possesses the requisite degree of business integrity, in consideration of:

1. Whether the applicant, as a part owner and general manager of Mullis-Hinkle, Inc., d/b/a Reno's New Horseshoe Club, was satisfied with the preexisting system of internal controls, which were allegedly deficient.

2. The allegation that on December 31, 1977, an unscheduled slot drop occurred at the Reno's New Horseshoe Club while the applicant was a part owner and general manager of that club.

PRELIMINARY RULING

During the hearing, the applicant offered exhibit P-24Id., the deposition of Mark Alden taken on February 4, 1980, in conjuction with the bankruptcy proceeding entitled In Re Mullis-Hinkle, Inc., d/b/a Horseshoe Club, United States District Court for the District of Nevada, and exhibit P-26Id., the deposition of David Mark Azadian also taken on February 4, 1980, in regard to the same proceeding. The Division opposed admission of the depositions into evidence on the basis that they were not relevant to the proceedings. Because it was necessary for the court to review the depositions in order to determine whether they should be admitted, decision on their admissibility was reserved.

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With regard to P-24Id., a substantial portion of the deposition concerns issues raised regarding Mr. Hinkle's application for licensure. Therefore, the deposition is relevant to the within proceedings. I **CONCLUDE** that the probative value of the deposition outweighs the risk of its admission. I **ORDER** that P-24 be admitted into evidence. N.J.S.A. 52:14B-10a.

The entire content of P-26 is concerned with the conduct of persons other than Mr. Hinkle. Although Mr. Hinkle and other witnesses testified to the conduct of the persons identified in the deposition, it is not now possible to determine whether the conduct of those other persons, as related in the deposition, is the same conduct described herein. Further, it is Mr. Hinkle's qualifications for licensure which must be established and not those of other persons. I **CONCLUDE** that P-26Id. has no probative value. It is **ORDERED** that P-26Id. is not admitted into evidence. N.J.S.A. 52:14B-10a.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

The evidence offered by the parties primarily dealt with the areas of issue raised by the Division. These issues were concerned with Mr. Hinkle's conduct during certain incidents and over an extended period of time which were separate and distinct from each other. With regard to the issues of fact, this decision will consider each subject area separately.

1. General Background

Mr. Hinkle is 50 years of age (J-1). He has resided in the Atlantic County area with his wife and two of his three children since December 1978.

The applicant is a 1950 graduate of Chickasha High School, Chickasha, Oklahoma.

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Following graduation from high school, the applicant enlisted in the United States Marine Corps. He served from November 1950 until Novemer 1953. The applicant was stationed in South Korea from August 1951 until August 1952. He was awarded a Purple Heart, the Korean Service Medal with Two Stars, the United Nations Service Medal and the Good Conduct Medal. The applicant earned an honorable discharge.

In January 1954, the applicant enrolled at the University of Oklahoma. In June 1957, he graduated with a Bachelor of Arts degree in business administration. The applicant majored in accounting and minored in business law.

From 1956 until 1957, the applicant was employed by American Potash and Chemical Corp. in the accounting department. His duties and responsiblities included the performance of routine accounting functions associated with record-keeping operations of a small business. Also and prior to 1959, the applicant prepared some small personal income tax returns.

The applicant commenced employment in the casino industry in 1959. He was first employed by the Golden Nugget in Las Vegas, Nevada, as an accounting assistant. His duties and responsibilities included posting revenues.

From 1962 until 1964, the applicant was employed by Mannitto Reality and Langson Construction Co. as an assistant manager to the owner.

In November 1964, the applicant commenced an 11-year period of employment with the Del E. Webb Corporation (DEWC). From November 1964 until January 1966, Mr. Hinkle was the comptroller of the Thunderbird Hotel and Casino, a subsidiary of DEWC. The applicant was responsible for the closing of the corporate books and the preparation of financial statements. From January 1966 until January 1968, the applicant was the corporate treasurer of the Hotel and Casino Division of DEWC. At that time, DEWC was not international in its operations. The applicant was responsible for the preparation of consolidated financial statements in regard to the various hotels and casinos owned by DEWC and managed by the Division. From January 1968 until January 1969, the applicant was a vice president and the assistant general manager of the Sahara and the Thunderbird Hotels and Casinos. This position constituted a lateral move by the applicant into the management sector of DEWC. In this capacity, the applicant assisted the general

manager, who had complete on-site responsibility for the operation of the facility. From January 1969 until January 1971, the applicant was a vice president and the general manager of the Thunderbird Hotel and Casino. In this capacity, he had full on-site responsibility for the daily operations of the facility. From January 1971 until July 1973, the applicant was a vice president and the general manager of The Mint Hotel and Casino (The Mint). This property was larger than the Thunderbird and had a greater volume. During the applicant's tenure in this capacity, The Mint underwent a substantial renovation of its physical plant and enjoyed a continuous increase in its win volume, from $25 million annually to $40 million. From July 1973 until March 1976, the applicant was the president and director of operations of the Hotel and Casino Division of DEWC. In this capacity, he had supervisory responsibility over all hotel and casino properties owned by DEWC and established corporate policy. At this time, DEWC owned and operated eight hotel and casino facilities and four resort properties. The applicant's employment obligations caused him to travel 40-60 percent of his time. On February 12, 1976, the applicant submitted his resignation. The applicant cited as reasons for his resignation the detrimental affects the excessive travel requirements had on his personal and family life.

From April until May 1976, the applicant was employed by Stearns Enterprises, which was in the process of developing a new casino hotel.

From May 1976 until March 1977, the applicant was employed by Western Village, Inc., as general manager.

On January 17, 1977, the applicant entered into a pre-incorporation agreement with a Dr. Tom N. Mullis (P-14). The agreement preceded the creation of a corporation known as Mullis-Hinkle, Inc.(Mullis-Hinkle). Mullis-Hinkle purchased an existing casino (incorporated as the 229 Corporation) in Reno, Nevada. It took possession on April 1, 1977. Mullis-Hinkle did business as the Reno's New Horseshoe Club (RNHC). Dr. Mullis was a 75-percent owner and Mr. Hinkle was a 25-percent owner of RNHC. Dr. Mullis borrowed $2,100,000 and Mr. Hinkle borrowed $700,000 in order to fund the enterprise. Subsequently, Mr. Hinkle paid off his note. Dr. Mullis had no operational experience in the casino industry, although he did have an investment interest in another casino. The principals contemplated that the applicant would manage the casino on a daily basis in consultation with Dr. Mullis. The applicant was to earn an annual salary of $36,000 and to

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receive 25-percent of the profits. The events which followed at the RNHC were in dispute and will be discussed, infra. In any event, on July 21, 1978, Mr. Hinkle left employment with the RNHC because of substantial differences of opinion with Dr. Mullis.

In December 1978, the applicant was employed as the chief executive officer of Adamar of New Jersey, Inc., a subsidiary of Ramada Inns, Inc. The applicant was responsible for the development and start-up of Ramada's first entry into the gaming industry, in Atlantic City. It was also contemplated that the applicant would be responsible for any other casino enterprises initiated by Ramada. The applicant terminated his employment with Ramada because of his difficulties in obtaining licensure.

In the spring of 1981, the applicant was hired by Atlantic Community College as an adjunct professor. He taught two courses. Thereafter, the college hired the applicant as a full-time professor. He remains employed in that capacity. The applicant teaches Casino Management, Casino Accounting, Introduction to Hotel Management and Introduction to Hotel Business.

2. The Mint Hotel and Casino

Each of the witnesses at the hearing who previously were employed within the casino industry in Nevada acknowledged that prostitutes were commonly available in casino hotels prior to and including the early 1970s. Primarily, prostitutes catered to "high rollers." Further, the witnesses generally acknowledged that "escort services," in which prostitutes are provided by a casino for "high rollers," were also common. Mr. Hinkle testified that while he was the general manager of The Mint, he had heard that "escort services" were available at the Sahara-Tahoe Casino, another subsidiary of DEWC.

Mr. Hinkle testified that The Mint was a family-oriented casino, dependent upon a large volume of transient patrons, as opposed to "high rollers." The applicant instructed his department heads and security personnel to make observations for the

presence of prostitutes in the bars of The Mint. In the event that prostitutes were observed, they were to be removed from the premises. The unanimous consensus of the witnesses was that no "escort services" were availabe at The Mint during the applicant's tenure as general manager.

Mr. Hinkle's testimony was corroborated by the testimony of Sean Grady, the Maitre d' Hotel, Thomas McNulty, a barboy, and the affidavits of James J. McCallum, an employee in the casino (P-20), Larry Eugene Mullin, lounge and bar manager (P-21), Jerry Price, casino manager (P-22), and Andrew Zorne, director of keno (P-23). Messrs. Price and Zorne stated that the applicant was opposed to and would not tolerate the presence of prostitutes in The Mint (P-22 and 23). Further, Shannon Bybee, Jr., the current president of the Golden Nugget Atlantic City Corp., testified that he was a member of the Nevada Gaming Control Board at the time the applicant was general manager of The Mint. He never heard any contention that there were prostitutes or that an "escort service" existed at The Mint.

The testimony, to the effect that no "escort service" or tolerance of prostitution existed at The Mint during the applicant's tenure as general manager was unrefuted, overwhelming, corroborated in full and totally persuasive.

3. Herbert Eugene Clark

When Mr. Hinkle became president of the Hotel and Casino Division of DEWC, the corporate structure included a vice president and general manager in charge of each facility and a division-level vice president in charge of various operational areas. However, security was handled on a facility-by-facility basis without any central management at the division level. The applicant desired to establish uniform policies and procedures for security within the division. He determined that the best means to implement this program was to establish a vice presidency with responsibility for security on a division-wide basis.

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At the time Mr. Hinkle determined to create a division-level vice president for security, Herbert Eugene Clark was employed by the Metropolitan Police Department in Las Vegas as a Deputy Chief. The applicant had known Mr. Clark since 1960. They had occasionally come into contact during the performance of their respective work responsibilities and had developed a casual social relationship, which consisted of an infrequent golf outing. The applicant stated that then Deputy Chief Clark was well-respected within the law enforcement community and enjoyed a superior reputation. The applicant learned that Mr. Clark planned to retire at the end of 1976. The applicant decided to hire Mr. Clark as the vice president for security.

During the summer of 1975, the applicant and Mr. Clark had several meetings in this regard, and Mr. Clark tentatively agreed to accept the offer. On August 12, 1975, the applicant presented a written proposal to Mr. Clark, which set forth the terms and conditions under which Mr. Clark would be employed (P-10). On August 29, 1975, Mr. Clark accepted the offer (P-10). The agreement provided that Mr. Clark would be paid an annual salary of $48,000. Further, Mr. Clark was offered an advance in pay of up to four months, which was to be repaid in the event that he did not accept the employment, and was given until January 1, 1977, to commence full-time employment. Further, in the period preceding full-time employment, Mr. Clark was to commence a training program for DEWC's security officers and to commence the preparation of training manuals. Mr. Clark received a salary advance of $14,390.38, which he used to purchase a portion of his retirement benefits (P-1). Mr. Clark administered some training and commenced preparation of training manuals. At the time the applicant left employment with DEWC in the spring of 1976, Mr. Clark was still employed by the Metropolitan Police Department. The applicant had no further involvement in the prospective employment relationship between Mr. Clark and DEWC.

William M. Dougall, the applicant's successor at DEWC, was the individual with whom Mr. Clark continued to negotiate (P-11, 12 and 13). On or about September 13, 1976, Mr. Clark determined, for reasons unrelated to the applicant, to reject the offer of employment with DEWC and so communicated his position to Mr. Dougall (P-11). DEWC did not seek reimbrusement of the salaray advance previously given to Mr. Clark and paid him an additional $10,000 as compensation (P-1, P-12 and R-12).

The affidavit of Mr. Clark and the other relevant documentary evidence corroborated in full the applicant's testimony in regard to this issue (P-1, P-10, P-11, P-12, P-13 and R-12).

Testimonial and documentary evidence in regard to Mr. Clark's relationship with DEWC through the applicant, which was unrefuted, consistent and totally persuasive, revealed no impropriety in the applicant's dealings with Mr. Clark. Rather, it was apparent that the applicant exercised sound business judgment and discretion in his efforts to employ Mr. Clark in a most important position.

4. Reno's New Horseshoe Club-December 31, 1977

It was not disputed that on New Year's Eve, December 31, 1977, an unscheduled slot drop was conducted by employees of RNHC without the mandatory notice having been provided to the Nevada Gaming Control Board. At the time of the incident, Mr. Hinkle was the general manager of the RNHC and was ultimately responsible for the casino's compliance with the internal system of controls, adopted pursuant to Regulation 6 of the Nevada Gaming Commission. Prior to midnight and on the "swing shift," Richard Paul, slot manager, requested permission from the applicant to conduct an unscheduled slot drop in order to obtain additional silver dollars in anticipation of a shortage for the remainder of the evening, which was supposed to have a heavy volume. Mr. Hinkle authorized the slot drop. It was Mr. Paul's obligation to notify the Nevada Gaming Control Board that the unscheduled slot drop would be conducted. Mr. Paul did not notify the Gaming Control Board (P-4). The unscheduled slot drop was otherwise conducted in total compliance with the system of internal controls in place at RNHC. Marlyn E. Mills, an agent with the enforcement commission of the Nevada Gaming Control Board, was present in the RNHC casino and observed the unscheduled slot drop take place. The Gaming Control Board subsequently made inquiry regarding the lack of notice of the unscheduled slot drop. Mr. Hinkle responded to the effect that the unscheduled slot drop was conducted in compliance with the system of internal controls, except for the failure to notify the Gaming Control Board, the responsibility for which was accepted by Mr. Paul. The RNHC was never cited by the Gaming Control Board for the incident.

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The applicant's testimony in regard to this issue was unrefuted, fully corroborated by the affidavits of Marlyn E. Mills, Richard Paul and Mark Alden, and was totally persuasive (P-2, P-2A, P-4, P-5 and P-6). It was evident that responsibility for the failure to notify the Nevada Gaming Control Board rested with Mr. Paul. Further, the incident was of little significance. Most important was that the unscheduled slot drop was otherwise conducted in total compliance with the system of internal controls.

5. Reno's New Horseshoe Club-Charles Schlegel

At the time Mr. Hinkle was employed by DEWC as president of the Hotel and Casino Division, the DEWC travel company had issued credit to Charles Schlegel, a California attorney, in the amount of $8,000, which had not been satisfied.

Dr. Mullis hired Mr. Schlegel, without the applicant's knowledge or consent, as a consultant for RNHC at a rate of $1,000 per month.

The RNHC owned 13 "Big Bertha" slot machines, which it had purchased from M & S Leasing, an entity separate from RNHC but owned by Dr. Mullis. The RNHC determined to sell these slot machines. Mr. Paul arranged for the sale of some of the machines to the Primadonna Casino, a subsidiary of DEWC, through Gary Anderson, director of slots at the Primadonna.

Following the tentative agreement between Mr. Paul and Mr. Anderson, Mr. Hinkle discussed the matter with Mr. Dougall, his successor as president of the Hotel and Casino Division of the DEWC. The applicant and Mr. Dougall agreed that compensation for the slot machines would be made by DEWC in the form of a cancellation of Mr. Schlegel's debt of $8,000. In turn, RHNC would not pay Mr. Schlegel for a period of eight months, in order to recoup the compensation. Mr. Dougall and Mr. Schlegel, independently, agreed to the plan.

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Mr. Hinkle submitted the proposal to Dr. Mullis for his approval. Dr. Mullis advised that he had terminated Mr. Schlegel's relationship with RNHC and that he disapproved of the proposal. The proposed sale of the slot machines was never consummated. However, Mr. Schlegel remained in the employ of the RNHC, continued to be a consultant to Dr. Mullis and continued to be paid at his established rate.

The applicant's testimony was unrefuted, fully corroborated by the affidavits of Mr. Paul and Mr. Alden (P-4, P-5 and P-6), and was totally persuasive. There was no indication that the applicant's conduct in regard to the proposed transaction or to the method of completing the proposed transaction was in any way inappropriate.

6. Reno's New Horseshoe Club-Brent Duncan

Nevada casinos are required to have an annual audit prepared by an outside auditing firm. Dr. Mullis had hired the firm of Chanslor, Barbieri and DeWhitt, Certified Public Accountants, through Archie Granata, CPA, a partner in the firm. Dr. Mullis had a personal relationship with Mr. Granata, who had previously prepared Dr. Mullis' personal and business income tax returns.

During the time Mr. Hinkle was employed by DEWC, Brent Duncan, a CPA, was the treasurer of the Hotel and Casino Division. The applicant and Mr. Duncan had a close working relationship. Subsequently, Mr. Duncan became employed by the firm of David Thompson and Co., Certified Public Accountants. Mr. Duncan and the applicant frequently shared lunch at the RNHC.

Bids for outside auditing contracts were customarily received during the last quarter of the calendar year. Mr. Duncan made inquiry of the applicant regarding the outside auditing contract for RNHC. The applicant informed Mr. Duncan that Dr. Mullis had hired the firm of Chanslor, Barbieri and DeWhitt. Mr. Duncan expressed a desire to submit a bid. The applicant advised Mr. Duncan that he could submit a bid, but stood little chance of securing the contract because of Dr. Mullis' relationship with Mr. Granata.

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Mark Alden, then comptroller of RNHC, solicited an outside audit proposal bid from David Thompson and Co. through Brent Duncan. A bid proposal was submitted on December 13, 1977. The proposal was addressed to the stockholders of RNHC, of which there were only two, Dr. Mullis and Mr. Hinkle. Further, the proposal indicated that it was submitted in response to "your request." The affidavit of Mark Alden corroborated the testimony of the applicant, to the effect that it was Mr. Alden, not the applicant, who solicited the submission of an outside audit proposal bid from Brent Duncan (P-5).

The testimony of the applicant in regard to this issue was unrefuted, corroborated in full and totally persuasive. There was no indication that the applicant's conduct was improper in any respect.

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

(B) DISPUTED FACTS

In dispute were the reasons for the applicant's alleged failure to include monthly reimbursements for household expenses paid to him by DEWC on his 1974 and 1975 federal income tax returns, the applicant's purported satisfaction with the preexisting system of internal controls at RNHC, the applicant's purported denial of a conversation with Richard Ferry on the subject of "skimming" and the applicant's reputation for good character, honesty and integrity.

1. 1974 and 1975 Income Tax Returns

In Mr. Hinkle's capacity as president of the Hotel and Casino Division of DEWC, he was paid a salary and received an annual bonus. Also, DEWC reimbursed the applicant for various expenses customarily associated with the maintenace of a household. Such expenses included mortgage payments, a food allowance, utility costs, automobile expenses, real estate taxes, etc. On a monthly basis, the applicant would submit to the division treasurer's office an itemization of all reimbursement costs prepared by his wife. Thereafter, the applicant would receive reimbursement by means of a check for the costs (R-13, R-14 and R-15).

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The applicant had prepared his own income tax returns for all taxable years up to and including the calendar year 1976. The applicant customarily prepared his income tax returns at a time just prior to the April 15 filing deadline because of the extreme time pressures associated with his position. In preparation of the subject returns, the applicant used a W-2 form received from the division treasurer's office. The W-2 forms for the subject years set forth the compensation that the applicant received as salary and bonus only. DEWC never issued the applicant a Form 1099 or any other statement which set forth the amount of reimbursement paid to the applicant (R-1, R-2, and P-18). The applicant earned $135,000 in salary and bonus in 1974 and $150,000 in salary and bonus in 1975, which were the amounts on which he paid taxes (R-1 and R-2). For the taxable years 1974 and 1975, the applicant did not declare as income the monies received from DEWC as reimbursement. Nevertheless, the applicant took many of the expenses he incurred and for which he received reimbursement as deductions. Those deductions were legitimate.

Immediately following an interview with the Division in 1980, during which the applicant's purported failure to declare reimbursement income on the subject returns was discussed, the applicant contacted his accountant, Gerald Ballard, a CPA. The applicant had first employed Mr. Ballard in 1978 for the purpose of the preparation of the applicant's 1977 income tax return. During preparation of the applicant's 1977 return, Mr. Ballard had reviewed his 1974, 1975 and 1976 returns. Mr. Ballard determined that the applicant had made errors on those returns which were contrary to his interest. Amended returns were filed on the applicant's behalf, from which he secured additional refunds (R-1 and R-2). Upon the applicant's request, Mr. Ballard again reviewed the 1974 and 1975 returns. At this point, it must be noted that Mr. Ballard and his firm were, in 1979, appointed by the Bankruptcy Court as a "Court Examiner" for the bankruptcy proceedings concerning RNHC. This appointment was made by the court at Mr. Hinkle's request. However, Mr. Ballard disclosed to the court that he had previously performed services for Mr. Hinkle. In any event, during the performance of his duties as "Court Examiner," Mr. Ballard learned that the Internal Revenue Service (IRS) was performing an audit of DEWC. Mr. Ballard further learned that the IRS had determined that the applicant had received additional income in the form of reimbursement during the taxable years of 1974 and 1975, which had not been declared on the subject returns.

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Mr. Ballard reviewed the subject returns with regard to the purported failure of the applicant to declare reimbursement received from DEWC. The IRS determined that for the taxable year 1974 the applicant had received additional income of $22,130. Based upon the information provided by the applicant, the IRS allowed as offsetting business expenses an amount of $9,123. The net adjusted income was $13,007. This adjusted income was offset partially against an additional refund due the applicant. For the taxable year 1975, it was determined that the applicant had additional income of $19,041. However, upon Mr. Ballard's advice, the applicant did not develop offsetting business expenses, even though he contended such were available, because there was no refund due the applicant against which to apply the additional tax liability (R-3). Since the 1975 taxable year was closed to both the IRS and the applicant, he was precluded from filing an amended return. The IRS found no evidence to support a charge of tax fraud and no penalties were ever assessed against the applicant (P-18).

All of the preceding evidence was unrefuted, is undisputed and believable and is thus FOUND as FACT.

In dispute were the reasons for the applicant's failure to declare the reimbursement on his returns for 1974 and 1975.

Mr. Hinkle contended that he first learned of his failure to declare the reimbursement from the Division during his interview in 1980. The applicant readily conceded to the Division that he had erred in the preparation of the subject returns. The applicant stated that he made a mistake, but claimed that his error was not intentional or purposeful in any respect. The applicant has consistently maintained this position throughout the entire proceedings.

In support of the applicant's position, it must be noted that DEWC never provided the applicant with a statement of the amount of reimbursement for his use in the preparation of the subject returns.

The applicant contended that his work responsibilities were demanding, exhaustive and all consuming. He was obsessed with his duties and responsibilities to DEWC. Further, a great deal of his time was taken up by business related travel. Consequently, he had very little time in which to prepare the returns, and he simply forgot to or did not think of the reimbursement at the time he prepared his returns.

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On the other hand, the Division argued that the applicant received a substantial financial benefit in the form of the reimbursement, which should not have eluded his memory. Further, the applicant was sufficiently aware of his financial situation to take deductions for many of the expenses for which he received reimbursement. Given the applicant's accounting background and the fact that he was found by Atlantic Community College to be qualified to teach accounting related courses, he should be held responsible for his conduct.

At this point it is appropriate to consider Mr. Hinkle's credibility. The outcome of the tax return issue, as well as several other issues, depends largely upon whether applicant's testimony was credible.

Initially, Mr. Hinkle's position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was obvious both during the hearing and during the review of the record that from my observations of the applicant's demeanor, the plausibility of his testimony, the witnesses who corroborated his testimony on numerous critical points and my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was candid, consistent, believable and most persuasive. The applicant responded fully and completely to each and every question asked. His testimony was plausible in every respect. Further, his testimony comported fully with human experience, was inherently consistent and was corroborated either by witnesses or by documentary evidence. There was no witness offered to refute any fact to which the applicant testified. In the final analysis, I am persuaded to accept his testimony in all respects.

It is also important not to view the income tax issue in a vacuum. It must be considered as a part of the applicant's conduct during his entire adult life. As will be discussed, infra, there was no indication of any wrongdoing by the applicant. Further, the applicant has at all times set high standards for himself and for those around him. The applicant has not deviated from those standards in any respect. Although the applicant should have declared the reimbursement as income and his recollection of the income should have been triggered during his preparation of the subject returns, it was not. I am persuaded to believe that the applicant's failure to declare the reimbursement was not knowing, purposeful or intentional. Rather, it was an inadvertent error.

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

1. The applicant first learned that he had failed to declare reimbursement received from DEWC as income on his 1974 and 1975 income tax returns during his interview with the Division in 1980.

2. The applicant conceded to the Division that he had erred in the preparation of his returns, but maintained that his error was not intentional or purposeful.

3. DEWC did not provide the applicant with any form or statement which set forth its payment of reimbursement.

4. Because of demands of his employment, the applicant prepared the subject income tax returns under extreme time constraints.

5. The applicant's testimony was credible, believable and persuasive in all respects.

6. The applicant's failure to declare the reimbursement on the subject returns was the result of an inadvertent error.

2. Reno's New Horseshoe Club

In addition to his interests in RNHC, Dr. Mullis had other financial interests. First, he was a medical doctor with an active practice. Second, he held a seat on the Chicago Commodities Board, which required monthly appearances. Third, the doctor also held interests in M & S Leasing, of which he was the sole owner. Additionally, Dr. Mullis, through M & S Leasing, was a partner in a joint venture known as Al-Don, which was also involved in slot machine activities. Mr. Hinkle had no interest in these other activities.

Dr. Mullis appeared at RNHC at various times during the day. His common practice was to go immediately to the Accounting Department.

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At the time of the Mullis-Hinkle takeover, it was agreed that the preexisting system of internal controls used by the 229 Corporation would remain in place. This system of internal controls had been adopted by and filed with the Nevada Gaming Commission pursuant to its Regulation 6. The Nevada Gaming Commission did not require modifications to the system of internal controls at the time of the takeover. Mr. Hinkle testified that the preexisting system of internal controls satisfied the requirements of Regulation 6. However, these controls did not satisfy Mr. Hinkle. It was his intention to upgrade the controls in order to improve the profitability of RNHC and to protect his investment.

At the time of the takeover, Robert Brodie was the comptroller and was retained in that capacity.

On April 1, 1977, Mr. Hinkle hired Griffin Investigations, an outside investigating firm. Griffin was retained for the purpose of verification of wins. The applicant also hired Richard Paul, formerly in security at The Mint, as director of slots.

From April through September 1977, there was a substantial reconstruction of RNHC, especially on the first and second floors, which involved the casino, bar and restaurant areas. This reconstruction significantly disrupted the operations of the facilities (P-6).

Shortly after RNHC had commenced operation, a rift developed between Mr. Hinkle and Dr. Mullis. The applicant testified that his expectations regarding his managerial authority were not satisfied. Dr. Mullis dictated policy and injected himself into all phases of the management of RNHC. The applicant held the opinion that Dr. Mullis was not qualified to manage a casino. This testimony was corroborated by that of Tommy Ballard.

In particular, the differences between the applicant and Dr. Mullis concerned the system of internal controls. As the rift between the applicant and Dr. Mullis increased, the applicant perceived that an upgraded system of internal controls would be the most effective means of protecting his investment. Mr. Hinkle testified that he made a continuous effort to upgrade this system. This testimony was corroborated by the testimonies of Tommy Ballard and Mr. McNulty and the affidavits of Mr. Alden (P-5 and P-6).

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In May 1977, Mr. Hinkle hired Mark Alden, CPA, as his administrative assistant. Mr. Alden had been an auditor with the Nevada Gaming Control Board and had been associated previously with Mr. Hinkle. Mr. Alden was hired for the purpose of recommending and installing a new system of internal controls (P-5). Mr. Alden prepared proposals; however, these recommendations were routinely rejected by Dr. Mullis.

Mr. McNulty, the Food and Beverage Director at RNHC, testified that at Mr. Hinkle's direction new and better controls were developed within Mr. McNulty's area of responsibility. More specifically, an EDI system, an electrical liquor gun, was installed. Also, alcoholic beverages were kept under lock and key, a daily inventory was conducted and all incoming shipments of meats were weighed.

Mr. Hinkle testified that he was particularly disturbed at the lack of satisfactory controls within the Accounting Department, maintained under the direction of Robert Brodie, the comptroller. The applicant frequently expressed these concerns to Dr. Mullis. This was also the one area of operations in which Mr. Hinkle was unable to affect a change in the system of internal controls, at least prior to December 31, 1976, because Dr. Mullis would not approve proposed corrective action.

Mr. Alden left employment with RNHC during September 1977. This was primarily attributed to Dr. Mullis not adopting proposed changes in the system of internal controls (P-5).

On October 21, 1977, Dr. Mullis conducted a meeting of the management of RNHC (P-8). During the meeting, Dr. Mullis referred to himself as the "supreme authority" and discussed the authority of various persons in RNHC. More specifically, Dr. Mullis appeared to delegate authority to various persons, including the applicant; however, the delegation was conditioned upon the doctor's approval of any and all decisions made by these persons. Further, Dr. Mullis directed the management and staff of RNHC to support the operations of M & S Leasing. Mr. Hinkle opposed this position, as he was not financially involved with M & S. However, Dr. Mullis' directions stood. Also of interest is the fact that Mr. Schlegel made a substantial statement regarding the operations of RNHC, which indicated that his role in the company was substantial.

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The position of the accounting firm of Chanslor, Barbieri & DeWhitt and the outcome of its audit were also in dispute. From the fall of 1977 through the spring of 1978, the firm assigned Dave Wood to perform the audit workup. Mr. Wood had an office at RNHC. It was well established that Mr. Wood was young and relatively inexperienced in casino matters. The RNHC audit was his first casino audit. It was also well established that Mr. Wood was basically unaware of what documentation he needed to perform his task and that he did not know how to establish the basis for certain conclusions he needed to reach.

The Chanslor firm was hired by Dr. Mullis to perform the annual outside audit function for the nine months ending December 31, 1977. However, a disagreement developed between Mr. Hinkle and Mr. Granata regarding the statement of financial position proposed by the Chanslor firm. More specifically, the Chanslor firm, through Messrs. Granata and Wood, prepared a draft statement which opined than an adequate system of internal controls was not in effect for the majority of the nine-month period and, as a consequence, the firm could not express an opinion of the financial position of RNHC (P-15). According to standard operating procedure, an exit interview was held between Mr. Granata, Mr. Wood and the applicant. The applicant disagreed with the draft statement. Therefore, and at the suggestion of Mr. Granata, the applicant prepared an alternate proposed draft of the financial position of RNHC (P-15). In his proposal, the applicant stressed that a substantial contruction project was in progress during the period from May through September 1977 which impeded the ability of RNHC to maintain an adequate system of internal controls. The applicant also cited the fact that the preexisting system of internal controls had been adopted and was satisfactory, pursuant to Regulation 6. Last, the applicant stated that an upgrade of the system of internal controls was in progress. The outcome of the exchange was that some of the applicant's comments were accepted by the Chanslor firm and were included within the final statement, especially in regard to the period of construction (R-6).

In March and April 1978, Mr. Wood issued memoranda to Mr. Granata and the RNHC file, respectively, which criticized the system of internal controls (R-4 and R-5). The criticism was directed at the lack of compliance with the system in the casino area.

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However, the conclusions reached in both memoranda focused soley upon the lack of adequate record keeping within the accounting area for the period while it was under Mr. Brodie's control. It must also be noted that the affidavit of Marlyn E. Mills identified deficiencies in the count procedures at RNHC, which were attributed directly to Mr. Brodie and a person under his control (P-2 and P-2A).

On June 21, 1978, Mr. Hinkle was forced out of his management role at RNHC. On that same date, Mr. Brodie was brought back to RNHC by Dr. Mullis in the positions of comptroller and general manager.

In August 1978, Mr. Alden was fired by Dr. Mullis. From the information contained in a deposition of Mr. Alden, taken in regard to the bankruptcy proceedings, the reasons for his dismissal are readily apparent. Subsequent to the applicant's removal from RNHC, Mr. Alden discovered that substantial discrepancies between actual revenues and reported revenues were occurring. He reported this information to Dr. Mullis and Mr. Granata. However, they took no action. Because of what Mr. Alden perceived to be a serious situation, he reported his findings to the Nevada Gaming Control Board. Three weeks later he was fired. During subsequent conversations between Mr. Alden and Mr. Granata, it became evident that Mr. Granata had recommended the firing because Mr. Alden had gone to the Nevada Gaming Control Board (P-24).

On November 1, 1978, Dr. Mullis and Mr. Brodie terminated Griffin Investigations (P-3). No replacement investigation firm was hired.

Following Mr. Hinkle's departure, the financial position of RNHC changed dramatically. In July, RNHC posted a profit. In August, reversals became evident. In September, the income situation was even. In October, and thereafter, RNHC posted increasing losses. Eighteen months after Mr. Hinkle's departure RNHC declared bankruptcy. Bankruptcy and other related proceedings are pending at this date.

By contrast, between April 1977 and June 1978, RNHC, while under Mr. Hinkle's direction, posted a small win. Again, it must be noted that RNHC made a heavy capital outlay for the rehabilitation of the facility during that period , which also limited its gaming operations.

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Gerald Ballard also testified in regard to his findings as the court appointed "Court Examiner" for the RNHC bankruptcy proceedings. Mr. Ballard was of the opinion that the accounting records were poorly maintained. By way of example, Mr. Ballard offered his discovery that the balance sheet prepared by the Chanslor firm contained an error. The balance sheet listed a note payable by RNHC to the Nevada National Bank in an amount of $2.24 million. However, upon investigation, Mr. Ballard determined that there was no such note.

In order to evaluate Mr. Hinkle's qualifications for licensure, it is necessary to assess his conduct regarding the system of internal controls in place at RNHC. However, the evidence presented revealed that there are two opposing factions which have developed regarding the applicant's conduct; first, those who support the applicant, and second, those who support Dr. Mullis. Although it is not possible now to resolve the dispute between the applicant and Dr. Mullis, it is necessary to examine the situation. In evaluating the applicant's position regarding the system of internal controls and the actions he took, heavy emphasis has again been placed upon his credibility, which clearly has been established. Further, Mr. Hinkle's testimony in this regard was corroborated on all important details by testimony, affidavits and documents. It is also necessary to recognize the applicant's extremely successful history within the gaming industry, the high regard for his management skills and abilities held by others both within and without the gaming industry and the applicant's financial interest in the successful operation of RNHC.

I am persuaded that Dr. Mullis lacked an adequate degree of knowledge of the operations of a casino and the management skills needed to be successful. Unquestionably, Mr. Hinkle possessed these attributes. It was also evident that a significant rift developed between Dr. Mullis and the applicant, which increasingly impaired the applicant's ability to carry out his duties and responsibilities at RNHC. Further, Dr. Mullis relied upon and hired persons whose knowledge and abilities to manage a casino were less than satisfactory. As a result, the applicant's sincere desire and efforts to develop a successful operation at RNHC were thwarted at virtually every step. I am persuaded that the applicant made substantial efforts to upgrade the system of internal controls at RNHC and to demand compliance therewith by the personnel of RNHC. Although the applicant was successful in several areas in achieving substantial strides towards his goal, Dr. Mullis provided an insurmountable obstacle in regard to the Accounting Department, a most critical area. The fiscal demise of RNHC is clear evidence of Dr. Mullis' abilities.

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

1. Dr. Mullis' interest in the RNHC was one of many investments he held.

2. At the time of the takeover, Mullis-Hinkle agreed to follow the preexisting system of internal controls of the 229 Corporation which had been filed with the Nevada Gaming Commission.

3. The preexisting system of internal controls comported with the requirements of Regulation 6.

4. The applicant was not satisfied with the preexisting system of internal controls and intended to upgrade the system.

5. The prior comptroller, Robert Brodie, was retained by Dr. Mullis.

6. On April 1, 1977, the applicant hired Griffin Investigations to provide an independent verification of wins.

7. From April through September 1977, a substantial reconstruction of RNHC was carried out. This rehabilitation substantially disrupted the operations of the casino.

8. Shortly after commencement of operations at RNHC, a rift developed between the applicant and Dr. Mullis.

9. The applicant's expectations regarding his management authority were not satisfied.

10. Dr. Mullis injected himself into all policy and management decisions at RNHC.

11. The applicant made a sincere and continuing effort to upgrade the system of internal controls of the entire operations of RNHC.

12. Dr. Mullis routinely rejected proposed changes in the system of internal controls regarding the Accounting Department.

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13. A decision on the proposed system of internal controls drafted by Mr. Alden was deferred by Dr. Mullis to Mr. Granata. Mr. Granata took no action on the proposal. The accounting firm of Chanslor, Barbieri and DeWhitt had a substantial prior relationship with Dr. Mullis through Mr. Granata.

14. The audit of RNHC performed by the Chanslor firm was based substantially upon the work of Dave Wood. The RNHC audit was the first casino audit performed by Mr. Wood.

15. The applicant's participation in the redraft of the Chanslor firm's proposed statement of the financial position of RNHC was entirely appropriate in all respects.

16. The criticisms of RNHC's system of internal controls made by the Chanslor firm were essentially directed to the failures of the accounting system while under the control of Mr. Brodie.

17. Immediately following the departure of the applicant from RNHC, Mr. Brodie was rehired as comptroller and general manager by Dr. Mullis.

18. Shortly after the applicant's departure from RNHC, Dr. Mullis fired Mr. Alden and Griffin Investigations.

19. Immediately following the departure of the applicant from RNHC, the financial position of the facility deteriorated progressively until bankruptcy was declared 18 months later.

3. Conversation with Richard Ferry

As part of its preemployment procedures, Ramada Inns, Inc. engaged the services of Korn/Ferry International, an investigation firm, to investigate Mr. Hinkle's background. In turn, Korn/Ferry retained the services of Boyd and Associates to conduct a polygraph examination of the applicant.

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It was evident that Richard M. Ferry had expressed an intent to discuss the subject of "skimming" with Mr. Hinkle as a result of the polygraph (R-10). Mr. Ferry did have a telephone discussion with the applicant. However, the subject matter of the telephone conversation is in dispute.

Shortly thereafter, Ramada hired Mr. Hinkle.

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

In dispute was whether Mr. Ferry ever confronted Mr. Hinkle during their telephone conversation with the question of the applicant's possible knowledge of any "skimming" he may have observed during the early portion of his career. The applicant testified, and credibly so, that Mr. Ferry never raised the subject of "skimming" during the conversation. The applicant recalled that Mr. Ferry stated that the polygraph test turned out "super" and to go on to Atlantic City. There was no other evidence of the content of the discussion.

After consideration of the entire record in this matter, I further **FIND** that the only evidence regarding the content of the conversation established that Mr. Ferry did not question the applicant regarding any knowledge that he might have regarding "skimming" observed during the early portion of his career.

4. Reputation for Good Character, Honesty and Integrity

The applicant offered many witnesses and affidavits of other persons as to his good character, honesty and integrity. Those who testified were: Rabbi Aaron Krauss, rabbi of the Community Synagogue in Atlantic City for the past 20 years, on the teaching staff of Stockton State College and a participant in many charitable enterprises; David Jacobson, Jr., a self-employed architect in Reno, Nevada, who had performed professional services for the applicant while at DEWC; Louis B. Paludi, Executive Director of Casino Liaison and Community Development for Atlantic Community College; William J. Downey, Executive Director of the Atlantic City Casino Hotel Association and a member of the Board of Atlantic Community College; Rubin Wyskin, owner and operator of Rubin's

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Valet Service, a dry cleaning and laundry in Atlantic City; Steven J. Batzer, Chief Executive Officer of Baily, Martin and Fay, a New Jersey subsidiary of the National Insurance Brokerage Firm, President of the Atlantic City Chamber of Commerce, and a member of the Atlantic City Economic Development Council; Abner J. Gelula, owner of Abner J. Gelula Associates, Inc., an advertising and public relations agency; Dr. Joseph G. Stella, retired from the medical profession, current President of the Atlantic City Medical Center Foundation and a past Chairman of the New Jersey Expressway Authority; Shannon Bybee, Jr., President of Golden Nugget of Atlantic City, previously an attorney in private practice and from 1971 to 1975 a member of the Nevada Gaming Control Board; Lawrence J. Walker, Staff Marketing Director of New Jersey Bell Telephone Company; David W. Schmidt, Vice President for Guarantee Bank; Tommy L. Ballard, a builder, previously employed within the casino industry for 25 years; and Sean Grady, an employed consultant to the hospitality industry and previously employed within the casino industry for many years.

The applicant also offered affidavits from the following persons: James J. McCallum, retired, but previously employed within the casino industry since 1958 (P-20); Larry Eugene Mullin, who was previously employed within the casino industry since 1969 and who is President of Mullin, Inc. which manages cocktail lounges, a vending company and has partial ownership in a beauty salon (P-21); Jerry Price, a pit boss employed by the Boardwalk Regency Corporation and previously employed in the casino industry for many years (P-22); Andrew Zorne, Executive Vice President and General Manager of The Mint and previously employed within the gaming industry for many years (P-23); Mark Alden, a self-employed consultant and previously employed within the gaming industry (P-27); Chaplain Jerome Blankinship of the Sunrise Hospital Medical Center in Las Vegas, Nevada (P-28); Donald F. Blacker, Scout Executive with the Hiawatha Council of the Boy Scouts of America (P-29); Vernon Daniel, retired, but previously employed within the gaming industry for many years (P-30); Nick Dolo, Sergeant with the Linwood, New Jersey, Police Department (P-31); Philip Hannifin, Senior Vice President and Member of the Board of Directors of Summa Corporation, responsible for the supervision of hotel and casino properties, and a prior chairman of the Nevanda Gaming Control Board (P-32); Arthur A. Marton, architect and manager of the Atlantic City office of George Thomas Howard Associates (P-33); Georgia Paxson-Steinfals, owner and President of Paxson-Ford Associates, Inc., a temporary and permanent personnel placement agency in Atlantic City,

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previously employed as a legal administrative assistant and an active member of the Atlantic City Women's Chamber of Commerce (P-34); and Frank Scott, Chairman of the Board and Chief Executive Officer of the Scott Corporation with supervisory responsibility of the Union Plaza Hotel and Casino in Las Vegas, Nevada (P-35).

These character witnesses were people from the religious, business, general civic and casino industry sectors of the communities in Nevada and Atlantic City, New Jersey, and were persons who have achieved a high level of success in their respective fields. Each of the witnesses personally held Mr. Hinkle in the highest possible regard. Some of the adjectives used to express their personal evaluations of his character, honesty and integrity were: "above reproach," "outstanding," "strong sense of integrity," "great sensitivity to moral issues," "outstanding citizen," "man of his word," "dependable," "highest business ideals," "honorable and competent," "complete honesty and integrity," "fair and honest," and "truthful." Similarly, these witnesses testified to the applicant's reputation for good character, honesty and integrity within the various communities in which he has worked and resided. Again, some of the adjectives used to describe the applicant's reputation were: "leadership," "his reputation is well known," "highest level of integrity," "impeccable," "the best," "ability beyond reproach," "proud to be associated with him," "100% honesty, integrity and ability," "always did everything in the best interest of his company (DEWC)," and "diligent and hardworking." It was also established that Mr. Hinkle has been an extremely active participant in charitable and community activities in both Nevada and New Jersey.

All of the preceding evidence was unrefuted, is undisputed and believable and is thus FOUND AS FACT.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-89b(1)

Under section 89b(1) of the Act, Mr. Hinkle was required to establish, by clear and convincing evidence, that he possesses finanacial stability, integrity and responsiblity. The Division raised concern regarding the applicant's failure to declare reimbursement income on his 1974 and 1975 income tax returns, over a purported conversation between the applicant and Richard Ferry regarding "skimming" and over the offer of employment to Herbert Eugene Clark.

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With regard to the applicant's admitted failure to declare reimbursement income from his employment at DEWC on his 1974 and 1975 income tax returns, it was evident that the omission was an inadvertent error. There was no evidence which would indicate that the omission was a knowing, purposeful or intentional act. Nevertheless, the error was serious in nature by virtue of its magnitude. However, given the explanation of the reasons for the omission and the manner in which the applicant has conducted his personal and business affairs at all other times, the error in his income tax returns does not reflect adversely upon the applicant. Further, the applicant has clearly and convincingly established that he possesses the requisite degree of financial stability, integrity and responsibility for licensure.

I **CONCLUDE** that Mr. Hinkle has established, by clear and convincing evidence, his financial stability, integrity and responsibility.

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

Under section 89b(2) of the Act, Mr. Hinkle was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 190 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's denial of knowledge of payment for "escort services" at The Mint and the applicant's conversation with Mr. Ferry.

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The evidence clearly established that there was no "escort service" or toleration of prostitution at The Mint during the applicant's tenure as general manager, and that he had no reason to believe that such activities were in existence. There was no evidence which would reflect adversely upon the applicant's character, honesty and integrity.

The conversation with Mr. Ferry has previously been put to rest.

The applicant has, by means of his own testimony, the testimony of others, affidavits and documentary evidence, refuted beyond any doubt the accusations of misconduct which have been raised against him. Further, this evidence has demonstrated to an overwhelming degree that the applicant has very high personal and business standards. In addition, the applicant is a tireless supporter of community and charitable interests. An examination of the "whole man" clearly and convincingly establishes that Mr. Hinkle 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 the applicant has established, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2) of the Act.

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

Under section 89b(3) of the Act, Mr. Hinkle was required to establish, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency as a casino key employee. The Division has raised the issues of applicant's conduct in regard to the system of internal controls in existence at the RNHC and the unscheduled slot drop conducted at the RNHC on December 31, 1977.

It was well established that the applicant only accepted the preexisting system of internal controls in order to commence operations at RNHC. The applicant intended to — and actively pursued efforts to — upgrade the system of internal controls. These efforts were impeded to some degree by the construction of RNHC. The applicant was

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successful in the upgrade of the system in many phases of RNHC operations. The fact that the upgrade was not completed for some of the casino and for the accounting functions was due to Dr. Mullis. The applicant's efforts to upgrade the system of internal controls at the RNHC are, in fact, very positive indications of the high level of business integrity which he possesses.

The failure to notify the Nevada Gaming Control Board of the unscheduled slot drop at RNHC on December 31, 1977, constituted a minor noncompliance with Nevada's regulatory scheme. It was well established that Mr. Paul was the designated official who failed to notify the Board. Although the applicant was ultimately responsible for the RNHC compliance with the regulatory scheme, this incident does not adversely reflect upon his business ability or business integrity. In fact, the unscheduled slot drop was otherwise carried out in full compliance with the system of internal controls.

The applicant's very successful employment history within the gaming industry, the opinions of others concerning the applicant's business abilities and integrity, and his reputation in that regard, speak well enough of his business ability, casino experience and business integrity that no further elaboration is necessary.

I **CONCLUDE** that Mr. Hinkle has established, by clear and convincing evidence, that he has sufficient business ability, casino experience and business integrity to establish the reasonable likelihood of success and efficiency as a casino key employee.

ORDER OF DISPOSTION

I **ORDER** that the application of Jess W. Hinkle for licensure as a casino key employee be **GRANTED.**

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

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

December 6, 1982
DATE

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

Receipt Acknowledged:

December 7, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Dec. 9, 1982
DATE

Ronald L. Parker/pa
OFFICE OF ADMINISTRATIVE LAW

ij

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LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-1, Jess W. Hinkle, filed July 31, 1979 (299 pages)

P-1 Affidavit of H. Eugene Clark, August 26, 1981 (5 pages)

P-2 Affidavit of Marlyn E. Mills, September 9, 1981 (3 pages)

P-2A Affidavit of Marlyn E. Mills, October 15, 1982 (2 pages)

P-3 Affidavit of James E. Jennings, September 9, 1981 (2 pages)

P-4 Affidavit of Richard E. Paul, August 25, 1981 (10 pages)

P-5 Affidavit of Mark Alden, October 9, 1981 (7 pages)

P-6 Affidavit of Mark Alden, August 20, 1981 (9 pages)

P-8 Minutes of Meeting of Administrative Board of Reno's New Horseshoe Club, October 21, 1977 (4 pages)

P-9 Transcription of Tape Recording made by Richard E. Paul, September 26, 1981 (12 pages)

P-10 Letter to Deputy Chief Gene Clark from Jess W. Hinkle, August 12, 1975 (2 pages)

P-11 Letter to William M. Dougall, President, from Gene Clark, Deputy Chief, September 13, 1976

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P-12 Release of Gene Clark, September 14, 1976

P-13 Letter to Gene Clark, Deputy Chief, from William M. Dougall, September 27, 1976

P-14 Pre-incorporation Agreement between Tom N. Mullis and Jess W. Hinkle, January 17, 1977 (6 pages)

P-15 Draft of Statement of Financial Position for Reno's New Horseshoe Club by Chanslor, Barbieri and DeWhitt, Certified Public Accountants, May 22, 1978, and Draft prepared by Jess W. Hinkle, May 24, 1978 (3 pages)

P-18 Affidavit of Tom Roley, October 14, 1982 (26 pages)

P-20 Affidavit of James J. McCallum, October 8, 1982 (4 pages)

P-21 Affidavit of Larry Eugene Mullin, October 15, 1982 (4 pages)

P-22 Affidavit of Jerry Price, October 2, 1982 (3 pages)

P-23 Affidavit of Andrew Zorne, October 5, 1982 (5 pages)

P-24 In re Mullis-Hinkle, Inc., d/b/a Horseshoe Club, United States District Court of the District of Nevada, Bankruptcy 80-00014, Deposition of Mark Alden, February 4, 1980 (33 pages)

P-25 Problems in Determining the Suitability of a Casino License Applicant: Legal and Ethical Issues, by William J. Downey, October 19, 1981 (14 pages)

P-27 Affidavit of Mark Alden, October 13, 1982 (3 pages)

P-28 Affidavit of Chaplain Jerome Blankinship, October 15, 1982 (3 pages)

P-29 Affidavit of Donald F. Blacker, September 30, 1982 (3 pages)

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P-30 Affidavit of Vernon Daniel, October 8, 1982 (4 pages)

P-31 Affidavit of Nick Dolo, October 8, 1982 (4 pages)

P-32 Affidavit of Philip Hannifin, September 30, 1982 (3 pages)

P-33 Affidavit of Arthur A. Marton, October 12, 1982 (3 pages)

P-34 Affidavit of Georgia Paxson-Steinfals, October 5, 1982 (3 pages)

P-35 Affidavit of Frank Scott, October 12, 1982 (3 pages)

R-1 1975 Personal Income Tax Return, Jess W. and Sondra K. Hinkle (28 pages)

R-2 1974 Personal Income Tax Return for Jess W. and Sondra K. Hinkle (19 pages)

R-3 Letter to Jess Hinkle from Gerry S. Ballard, May 29, 1981 (3 pages)

R-4 Memorandum to Horseshoe Club File from Dave Wood, April 28, 1978 (4 pages)

R-5 Memorandum to Archie Granata from Dave Wood, March 21, 1978 (8 pages)

R-6 Letter to Board of Directors of Mullis-Hinkle, Inc., from Chanslor, Barbieri and DeWhitt, Certified Public Accountants, May 22, 1978 (2 pages)

R-7 Copy of page 39 of Prospectus from the Del E. Webb Corporation, September 28, 1978

R-8 Internal Revenue Service — Preliminary Audit Findings, Del E. Webb Corporation, July 2, 1974

R-9 Internal Revenue Service — Notice of Proposed Adjustments for the Del E. Webb Corporation

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R-10 Letter to George Griffin from Richard N. Ferry, December 1, 1978 (2 pages)

R-11 Letter to Richard N. Ferry from Raymond G. Boyd, November 27, 1978

R-12 In the Matter of the Application of Herbert Eugene Clark for Licensure for Chief of Security of Penthouse, Excerpt of Sworn Interview taken by the Division of Gaming Enforcement, January 23, 1980 (8 pages)

R-13 Copy of Check payable to J. W. Hinkle drawn from the account of the Sahara-Nevada Corporation, March 10, 1975, and Statement of Items for Reimbursement prepared by Mrs. Hinkle, February 1975 (2 pages)

R-14 Copy of Check payable to J. W. Hinkle drawn from the account of the Sahara-Nevada Corporation, May 14, 1974, and Statement of Items for Reimbursement prepared by Mrs. Hinkle, April 1974

R-15 Copy of Check payable to J. W. Hinkle drawn from the account of the Sahara-Nevada Corporation, May 19, 1975, and Statement of Items for Reimbursement prepared by Mrs. Hinkle, April 19, 1975

EXHIBITS NOT OFFERED INTO EVIDENCE

P-16

P-17

P-19

EXHIBIT NOT ADMITTED INTO EVIDENCE

P-26Id. In re Mullis-Hinkle, Inc., d/b/a Horseshoe Club, Bankrupt, United States District Court for the District of Nevada, Bankruptcy 80-00014, Deposition of David Mark Azadian, February 4, 1980 (42 pages)

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WITNESS LIST

For the Applicant:

Gerald Ballard
Tommy L. Ballard
Steven J. Batzer
Shannon Bybee, Jr.
William J. Downey
Abner J. Gelula
Sean Grady
Jess W. Hinkle
David Jacobson, Jr.
Rabbi Aaron Krauss
Thomas McNulty
Louis B. Paludi
David W. Schmidt
Dr. Joseph G. Stella
Lawrence J. Walker
Rubin Wyskin

For the Respondent:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-63
OAL DOCKET NO. CCC 9578-82
APP. NO. 21317-21

IN THE MATTER OF THE APPLICATION
OF FRANKIE HOLDEN FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on April 25, 1983, recommending that the casino employee license application of Frankie Holden be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on June 1, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Frankie Holden,

IT IS on this 1st day of June 1983, 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 Frankie Holden 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, provided, however, that no license credential shall issue until the Commission receives a certificate of completion of the requisite training as required by N.J.A.C. 19:44-8.4, which certificate shall issue upon the applicant's completion of the fee arrangement described in a letter dated May 31, 1983, from Paul C. Stolfo, corporate secretary of Atlantic Casino Training Academy; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 1, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 9578-82

AGENCY DKT. NO. 82-EA-63

FRANKIE HOLDEN,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

Frankie Holden, petitioner, Pro Se

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

Record Closed: March 11, 1983 Decided: April 25, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Frankie Holden to the Casino Control Commission for a casino employee license permitting him to work in a casino as a craps dealer. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

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

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2. Whether the petitioner, with specific reference to his disorderly persons arrests in 1968, 1969 and 1979, has failed to reveal a fact material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner as a casino employee by letter report to the Casino Control Commission, dated March 18, 1982. Subsequently, the petitioner requested a hearing on his application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner is a 34-year-old resident of Cardiff, New Jersey. He is married and is the father of a 14-year-old son and a 12-year-old daughter.

The petitioner was born and raised in Florida. His formal education was completed through the 11th grade and he is presently studying at home for his equivalency diploma. He successfully completed a craps dealer course offered by the Atlantic Casino Training Academy. However, he was never awarded a certificate of completion because he had not finished paying for the course. The Division of Gaming Enforcement has raised no objection concerning the petitioner's casino ability.

The petitioner has been employed in the housekeeping department of Bally's Park Place Casino since November 6, 1982. The duties of this position include general sweeping and cleaning. Prior to this employment, the petitioner worked in the construction industry for approximately 12 years. Wishing to provide adequate support for his family, despite the poor outlook in the construction industry, the petitioner has chosen to pursue a career in the legalized gaming industry.

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At the hearing, the petitioner presented letters from friends, relatives and neighbors. These letters, which were admitted into evidence as exhibits P-1 to P-6, collectively offer the opinion that the petitioner is a dependable, honest and hard-working family man, who would be well-suited for licensure as a casino employee.

The petitioner testified with candor and sincerity concerning his record of disorderly persons arrests and convictions. The petitioner's first contact with law enforcement occurred in 1968, when he was 19 years old. At that time, the petitioner had returned to his apartment after work and discovered that he had been locked out by his landlord. When the landlord stated that he would not permit the petitioner to obtain his belongings, the petitioner advised the landlord that he was going to call the police. Subsequently, the landlord came toward the petitioner carrying a handgun. When the police arrived, the landlord stated that the petitioner had threatened him with a jack handle. The petitioner was arrested by the Pleasantville, New Jersey, police and charged with assault, in violation of N.J.S.A. 2A:170-26. According to the petitioner, he spent approximately 20 minutes at police headquarters and he did not believe that he was fingerprinted or photographed. The petitioner testified that he thought he had been found not guilty in municipal court. However, the record of court action in this matter (Exhibit R-4) reveals that the petitioner was sentenced to 30 days in the county jail, which sentence was suspended.

The petitioner's next encounter with the police occurred in 1969, when he was charged with larceny, in violation of N.J.S.A. 2A:119-2. The petitioner explained that the complainant was his employer, who operated a restaurant. The petitioner was charged with taking a money box containing $155 from his employer's automobile. According to the petitioner, he was placed in a cell by the Pleasantville police, and was required to post bail before being released. It was the testimony of the petitioner that a fellow employee had actually taken the money box from their employer's automobile. The charge against the petitioner was subsequently dismissed in the Pleasantville Municipal Court (Exhibit R-5).

The petitioner's final contact with law enforcement occurred in 1979. At that time, the petitioner ordered wallboard from a supply house and paid for the purchase with a check in the amount of $593.78. The petitioner told the supply house manager that he had just deposited a check for $900, which he expected would be cleared into his account within a few days. As a result, the petitioner asked the supply house manager to wait a

few days before attempting to cash the check which the petitioner gave him for the wallboard purchase. However, the supply house manager did not wait to cash the petitioner's check. When he was informed that there were insufficient funds in the petitioner's account to cover the check, the supply house manager filed a complaint against the petitioner, charging him with fraud, in violation of N.J.S.A. 2A:111-15. When the petitioner offered the complainant $600 in cash, the complainant would not accept it, saying that he had already turned the matter over to the Pleasantville police. The petitioner then appeared before the court clerk and the police were summoned. The petitioner was released after depositing the $600 as bail.

The charge against the petitioner was downgraded to making a check with intent to defraud, a disorderly persons offense in violation of N.J.S.A. 2A:170-50.4. In municipal court, the petitioner was fined $100 and $25 costs. The petitioner was also ordered to make restitution to the complainant within 30 days (Exhibit R-6).

The petitioner did not disclose his three encounters with law enforcement in response to question No. 46 of his Personal History Disclosure Form (Exhibit R-2), which requires complete disclosure of an applicant's arrest and conviction record. In regard to the 1968 assault charge and the 1969 larceny charge, the petitioner stated that he did not realize there would be a record of these matters and he did not know that this was the type of information which was sought by question No. 46 of the Personal History Disclosure Form. According to the petitioner, he understood question No. 46 to be seeking information concerning offenses for which an applicant was convicted and imprisoned. In regard to the 1979 incident concerning the check for which there were insufficient funds, the petitioner explained that he had not thought of this incident at the time he prepared his Personal History Disclosure Form. It was the sincere and credible testimony of the petitioner that it was not his intention to hide any information at the time he prepared his disclosure form.

Kathleen Holden, the petitioner's wife, testified on behalf of the petitioner that she assisted him in the preparation of his disclosure form. According to Mrs. Holden, she read question No. 46 and its additional instructions. After discussing the matter with her husband, she concluded that it was not necessary for him to disclose the three incidents because she felt they were not the type of information which was requested to be disclosed in response to question No. 46. Mrs. Holden's testimony was sincere and entirely worthy of credit.

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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 also incorporates the disqualification criteria set forth in Section 86 of the act. Section 86a provides that licensure shall be denied to any applicant disqualified on the basis of his failure to prove, by clear and convincing evidence, his affirmative licensure criteria.

Pursuant to Section 86b of the act, licensure shall be denied to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. However, disqualification will not ensue when it has been demonstrated that the applicant's failure to provide requested information was inadvertent, ignorant or absent bad faith. In the Matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Docket No. 79-CL-1 (1979).

It is undisputed that the petitioner did not reveal his record of disorderly persons arrest and convictions on his Personal History Disclosure Form. However, the petitioner and his wife testified credibly that the information would have been disclosed had they realized that it was the type of information which was requested by question No. 46 on the disclosure form. Since the petitioner's failure to disclose was absent bad faith, I **CONCLUDE** that the petitioner is not disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

Ample evidence exists in the record to support the petitioner's reputation for good character, honesty and integrity. Based upon this evidence, and upon my evaluation of the testimony of the petitioner, I further **CONCLUDE** that he actually possesses the degree of good character, honesty and integrity requisite for licensure as a casino employee.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Frankie Holden for licensure as a casino employee be **GRANTED.**

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

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

April 25, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

April 25, 1983
DATE

Nancy I. Stubbs
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

April 27, 1983
DATE

Ronald L. Parker/jm
OFFICE OF ADMINISTRATIVE LAW

bm

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WITNESSES:

For the Petitioner:

Frankie Holden
Kathleen Holden

For the Respondent:

None

INVENTORY OF EXHIBITS:

For the Petitioner:

P-1 Letter from Kathleen Holden, dated March 10, 1983
P-2 Letter from A.W. Whittaker, dated March 1, 1983
P-3 Letter from Mr. and Mrs. Robinson, dated March 3, 1983
P-4 Letter from Marjorie Mastro, dated March 6, 1983
P-5 Letter from Mr. and Mrs. Thomas, dated March 9, 1983
P-6 Letter from Marie Meade, dated March 3, 1983

For the Respondent:

R-1 Not in evidence
R-2 Personal History Disclosure Form
R-3 Not in evidence
R-4 Summons, dated August 28, 1968
R-5 Complaint, dated March 28, 1969
R-6 Complaint, dated July 5, 1979
R-7 Not in evidence

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-46
OAL DOCKET NO. CCC 9469-82
REGISTRATION NO. 26893-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL ORDER
v.	:	
HARRY R. HURLEY		
Respondent.	:	

This matter having been opened to the Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on May 13, 1983, recommending that the Complaint of the Division of Gaming Enforcement be dismissed; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of June 22, 1983, to affirm and adopt the said Initial Decision and to dismiss the Complaint of the Division of Gaming Enforcement with prejudice,

IT IS on this 24th day of June 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the Complaint of the Division of Gaming Enforcement be and hereby is dismissed with prejudice based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS [illegible]
SENIOR ASSISTANT COUNSEL

DATED: June 24, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 9469-82

AGENCY DKT. NO. 82-46

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

v.

HARRY R. HURLEY,
Respondent.

APPEARANCES:

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

D. William Subin, Esq., for respondent (Subin, Armstrong and Armstrong, attorneys)

Record Closed: April 13, 1983 Decided: May 12, 1983

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

The Division of Gaming Enforcement seeks revocation of Harry R. Hurley's registration as a casino hotel employee. The Division originally filed a complaint with the Casino Control Commission on June 14, 1982. That complaint charged that Mr. Hurley had violated various sections of the Casino Control Act, N.J.S.A. 5:12-1 et seq., in that he had engaged in action which would constitute an offense under Section 86c of the Act and which therefore required denial of licensure pursuant to Section 86(g). In addition, the complaint charged that Mr. Hurley had committed actions which would make

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his registration as a casino hotel employee inimical to the policies of the Act and to casino operations in the State of New Jersey, therefore requiring revocation of registration pursuant to Section 86c4. The specific charges against Mr. Hurley arose out of his alleged involvement with his wife, Margaret, in a scheme in which Margaret Hurley, who was a bus greeter at the Bally's Park Place Casino, stole bus coupons and provided them to her husband, who allegedly cashed them. Further information concerning the charges and the alleged scheme will be set forth below.

Following the filing of the complaint with the Casino Control Commission, the Division moved for a suspension of Mr. Hurley's registration pending the outcome of the plenary hearing. On July 16, 1982, the Commission denied the application for suspension as being "not warranted under the circumstances presented." The respondent moved to dismiss the complaint and on October 13, 1982 the Commission denied that application and referred the matter to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Thereafter, a prehearing conference was held on November 24, 1982 and a Prehearing Order was issued on December 9, 1982. Hearings on the matter were held before Administrative Law Judge Jeff S. Masin on April 4, 1983 in Ventnor Municipal Court, April 5, 1983 in Pleasantville Municipal Court, and April 6 and 13, 1983 in the Atlantic County Courthouse in Atlantic City. For reasons which shall be explained below, following a motion by respondent at the completion of the petitioner's case, the administrative law judge determined to dismiss the complaint on the basis that, giving all reasonable inferences to the petitioner, no reasonable finder of fact could conclude that Mr. Hurley was guilty of the charges.

THE EVIDENCE

As the result of uncontradicted testimony presented by the petitioner during the hearing, it appears that personnel in the Accounting Department of Bally's Park Place Casino became suspicious during December of 1981 about the possibility of thefts of bus coupons by bus greeters employed by the hotel. These coupons were distributed to persons coming to the casino hotel on bus trips. The distribution was made by individuals known as bus greeters, who would greet the bus upon its arrival and would board the bus or hand out tickets to individuals as they alighted from the vehicle. It is sufficient at this point to note that the suspicions concerning possible thefts centered on a bus greeter named

Margaret Hurley. Eventually, Arlene McDaniel, an income maintenance clerk for Bally's, and an associate of her's named Coleen McDermott, contacted Eugene Salerno, a security investigator employed by Bally's, and brought their suspicions to his attention. Ultimately, after Salerno had conducted an investigation and after further contacts by Ms. McDermott with superiors in the Bally chain of command, Salerno was directed to call in Margaret Hurley for questioning about her possible involvement in the thefts. On January 21, 1982, Mrs. Hurley came to the Bally's Security Office, accompanied by her husband, Harry. In the course of an interview conducted by Bally investigators, Mrs. Hurley admitted that she had indeed been stealing bus coupons. She claimed that she had misrepresented to the hotel the number of individuals on various buses and had retained some of the coupons from the packages thereof. She stated that she gave some of these coupons to her husband, telling him that she had received them from bus patrons as tips, also known in the industry as tokes. According to Ms. Hurley's statement, she at no time advised her husband that in fact she had stolen the coupons which she had given to him and that they had not been given to her as tips. During the course of the interview, Harry Hurley, who was interviewed separately from his wife, denied any knowledge of the stolen nature of the coupons, but he did admit that he had indeed cashed coupons given to him by his wife. He also stated that his wife had told him that the coupons had been given to her as tips by bus patrons. Mr. Hurley denied any knowledge that he had been engaging in any criminal activity.

Following the interrogation by Bally security officers, Mr. and Mrs. Hurley were questioned by New Jersey Division of Gaming Enforcement investigators. The testimony of Investigator John Albert reflected that there was no change in any of the story provided by Mr. or Mrs. Hurley during any contact with the New Jersey State Police or the Division investigators on the night of the 21st of January. Arrests were made and complaints were signed on the 21st. The testimony of Investigator Albert indicated that the complaint against Harry Hurley, filed in the Atlantic City Municipal Court by complainant Gino Salerno, on behalf of Bally's Park Place, witnessed by Investigator Albert, had been signed at the insistance of Bally's personnel, despite the belief of the Division investigators that the evidence against Mr. Hurley was insufficient to permit the signing of a complaint. The complaint, SI 54030, P-18 in evidence, charged Mr. Hurley with conspiring with his wife to commit theft by deception, a violation of N.J.S.A. 2C:5-2. In addition, the complaint charged Hurley with receiving stolen property, in violation of N.J.S.A. 2C:20-7.

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Testimony and representations of counsel reveal that Margaret Hurley eventually was placed in the Pre-Trial Intervention Program and that the criminal complaint against Harry Hurley was administratively dismissed by the Division of Criminal Justice.

As will be noted in the subsequent discussion of this matter, after several days of testimony, it became apparent to this judge that the Division had no further evidence to indicate the guilt of Harry Hurley in connection with the charges contained in the municipal court complaint and the Division's complaint filed before the Commission other than that which came as the result of Investigator Salerno's investigation. At the hearing the evidence presented on the petitioner's case demonstrated nothing more than that Margaret Hurley had confessed to stealing coupons, had denied that she had ever told her husband that she was committing thefts, had admitted that she had given coupons to her husband, and stated that she had told him that she had received them as tips. In addition, the evidence showed that Harry Hurley had admitted receiving coupons and cashing them and had denied any knowledge of the stolen nature of the items, stating that his wife had told him she received them as tips. In addition, Investigator Salerno's testimony demonstrated that on several occasions he had observed Margaret Hurley give Harry Hurley envelopes or, on one occasion, blue coupons, in the bus receiving area of Bally's. Salerno had followed Harry Hurley up to the casino floor, where he observed Harry Hurley cash coupons in and receive money in exchange therefore or go to the cashier's window and receive money, although no passage of coupons to the cashier was observed. Neither Harry nor Margaret Hurley testified on the petitioner's case (in connection with Harry, see further discussion below).

The Division's witnesses of importance in connection with the merits of the charge were Arlene McDaniel and Eugene Salerno. Initially, at the beginning of the hearing, counsel for the Division called Harry Hurley as a witness. At that point, counsel for Hurley indicated that his client, who was not then present in the courtroom, would claim the Fifth Amendment if called as a witness and would only testify if directed to by the Superior Court. In light of this representation, the deputy attorney general presented a subpoena to the administrative law judge, commanding the appearance of Mr. Hurley on behalf of the State. The subpoena was signed and was accepted for service by Mr. Subin. Thereafter, although Harry Hurley did indeed appear in the courtroom on subsequent occasions, he was never called as a witness by the Division and never was required to

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make a determination as to whether he indeed would take the Fifth Amendment with respect to any questions presented to him. The Division initially indicated that it might go to the Superior Court for an order directing Mr. Hurley to testify, but during the course of the hearing counsel determined not to pursue Mr. Hurley's testimony. Following the hearing, counsel requested the court to infer from Mr. Hurley's refusal to testify some evidence of his guilt. However, the court concluded that because Mr. Hurley had never actually been called to the stand following his appearance at the hearing and had never refused to testify, having never claimed the Fifth Amendment in regard to any individual question, that the court could not reasonably and properly imply anything in connection with any alleged refusal of Mr. Hurley to testify. Had Mr. Hurley in fact been called once he appeared in court and had he refused to take the stand, or had he taken the stand and been questioned and asserted the Fifth Amendment privilege in connection with any specific questions put before him, it would indeed be appropriate for the court to consider drawing implications from the invocation of the amendment. However, this situation never occurred because the Division chose, for its own reasons, not to press the point. Therefore, in considering the Motion to Dismiss made at the conclusion of the petitioner's case, the court determined that it could not rely on any inferences in any way connected with the failure of Mr. Hurley to appear as a State's witness.

Arlene McDaniel testified that she was employed as a bus greeter and then as a bus greeter supervisor at Bally's Park Place Casino. Ultimately, she became the convention sales coordinator and was in charge of bus greeters. She was responsible for transposing and reconciling information received from the greeters concerning the number of patrons on buses and the number of coupons handed out to them. She described the bus coupon system in some detail. She knew Margaret Hurley, having initially worked as a bus greeter along with Mrs. Hurley. Some time around December 1981, Ms. McDaniel began to question the documentation that she was receiving from Hurley. The balancing of accounts came up short. She examined Margaret Hurley's charter bus documents more carefully and began to take physical counts on the buses themselves in order to determine how many passengers actually were on the buses. She noted what seemed to be a consistent discrepancy in Margaret's forms. She discussed the problem with Coleen McMillan, who was the supervisor on the next shift. She believes that McMillan called the matter to the attention of Gino Salerno. In January of 1982, when nothing specific appeared to have come out of any investigation that Mr. Salerno might be conducting at

the request of Ms. McMillan, McDaniel and McMillan discussed the matter and McMillan notified their supervisor, Gene McDermott. Ms. McDaniel was familiar with Harry Hurley because he and Margaret had begun dating while Ms. McDaniel was working at the bus center and he would constantly call to speak to Margaret.

Ms. McDaniel became aware that Mr. McDermott had informed his supervisor, Richard Knight, of the possibility of thefts and that Knight had apparently told Jack Portock, who was his supervisor, about the problem. Portock came down to the bus center and asked a number of questions concerning its operation. This all occurred after McMillan's memorandum to McDermott.

Eugene Salerno testified that he was contacted by Coleen McMillan concerning the alleged activities of Margaret Hurley some time around the end of November 1981. Initially, Ms. McMillan did not tell him who she thought was stealing, only indicating that she thought thefts were occurring. However, within a few days or a week at most, she told him that Margaret Hurley was the suspect. When Salerno learned this he started surveilance on Mrs. Hurley. He stated that he just watched her and that it was not an in-depth surveilance. At first, he did not understand how the coupon system worked and he asked Coleen about it because he could not tell how Margaret was stealing anything.

Salerno testified that during his investigation he observed Harry Hurley on several occasions. Coleen McMillan pointed out Harry to him. He watched Harry come into the bus depot and observed that on a number of occasions Margaret handed him a white envelope. Salerno had no idea what was in the envelope. He then saw Hurley go to the casino floor. On one occasion, he saw what he believed to be bus coupons handed to Hurley. The surveilance would generally last from 4:15 to 6:00 p.m., and Harry would come in between 5:15 and 5:45. Mr. Salerno was sure that he could identify Harry Hurley as the individual who had received the items from Margaret. It should be noted that while in his statement to the investigators, Harry Hurley had admitted that he had received coupons from his wife, Harry Hurley has a twin brother, Donald, who is a police officer. When confronted in court by the brothers Hurley, Mr. Salerno was unable to identify which one was Harry. As a result, it would appear that Mr. Salerno's identification of Harry Hurley as the individual to whom envelopes and coupons were handed, while quite likely accurate in view of Harry's admission, does not automatically mean that on each and every occasion when Salerno observed the individual who he believed to be Harry Hurley

receiving something from Margaret, that in fact it was Harry. The court will take notice that Harry and Donald Hurley are almost identical in every visible feature. Although the court believes that there may be some difference in the appearance of their noses, it is fair to say that it would be extremely difficult, if not impossible, for one not familiar with the brothers Hurley to make a positive identification of one or the other at any given time based solely on a physical observation.

Salerno testified that he at no time heard any conversations between the Hurleys at the time of the transfers. He did not follow Harry after each transfer.

Mr. Salerno testified that ultimately he notified Robert Donnell, his supervisor. Donnell told him to follow up the investigation and Salerno personally observed transfers on three or four occasions. He saw white envelopes transferred during the first couple of transfers. Salerno was within seven feet of the Hurleys when the transfers occurred at the Park Place entrance, near the bus station. He was 15 feet away from the cashier's booth when the coupons were allegedly cashed in. The bus coupons were blue. The witness made no written documentation of his observations, but orally informed Donnell of them. He could not recall the exact dates when any of the transfers occurred and was quite hazy concerning the exact period of his investigation. He claimed that he only observed Margaret for one week. He never saw Harry appear on any occasion when no transfer occurred. He did not observe what Harry did with the money. The investigation closed on or about January 21, and Mrs. Hurley was called in for questioning on the 21st. The investigation closed after Coleen McMillan sent a memo to Donnell concerning the thefts. At that point, Salerno was ordered to have Margaret Hurley come in.

Salerno described the events surrounding the questioning of Margaret and Harry Hurley on January 21. He called Margaret at home, since she was not working at the time he was directed by Donnell to have her come in for questioning. He asked her to come into the office, but did not tell her what it was about. She said that she had no ride, but that her husband would be off from work between 6:30 and 7:00 and that she would come down at that time. At approximately 7:45 Margaret and Harry Hurley arrived at the Bally office. Salerno had never really expressed any desire for Harry to come in for questioning. Margaret was placed in an office with Mr. Donnell. Salerno went into an

outer office with Harry. Harry asked what the whole thing was about and Salerno told him. He advised Harry that he was a suspect in the thefts and was told that he had been seen cashing coupons. He admitted this and said that he didn't know that they were stolen and that his wife had told him that they were given as tips by people from Philadelphia.

On cross-examination, Salerno clarified his prior testimony by indicating that although he had not originally asked for Harry to come in for questioning, he was told by his supervisors to have him come in. He knew that he was going to sign a complaint against Margaret. Between 8:00 and 8:30, either he or Donnell advised the Division of Gaming Enforcement concerning the investigation and the questioning. Had he not been instructed to call Margaret in on the 21st, Salerno would not have asked her to come in on that date. He would have attempted to get further documentation. To the best of Salerno's knowledge, neither Margaret nor Harry Hurley knew what the investigation was about or why they were called into the Bally office on the 21st. When Margaret Hurley wrote out her statement, both Harry and he were present. However, when Donnell first questioned her, prior to her writing out the statement, Harry Hurley was not in the room. When they were brought together, Margaret told Harry that she had something to say and advised him that she had stolen the tickets which she had given to him.

Further testimony concerning the questioning and arrest procedures was given by John J. Albert, an agent for the Division of Gaming Enforcement. On January 21, 1982, Albert went to Bally's in response to a call from Bally's security regarding an employee who had been stealing bus coupons. When he arrived at the security office, he spoke with Donnell and Salerno and was advised that Margaret Hurley had confessed her involvement in the thefts. Albert acted as the booking officer for the arrests. He saw both Harry and Margaret. He took them to the Division's office in Bally where he read Margaret her rights and she made a statement. In the Division office, he was with Margaret Hurley. Harry Bloom, another agent, took Harry Hurley into a separate office. Albert also gave Harry Hurley his Miranda warnings. Margaret Hurley advised Albert of her thievery, telling him that she added extra numbers to the bus passenger lists and redeemed the extra coupons for cash. She stated that she had given some to her husband, but had not told them that they were stolen. She supplied the approximate number of occasions when the thefts had occurred. Investigation and arrest reports were typed out and photographs taken.

According to Albert, the charges against Harry Hurley were lodged after he received information that Bally's wanted Hurley charged. The dates of the offenses were provided by Margaret Hurley. However, of course, Margaret at no time indicated that Harry knew that she was committing crimes rather than receiving tips. Albert could not recall Bally's security having provided any information concerning the dates of Harry Hurley's alleged involvement in the criminal activity. Albert did not sign the complaint against Harry, although he did sign the complaint against Margaret. He only witnessed Salerno's signature on the complaint against Harry. The complaint was originally to be for a disorderly person's offense, but was changed to an indictable at Salerno's insistance.

Albert explained that when he first talked to Salerno on the telephone he stated that no charges could be placed against Harry. Albert told Salerno that he did not have enough information to charge Harry, since there was no indication that Harry knew of the stolen nature of the material. However, Bally's insisted on the charge being placed against Harry.

Harry Bloom, also an agent for the Division of Gaming Enforcement, testified concerning his role in the arrest and charging of Harry and Margaret Hurley. He confirmed that Salerno pressed to have complaints signed against Harry.

Bloom questioned Harry Hurley out of the presence of Margaret. Harry admitted having cashed coupons on three or four occasions and gambling some of the money at blackjack and slots. He told Bloom that his wife had told him that certain people from Philadelphia or somewhere else who were regular customers on the buses had given her the tokens. When these people were for some reason not going to play the slots, they would give her the coupons as tips.

Bloom confirmed that he had told Salerno on the night of the arrest that there was no significant proof that Harry knew that the coupons were stolen. Salerno did not supply any particular details to evidence any information or evidence that would establish Harry's knowledge of the thefts.

DISCUSSION

As noted above, after carefully considering the evidence that was presented, the court concluded that the Division's charges should be dismissed at the conclusion of their case. It should be noted that during the testimony of Investigator Salerno, the court spoke to counsel to determine whether there was any further evidence to be presented which would be probative on the issue of Harry's knowledge. After representations by the Division that it did not intend to call Margaret or Harry Hurley to the stand and that the testimony of other witnesses, such as Colleen McDaniel, would be merely cumulative of previous testimony presented and would not add further evidence of Harry's knowledge of the thefts or of any circumstances or conditions beyond those already testified to which might lead to an inference that Harry knew that the documents were stolen, the court dealt with the motion to dismiss with the consent of counsel and with the understanding that the Division preserved its right to present further witnesses should the matter ultimately be remanded for further proceedings.

In considering whether the Division had sufficient proofs to require the respondent to go forward with his defense, the court, of course, was required to give to the Division all reasonable inferences arising from the proofs. Dolson v. Anastasia, 55 N.J. 2 (1969). Having done so, this judge could not FIND that a reasonable finder of fact could in any way conclude that Harry Hurley was guilty, by a preponderance of the evidence. It is obvious that the investigation conducted by Bally's security was somewhat less than well documented and was largely performed according to the dictates of Mr. Salerno's own view of proper investigative techniques. The investigation showed nothing more than that Margaret Hurley was passing something, on one occasion identified as bus coupons, to her husband and that he was cashing them. None of this was denied when the Hurleys were eventually confronted. Nothing in the investigation uncovered any direct proof of Harry's knowledge that the documents were stolen. There were no conversations overheard, no written evidence of his knowledge, and no unusual activity involved in connection with the transfers which would lead to the belief that the surreptitious nature of the activity implied guilty knowledge on Harry's part. Indeed, there is no proof that Harry received coupons from Margaret in white envelopes, although for purposes of the motion it would be appropriate to assume that inside the white envelopes which were handed to Harry on several occasions were bus coupons. At best, this merely shows the passage of the coupons. If one is to imply from the transfer that Harry knew that he was receiving

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stolen items, it would appear to this court that one must stretch quite a bit to come to such a conclusion. There is no evidence in the record that there was anything illegal about Margaret Hurley having given her husband coupons which she might have received as tips. If indeed she did, there was nothing illegal about Harry cashing them and using the money for whatever purposes he wished, including gambling. Since there was nothing surreptitious about the transfers, which appear to have occurred out in the open in the bus depot area where Margaret worked rather than in some dark corner or isolated area of the hotel, or off the premises, and since it was perfectly normal for a husband to meet his wife at work and perhaps receive something from her, I cannot **FIND** anything concerning the circumstances of the transfers and the cashing that would lead any reasonable finder of fact to conclude that Harry knew that he was receiving stolen documents.

It seems to this judge that the "easiest" way to find knowledge would be to assume that because Margaret and Harry were married, it was quite likely that if Margaret was giving Harry coupons which she had stolen that she would have told her husband that the coupons were indeed stolen. This, if it occurred, would implicate both Harry and Margaret in a conspiracy. However, there is no evidence of any conversations between them other than those which they admitted to, which contained nothing which demonstrates guilty knowledge. Unless one is to presume that the marital relationship in and of itself supports a conclusion that a husband would always be aware of the illegal activities of his wife, one must stretch very far to find guilty knowledge by a preponderance of the evidence. I am unwilling to impose such an extreme inference on the marital relationship. Although Margaret and Harry were married, there is certainly no evidence from which to imply that they each knew everything about each others business and there is nothing except pure supposition to support the conclusion that Margaret would have automatically informed her husband that she was engaged in illegal activity. Whatever Margaret's motives were, and despite the fact that she was permitting her husband to obtain some of the proceeds of her thefts, only supposition would support the conclusion that she let him in on her secret. Despite the fact that the state benefits from all reasonable inferences at this juncture of the case, I do not believe that there is enough evidence to survive the motion. Therefore, I have determined to grant it.

It seems clear that the court's reading of the nature of the evidence conforms to that of the Division's own investigators who, on the night of the 21st, were extremely reluctant, and in fact refused, to sign a complaint against Harry Hurley. While by no means suggesting that the police officers were lawyers, or that their determinations were

controlling, I believe that in this case they saw, as does this court, a fatal flaw in the position of the complainant against Harry Hurley. Mr. Salerno and his employers may have honestly believed that if Margaret knew, Harry must have known. However, convictions of criminal offenses, and findings of guilt at the civil level, must be supported by something more than what can perhaps best be described as the "he must have known" supposition.

Given all of the evidence before me, and giving to the state all of the legal benefits which it is entitled to at this juncture of the case, I **CONCLUDE** that the Division of Gaming Enforcement has failed to establish by a preponderance of the evidence sufficient reasonable evidence upon which a finding of guilt could be returned against Mr. Hurley. Therefore, it is **ORDERED** that the Division's charges be **DISMISSED.**

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

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

May 12, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

May 13, 1983
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

May 17, 1983
DATE

Ronald L. Lakenfox
OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-135
OAL DOCKET NO. CCC 8071-82
APP. NOS. 01648-11 & 05917-21

IN THE MATTER OF THE APPLICATIONS OF NICHOLAS FRANK IMPERATO FOR A CASINO KEY EMPLOYEE LICENSE AND RENEWAL OF HIS CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on May 10, 1983, recommending that the applications of Nicholas Frank Imperato for a casino key employee license and renewal of his casino employee license be denied; and Nicholas Frank Imperato having filed exceptions to the Initial Decision on June 3, 1983, to which the Division of Gaming Enforcement filed a response on June 9, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on June 22, 1983, to affirm and adopt the said Initial Decision and to deny the aforementioned applications of Nicholas Frank Imperato,

IT IS on this 23rd day of June 1983, 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 applications of Nicholas Frank Imperato for a casino key employee license and renewal of his casino employee license be and hereby are denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Nicholas Frank Imperato is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Nicholas Frank Imperato, the Division of Gaming Enforcement and the authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 23, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
MAY 10 1983
CASINO CONTROL COMMISSION

INITIAL DECISION

OAL DKT. NO. CCC 8071-82

AGENCY DKT. NO. 82-EA-135

(Record Partially Sealed)

NICHOLAS FRANK IMPERATO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Alfred J. Bennington, Jr., Esq., for petitioner

William J. Walsh, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: March 17, 1983 Decided: May 9, 1983

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

STATEMENT OF THE CASE

Petitioner Nicholas Frank Imperato seeks renewal of his casino employee license which permits him to work in a casino as a blackjack and roulette floor person, and he also seeks licensure as a casino key employee, which would permit him to work in a casino as a pit boss. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issue to be determined in this matter is as follows:

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Whether the petitioner, with specific reference to his allegedly unlawful deductions for mortgage interest on his 1976 federal income tax return and for charitable contributions on his 1981 federal income tax return, lacks the requisite good character, honesty and integrity for licensure, within the meaning of Section 89b(2) of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner as a casino key employee, and to the renewal of the licensure of the petitioner as a casino employee, by letter report to the Casino Control Commission, dated July 8, 1982. Upon receipt of the letter report from the Division of Gaming Enforcement, the Casino Control Commission informed the petitioner that there was a substantial possibility that his applications would be denied and that he had a right to a hearing. Subsequently, the petitioner requested a hearing on his applications and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

Few of the material facts in this matter are in dispute. The petitioner is a 48-year-old resident of Margate, New Jersey. For the last three and one-half years, the petitioner has been employed by Caesar's Boardwalk Regency Casino as a floor person. Prior to his employment in the legalized gaming industry in New Jersey, the petitioner was employed as a casino dealer in Las Vegas, Nevada, for 12 years. From 1960 until 1965, the petitioner was a police officer in Miami, Florida.

The petitioner presently performs as a floor person in the games of blackjack and roulette. This employment is pursuant to a casino employee license issued by the Casino Control Commission in 1979 and renewed in 1981. The petitioner seeks renewal of this license, as well as licensure as a casino key employee, which would permit him to work as a pit boss in the areas of blackjack and roulette. The Division of Gaming Enforcement has raised no objection concerning the sufficiency of the petitioner's casino experience.

The assertion of the Division that the petitioner lacks the requisite good character, honesty and integrity for licensure arises from deductions claimed by the

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petitioner on his 1976 and 1981 federal income tax returns. As an accommodation to a friend who was unable to obtain a mortgage loan for the purchase of a home, the petitioner obtained financing and purchased the home in his own name. Although the petitioner was the named individual on the deed of trust for the property (Exhibit P-3), which was executed on May 4, 1976, his friend actually occupied the home and paid all the expenses for the property, including mortage principle and interest.

At some time after 1976, the petitioner deeded the property to his friend, who continued to pay all expenses as before. Although the petitioner at no time paid any of the mortage interest for this property, he claimed a deduction on his 1976 federal income tax return (Exhibit R-2) for interest on the home mortgage in the amount of $3,532.

In May 1981, the petitioner met with Robert Johnson, who held himself out to be a minister in the Freedom Church of Revelation. Mr. Johnson had been promoting the church at Atlantic City casinos, attempting to interest casino employees in becoming ministers of the church. The petitioner listened to Mr. Johnson's "sales pitch" and he reviewed a packet of promotional materials (Exhibit P-1) which he was given.

The petitioner met with Mr. Johnson on four or five occasions. It appeared to the petitioner that becoming a minister in the Freedom Church of Revelation would provide him with a charitable deduction on his federal income tax return which could save him a considerable sum of money by reducing his income tax. This would be accomplished by claiming that the paychecks which the petitioner deposited into his own bank account were contributions to his church. The petitioner was told that he would then be entitled to use the income which he gave his church for every purpose except to purchase food for his household and for personal servants. Even though the petitioner thought that "this is too good to be true," he paid $3,500 to Robert Johnson to become a minister in the Freedom Church of Revelation. For his money, the petitioner received a charter, a certificate of ordination as a minister, a certificate of sacramental authority and instructions on parsonage allowances and tax exemption (Exhibit P-2).

The petitioner received no training prior to his ordination. After his ordination, he attended various "missionary schools," which were training sessions conducted at area motels. At these sessions, the petitioner learned that the Freedom Church of Revelation stands for "the Bill of Rights, the Constitution and better health through nutrition, (and) holistic medicine." It is undisputed that the petitioner has never

administered a sacrament or performed any religious services as a minister of the Freedom Church of Revelation. According to the petitioner, he occasionally gave spontaneous sermons to his social guests. It is undisputed that the petitioner was the sole contributor to his congregation.

At some time during 1981, the petitioner received a newsletter from the Freedom Church of Revelation Organization which stated that ministers should open a bank account in the name of their local church to receive the deposits of contributions. When the petitioner first opened the church checking account, he would deposit his paycheck from his casino employment in either his personal checking account or his church checking account. Subsequently, the church organization suggested that the ministers first deposit paychecks in their personal accounts and then draw a check from that account to be deposited into the church account. It was the testimony of the petitioner that he normally followed this procedure, depositing half or more of his income into the church account. The petitioner acknowledged that he paid for all of his living expenses, except for food, from the church account.

In 1981, the petitioner sent $210 to the Freedom Church of Revelation in Boca Raton, Florida. In return, the petitioner received receipts indicating a donation of $21,000. On his 1981 federal income tax return, the petitioner claimed a charitable deduction of over $20,000. However, it is undisputed that he had paid only $210 to the Freedom Church of Revelation, and that the remainder of the money claimed as a deduction had been deposited into either his personal account or the church account which he controlled. As previously indicated, the money in the petitioner's church account was used to pay his personal expenses. The Internal Revenue Service is presently auditing the petitioner's 1981 federal income tax return.

Robin Cunningham, who had worked as an investigator for the Division of Gaming Enforcement, testified concerning her background investigation of the petitioner. According to Ms. Cunningham, she asked the petitioner about his payment to Robert Johnson and was informed that the money had been paid to purchase a ministry in the Freedom Church of Revelation. The petitioner told Ms. Cunningham that he had become a minister as a "tax dodge." Ms. Cunningham also asked the petitioner about the various certificates of deposit which were purchased in the joint names of the petitioner and various nieces and nephews. The petitioner stated that he had purchased the certificates of deposit in this manner "to avoid income tax."

406.

Also testifying on behalf of the Division of Gaming Enforcement was William Gammon, an agent for the Internal Revenue Service who is presently assigned as Project Coordinator of Illegal Tax Protestors. According to Mr. Gammon, the Internal Revenue Service made an initial determination that the petitioner's charitable deduction claimed on his 1981 federal income tax return was not allowable. Mr. Gammon acknowledged that the Freedom Church of Revelation Organization was exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code in 1981. In September 1982, the Internal Revenue Service revoked the exempt status of the church, contending that it no longer complied with the provisions of Section 501 of the Internal Revenue Code. Mr. Gammon also acknowledged that the Freedom Church of Revelation has brought a Complaint for Declaratory Judgment against the Commissioner of Internal Revenue seeking to determine the controversy concernings its exempt status (Exhibit P-5). According to Mr. Gammon, whether or not the Freedom Church of Revelation remains on the Internal Revenue Service exemption list does not change the manner in which the Internal Revenue Service treats the petitioner's attempted charitable deduction. The deduction would still be disallowed because the alleged contributions never left the dominion or control of the petitioner, as required under Section 170 of the Internal Revenue Code.

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

During his testimony, the petitioner stated that there were key employees in the Atlantic City casino industry presently involved with the Freedom Church of Revelation. When asked to identify the key employees, the petitioner balked, claiming that his casino career and personal safety would be jeopardized if he answered. The petitioner was then required to answer the question, but in the interests of protecting his casino career and personal safety, the record of that portion of his testimony was sealed.

CONCLUSIONS OF LAW

Pursuant to Sections 89 and 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license and for a casino key employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. The petitioner offered no evidence in regard to his reputation concerning these attributes. However, the material issue in this matter is whether the petitioner actually possesses the degree of good character, honesty and integrity requisite for licensure.

The relevant and credible evidence in the record clearly establishes that the petitioner engaged in a pattern of false reporting on his federal income tax returns which was intended to avoid the payment of taxes. On his 1976 income tax return, the petitioner claimed a deduction for interest on a home mortgage, knowing that he had not, in fact, actually paid the interest. The petitioner joined the Freedom Church of Revelation as a "tax dodge," and obtained receipts from the church indicating contributions in excess of $20,000, when he had actually paid only $210 to the church. The remainder of his purported charitable contribution in excess of $20,000 was used to pay for his ordinary living expenses.

The petitioner paid $3,500 to obtain his ordination in the Freedom Church of Revelation. Nevertheless, the petitioner administered no sacraments of the church and, in fact, performed no religious services whatsoever. It is clear that the petitioner had no intention of contributing a significant portion of his income to the Freedom Church of Revelation for religious purposes. Rather, the "charitable contributions" claimed by the petitioner were not genuine charitable gifts at all, but were deposits into accounts supporting the petitioner's personal purposes, in furtherance of the scheme to avoid the payment of taxes.

It is apparent from the undisputed facts in this matter that the petitioner knew or should have known that the deductions claimed by him on his 1976 and 1981 income tax returns were not proper. The circumstances of these improper deductions represent more than a lapse of judgment by the petitioner. The circumstances also impact adversely upon the petitioner's demonstration of his good character, honesty and integrity. Based upon the relevant and credible evidence in the record, and the foregoing discussion, I **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of Section 89b(2) of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the applications of the petitioner, Nicholas Frank Imperato, for renewal of a casino employee license, permitting him to work in a casino as a blackjack and roulette floor person, and for a casino key employee license, permitting him to work in a casino as a pit boss, be **DENIED.**

408.

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

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

May 9, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

May 10, 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

bm

409.

INVENTORY OF EXHIBITS

For the Petitioner:

P-1 Promotional materials
P-2 Charter and Certificate of Ordination
P-3 Mortgage Deed of Trust
P-4 Payment of Tip Income Tax Liability
P-5 Suit for Declaratory Judgment

For the Respondent:

R-1 Personal History Disclosure Form
R-2 United States Income Tax Return for 1976
R-3 Tax Information Authorization
R-4 United States Income Tax Return for 1981
R-5 Internal Revenue Service thirty-day letter
R-6 Audit Report Transmittal
R-7 Sworn Interview
R-8 Bank Records
R-9 Depositor's Agreement
R-10 Letter, dated May 14, 1982

410.

WITNESSES

For the Petitioner:

Nicholas Frank Imperato

For the Respondent:

Ronald Walraven

Robin Cunningham

William Gammon

Robert Browne

411.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-195
OAL DOCKET NO. CCC 09455-82
APP. NO. 31624-22

IN THE MATTER OF THE APPLICATION
OF ROBERT S. JOHNSON FOR A
CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on April 11, 1983, recommending that the application of Robert S. Johnson for a casino employee license be denied; and Robert S. Johnson having filed exceptions to the Initial Decision on April 21, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on June 8, 1983, to reject the said Initial Decision and to grant the casino employee license application of Robert S. Johnson,

IT IS on this 24th day of June 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Robert S. Johnson be and hereby is granted based upon the following Commission findings:

(1) Robert S. Johnson's failure to disclose information pertaining to his criminal record and use of drugs with respect to questions 46 and 49, respectively, on the personal history disclosure form was not intentional or in conscious disregard of the regulatory process.

(2) There being no other basis for objection other than the nondisclosures which have been found to be unintentional, Robert S. Johnson has established by clear and convincing evidence his good character, honesty and integrity.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 24, 1983

FILED
NEW JERSEY
APR 11 1983
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 9455-82

AGENCY DKT. NO. 82-EA-195

ROBERT S. JOHNSON,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

Robert S. Johnson, Pro Se

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

Record Closed: February 18, 1983 Decided: April 11, 1983

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Robert S. Johnson to the Casino Control Commission for a license permitting him to work in a casino as an alcoholic beverage employee. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner, with specific reference to his record of arrests and convictions in 1975, and with specific reference to his dismissal from a drug rehabilitation program on January 31, 1977, has established by

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

2. Whether the petitioner, with specific reference to his aforementioned arrests and convictions, and with specific reference to his conduct resulting in his dismissal from the drug rehabilitation program on January 31, 1977, has been convicted of or has committed any 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.

3. Whether the petitioner, with specific reference to his failure to disclose all but one of his aforementioned 1975 arrests and convictions, has failed to reveal any fact material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the act.

4. Whether the petitioner, notwithstanding any possible disqualification which may exist pursuant to section 86c of the act, has demonstrated his rehabilitation, within the meaning of section 90h of the act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objections to the licensure of the petitioner by letter report to the Casino Control Commission, dated September 14, 1982. The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 26-year-old resident of Vineland, New Jersey. In addition to being a high school graduate, the petitioner satisfactorily completed the course of study at the Jersey Shore Bartending School in November 1977. In June 1981, the petitioner satisfactorily

completed the curriculum in building maintenance at the Atlantic County Area Vocational Technical School (Exhibits P-3, P-4 and P-5).

From January 1978 until May 1979, the petitioner was employed as a chemical machine operator by Partical Size Technology in Lakewood, New Jersey. From May until August 1979, the petitioner worked as a roofer, and from August until October 1979, the petitioner was employed as a door-to-door salesman. In 1980 and 1981, the petitioner worked both as a janitor and as a gardener.

From July 1981 until January 1982, the petitioner was employed as a bartender's helper at the Claridge Casino Hotel in Atlantic City, New Jersey. The petitioner was terminated from this position when he was unable to renew a temporary casino employee license. Letters from Beverage Manager Arthur Sepe (Exhibit P-1) and Director of Food and Beverage Barry Cregan (Exhibit P-2) offered the opinion that the petitioner was of good character, sincere, honest, and an overall good employee. According to Mr. Cregan, if the petitioner were licensed and there were a position available, he would definitely be rehired within the beverage department at the Claridge Hotel and Casino.

Since the age of 16, the petitioner had been involved in amateur boxing. In 1981, he became a professional boxer and he was licensed to box in the States of New York, Pennsylvania, Massachusetts and New Jersey.

All of the petitioner's criminal and disorderly persons arrests occurred in 1975, when the petitioner was 18 years old. He was first arrested on January 3, 1975, for larceny of the mail, contrary to N.J.S.A. 2A:17030.1(b). According to the petitioner, this offense occurred when he and a friend were walking down a street and they removed some mail from a mailbox and threw it away. The petitioner explained that this act was one of ignorance and stupidity. The petitioner was convicted of this offense and was sentenced to a ten-day jail term, which was suspended. He was also placed on probation and was fined $75.

The petitioner was next arrested on August 31, 1975, for the offenses of breaking and entering with intent to steal, malicious damage to property, larceny and possession of burglary tools. According to the petitioner, these offenses occurred when he and a friend used a propane torch to break into the coin boxes of washing machines

located in laundry rooms on the campus of Rutgers University, in New Brunswick, New Jersey (Exhibits R-6 through R-25). As a result of these offenses, the petitioner was indicted by the Middlesex County Grand Jury for entering without breaking with intent to steal, contrary to N.J.S.A. 2A:94-1, and possession of burglary tools, contrary to N.J.S.A. 2A:94-3. On June 29, 1976, the petitioner plead guilty to two counts of the indictment and he was sentenced concurrently on both counts to one year in the county work house, with the sentence of incarceration suspended. The petitioner was placed on probation for a period of two years and the remaining three counts of the indictment were dismissed. The sentencing judge gave the following statement of reasons for the sentence which he imposed (Exhibit R-26):

> This defendent has a dismal history but has apparently been making real efforts toward a change in his life style under supervision and that should be encouraged. A custodial sentence would merely serve to interupt [sic] what could be a beneficial trend.

Prior to the imposition of the aforementioned sentence, the petitioner was arrested three more times. On September 15, 1975, the petitioner was arrested for possession of stolen property, in violation of N.J.S.A. 2A:170-41. The petitioner explained that this arrest occurred when a friend stole an expensive cut of meat from a supermarket and placed it in the petitioner's car. On September 22, 1975, the petitioner was convicted of this offense and he was fined $50.

On October 24, 1975, the petitioner was arrested for shoplifting, contrary to the provisions of N.J.S.A. 2A:170-97. According to the petitioner, he was arrested by store security officers when they believed that he intended to leave the store without paying for a golf glove. The petitioner asserted that he had not intended to take the golf glove without paying for it, but he was convicted of this offense and was fined $10.

The petitioner's final arrest occurred on November 21, 1975, when he was arrested for breaking and entering, contrary to N.J.S.A. 2A:94-1 and larceny, contrary to N.J.S.A. 2A:119-2 (Exhibit R-30). The petitioner explained that he and a friend broke into a home and stole four rifles. The rifles were taken with the intention of selling them in order to obtain money to buy drugs. The petitioner testified that he participated in this offense at the suggestion of his friend and that by committing the crime he was living up to peer pressure. For the offense, the petitioner was indicted by the Somerset County Grand Jury. On November 16, 1976, the petitioner entered a plea of guilty to breaking and entering and grand larceny, and on January 21, 1977, the petitioner was sentenced to

an indeterminate term at the Youth Reception and Correction Center at Yardville, which sentence was suspended. The petitioner was then placed on probation for a period of three years, upon the condition that he successfully participate in a residential drug rehabilitation program at Integrity House, in Newark, New Jersey. In his reasons for sentence (Exhibit R-32), the sentencing judge provided the following warning to the petitioner:

> If you fail to take this opportunity, you can expect to be treated with severity as you will have established that your entrance into the drug program was motivated solely by a desire to avoid incarceration.

On January 31, 1977, the petitioner was dismissed by the Directors of Integrity House after engaging in sexual relations with a resident and after threatening physical violence to another resident (Exhibit R-35). On January 31, 1977, the petitioner was charged by the Somerset County Probation Department with a violation of probation in that he failed to complete successfully a drug rehabilitation program as he had been sentenced. On February 18, 1977, the petitioner pled guilty to the charge of violation of probation and it was ordered that his sentence of an indeterminate term of incarceration be executed (Exhibit R-33). According to the petitioner, he was released from the Annandale Youth Correctional Institution, in September 1977, after a period of incarceration of seven months.

In connection with his application for licensure, the petitioner filed Personal History Disclosure Form No. 2 (Exhibit J-1). Question no. 46 of the disclosure form inquires as follows: "Have you or has any member of your immediate family, (as defined on page two 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 petitioner's response to question no. 46 was, "No." In response to question no. 45, which seeks disclosure of an applicant's juvenile offense arrest record, the petitioner set forth his 1975 arrest for shoplifting. The remainder of the petitioner's arrest and conviction record was not disclosed in his Personal History Disclosure Form.

According to the petitioner, he had applied for a position as a casino hotel employee at the Golden Nugget Casino Hotel in 1979. At that time, he disclosed that he had been arrested and he was informed that he would not be hired unless his arrest was expunged. The petitioner explained that he was discouraged by this circumstance. When he later applied for a position at the Claridge Hotel and Casino, he disclosed only his

shoplifting arrest, asserting that he knew that the remainder of his arrests would be discovered. It was the petitioner's testimony that he was too confused and ashamed to remember all the dates of his offenses and to record them in his disclosure form. The petitioner testified that he really wanted to get the job at the Claridge Hotel and Casino and that he knew the Division of Gaming Enforcement Investigator would eventually discover all of the information which was not disclosed. According to the petitioner, it was not his intention to hide the information.

The petitioner also testified concerning his interview by Investigator John Stolar of the Division of Gaming Enforcement. Investigator Stolar and the petitioner first discussed the shoplifting arrest which the petitioner had disclosed on his Personal History Disclosure Form. The investigator then asked the petitioner if he had any other arrests and the petitioner said, "No." Investigator Stolar then brought to the petitioner's attention each of his undisclosed arrests, which the petitioner then acknowledged and explained. According to the petitioner, he told Investigator Stolar that he just put down the shoplifting charge because he was sure that the Division of Gaming Enforcement would find the others. Testifying on behalf of the Division of Gaming Enforcement, Investigator Stolar agreed that the petitioner explained that he had disclosed only his shoplifting arrest because he knew that the other arrests would be found when he was investigated.

The petitioner testified that he was a user of heroin and marijuana at the time of his arrest in 1975, and that his arrest on the campus of Rutgers University occurred when he was under the influence of drugs. The petitioner ended his use of herion when he went to Integrity House. However, he acknowledged at the hearing in this matter that he still occasionally smokes marijuana. Questior no. 49 of the Personal History Disclosure Form seeks disclosure of any use, distribution or possession of any narcotic, hallucinogenic, drug barbiturate or amphetamine during the past ten-year period, other than pursuant to a valid prescription issued by a licensed physician. Pursuant to this question, the petitioner was obligated to disclose such use, distribution or possession during the ten-year period preceding the filing of his disclosure form on June 12, 1981. Nevertheless, the petitioner's response to this question was "No." The petitioner's explanation was that he has answered "No" to the question, simply because he had not used heroin since 1975. The petitioner also acknowledged that he had told Investigator Stolar that he had used cocaine in 1975. The petitioner acknowledged that he had actually used heroin, rather than cocaine. He explained that he did not want to tell the investigator that he had been a heroin user.

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

As part of the process of applying for licensure as a casino employee, the petitioner twice failed to disclose his complete record of arrests and convictions. The first failure to disclose occurred when the petitioner recorded only the most minor of his arrests on his Personal History Disclosure Form. The second failure to disclose occurred when he was asked by Investigator Stolar if he had any other arrests and the petitioner responded, "No." It was not until he was actually confronted by the investigator with the remainder of his arrest and conviction record that the petitioner acknowledged and explained the remainder of his arrests and convictions. The petitioner explained his omission from his Personal History Disclosure Form by stating that he only recorded the shoplifting arrest because he knew that the Division of Gaming Enforcement would discover the remainder of his arrests and convictions. He did not explain why he first denied having any other arrests and convictions when he was interviewed by Investigator Stolar. The petitioner stated that he had not intended to hide any information. However, it is difficult to give credence to this testimony in light of his initial denial to Investigator Stolar that he had any arrests and convictions in addition to the shoplifting charge. The petitioner's lack of complete candor in the application process is also illustrated by his failure to disclose in his Personal History Disclosure Form his use of heroin and marijuana during the preceding ten-year period.

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

1. The petitioner failed to disclose on his Personal History Disclosure Form No. 2 his complete record of criminal and disorderly persons arrests and convictions.

2. The petitioner failed to disclose on his Personal History Disclosure Form his use of marijuana and heroin during the ten-year period preceding the filing of his application.

3. The petitioner's record of criminal and disorderly persons arrests and convictions, and his use of heroin and marijuana, were specifically required to be disclosed on his Personal History Disclosure Form.

4. The petitioner's failure to disclose on his Personal History Disclosure Form his complete record of criminal and disorderly persons arrests and convictions, as well as his failure to disclose his use of heroin and marijuana, resulted from a conscious disregard of the request for such information, rather than from ignorance or inadvertence.

CONCLUSIONS OF LAW

Pursuant to Section 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the Act also incorporates the disqualification criteria set forth in Section 86. Pursuant to Section 86c(4), the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the Act and to casino operations.

There is no genuine dispute concerning the nature of the petitioner's conduct and the circumstance surrounding each of his 1975 arrests and subsequent convictions. The petitioner was 18 years old at the time of each offense, and the offenses resulted in part from his drug use while succumbing to peer pressure. The petitioner has had no arrests since 1975, and he has maintained various employments since his release from incarceration in September 1977. He has obtained vocational training as a bartender and as a building maintenance technician. In addition, the petitioner was satisfactorily employed as a bartender's helper at the Claridge Casino Hotel from July 1981 until January 1982. Finally, the petitioner has obtained his license as a professional boxer in New Jersey and several other states.

It is apparent that the petitioner has overcome to a substantial degree his criminal involvement in 1975. As a result, those criminal offenses are not so significant to the question of the petitioner's licensure as to justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I **CONCLUDE** that the petitioner has not been convicted of any offense which would indicate that licensure would be inimical to the policy of the Act and to casino operations.

Pursuant to Section 86b of the Casino Control Act, the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. It is undisputed that the petitioner failed to reveal his complete record of arrests and convictions on his Personal History Disclosure Form No. 2. He also failed to disclose his use of heroin and marijuana during the ten-year period preceding his application for licensure. Having found that the petitioner's failure to disclose resulted from his conscious disregard of the request for such information, I **CONCLUDE** that the petitioner is disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

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

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Robert S. Johnson 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.

April 11, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

April 11, 1983
DATE

Nancy D. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

April 13, 1983
DATE

Ronald L. Lankenau
OFFICE OF ADMINISTRATIVE LAW

bm

INVENTORY OF EXHIBITS

JOINT EXHIBIT:

J-1 Personal History Disclosure Form No. 2 of Robert Shiloh Johnson, filed June 12, 1981

FOR THE PETITIONER:

P-1 Letter, dated February 2, 1983
P-2 Letter, dated February 14, 1983
P-3 Jersey Shore Bartending School Certificate
P-4 Franklin High School diploma
P-5 Atlantic County Area Vocational Technical School Certificate
P-6 Letter from Marjorie L. Burgess

FOR THE RESPONDENT:

R-1 State Police Criminal History Summary Record, dated June 24, 1981
R-2 State Police Request for Criminal History Record Information, dated August 10, 1981
R-3 FBI Investigation Record, dated September 8, 1981
R-4 Arrest report, dated January 3, 1975
R-5 Complaint, dated January 3, 1975
R-6 Criminal Investigation Report, dated August 30, 1975
R-7 Arrest report, dated September 2, 1975
R-8 Supplementary Investigation Report, dated September 4, 1975
R-9 Complaint, dated September 3, 1975
R-10 Criminal Investigation Report, dated August 31, 1975
R-11 Arrest Report, dated September 2, 1975
R-12 Supplementary Investigation Report, dated September 4, 1975
R-13 Complaint, dated September 3, 1975
R-14 Criminal Investigation Report, dated September 1, 1975
R-15 Arrest Report, dated September 1, 1975
R-16 Supplementary Investigation Report, dated December 3, 1975

R-17 Certificate of Miranda Warning and Waiver, dated September 1, 1975
R-18 Voluntary Statement, dated September 1, 1975
R-19 Complaint, dated September 1, 1975
R-20 Complaint, dated September 1, 1975
R-21 Criminal Investigation Report, dated September 1, 1975
R-22 Arrest Report, dated September 2, 1975
R-23 Supplementary Investigation Report, dated September 4, 1975
R-24 Complaint, dated September 3, 1975
R-25 Complaint, dated September 3, 1975
R-26 Superior Court Judgment, dated August 26, 1976
R-27 Criminal Investigation Report, dated October 24, 1975
R-28 Arrest Report, dated October 24, 1975
R-29 Transcript, dated February 28, 1983 (sic)
R-30 Arrest Report, dated November 21, 1975
R-31 Disposition Form, dated January 25, 1977
R-32 Criminal Action Judgement, dated January 21, 1977
R-33 Criminal Action Judgment, dated February 25, 1977
R-34 Letter, dated December 1976
R-35 Letter, dated February 10, 1977
R-36 Notification concerning charges of violation of Probation
R-37 Violation of Probation Presentence Report

WITNESSES

FOR THE PETITIONER:

Robert S. Johnson

FOR THE RESPONDENT:

John Stolar

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-36
OAL DOCKET NO. CCC 6287-82
LICENSE NO. 1612-11
REGISTRATION NO. 40514-40

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

COMPLAINANT,

FINAL ORDER

v.

TOMMIE JONES, JR.,

RESPONDENT.

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 23, 1982, recommending that the Respondent's casino key employee license and casino hotel employee registration be revoked, and the Respondent having filed exceptions to the Initial Decision on January 13, 1983, and the Division of Gaming Enforcement having filed a reply to the Respondent's exceptions on January 20, 1983, and the Commission having previously suspended the Respondent's casino key employee license and casino hotel employee registration by Order dated June 8, 1982; and the Commission having considered the entire record of these proceedings, resolved at its public meeting

of January 25, 1983, to modify, affirm and adopt the Initial Decision as modified and revoke the Respondent's casino key employee license and casino hotel employee registration,

IT IS on this 7th day of February 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted subject to the following modification:

> In light of the other evidence contained in the record which warrants the revocation of Respondent's casino key employee license and casino hotel employee registration, the Commission does not reach the issue of whether the Respondent's allegedly intentional failure to disclose his 1979 disorderly persons conviction on the Personal History Disclosure Form-4 constitutes a basis for revocation.

IT IS FURTHER ORDERED that the casino key employee license and casino hotel employee registration of Tommie Jones, Jr. be and hereby are revoked based upon the reasons set forth in the Initial Decision, as modified herein, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Respondent is not eligible to apply for or obtain any license, registration, qualification or approval

required under the provisions of the Casino Control Act until five years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: February 7, 1983

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

NE
DEC 23 1982
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 6287-82
AGENCY DKT. NO. 82-36

DIVISION OF GAMING ENFORCEMENT,
Petitioner
v.
TOMMIE JONES, JR.,
Respondent.

APPEARANCES:

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

John H. Fitzgerald, Esq. for respondent (Cape-Atlantic Legal Services, attorneys)

Record Closed November 8, 1982 Decided December 23, 1982

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on May 25, 1982, seeking judgment revoking the respondent's casino key employee license and casino hotel employee registration, pursuant to section 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). By Order, dated June 8, 1982, the Casino Control Commission suspended the respondent's casino key employee license and casino hotel employee registration pending final disposition of this matter, pursuant to section 109 of the act. The respondent's license and registration were suspended because of his alleged arrest on September 2, 1981 for theft by unlawful taking, in violation of N.J.S.A. 2C:20-3. The issues to be determined in this matter are as follows:

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1. Whether the respondent has engaged in conduct constituting an enumerated disqualifying offense under section 86c(1) of the Casino Control Act, or conduct constituting an offense inimical to the policies of the Casino Control Act, within the meaning of section 86c(4) of the act, thereby requiring revocation of licensure and registration, or some other sanction, pursuant to section 129 of the act.

2. Whether the respondent, with specific reference to his application for a casino hotel employee registration and his personal history disclosure form No. 4, filed with the Casino Control Commission on or about April 1, 1982, has failed to reveal any fact material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the act, thereby requiring revocation of his casino key employee license and casino hotel employee registration, or some other sanction, pursuant to section 129 of the act.

PROCEDURAL HISTORY

By letter received by the Casino Control Commission on June 21, 1982, the respondent requested a hearing concerning the complaint of the Division of Gaming Enforcement filed with the Commission on May 25, 1982. The matter was thereafter transmitted by the Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. The respondent is a 27-year-old resident of Atlantic City, New Jersey. He moved to Atlantic City from Ocean City, New Jersey in 1966. From 1973 to 1978, the respondent resided in the Wayne, New Jersey, area while obtaining a degree in urban education from William Patterson College. After completing college, the respondent returned to Atlantic City to seek a management level position in the casino industry.

It is undisputed that the respondent was arrested in December 1977 in North Haledon, New Jersey, on a charge of assault and battery. This charge against the

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respondent was dismissed. It is also undisputed that the respondent was arrested on a disorderly persons charge in Atlantic City in July 1979. The respondent was found guilty of this offense and was fined $25 and ordered to pay costs in the amount of $25.

In July 1978, the respondent was hired as a cook at Resorts International Hotel and Casino. In September 1978, the respondent received his casino employee license and was then able to obtain employment at Resorts International as a slot booth cashier. Within 60 days, he was promoted to the position of loading booth supervisor. In August 1979, the respondent was transferred to the day shift, to the position of slot booth cashier supervisor.

In approximately August 1980, the respondent was promoted to the position of assistant shift supervisor, with responsibility for approximately four or five slot booth cashiers. The respondent was promoted to the position of shift manager in September or October 1980. According to the respondent, he worked well with his supervisor, Warren Massey, until around July 1981, when Resorts International began an expansion program. At that time, the respondent began working many overtime hours. It was his opinion that he was working without the cooperation of Massey and that their relationship had begun to deteriorate. On August 8, 1981, the respondent was dismissed from his position at Resorts International for absenteeism and lateness. According to the respondent, he had been absent only five times within the previous year and had been late only five or six times. He felt these were not uncommon amounts of absences and lateness, and that he should not have been dismissed under the attendance policy in affect at Resorts International at that time. However, two reviews of his termination within the internal appeals structure existing at Resorts International upheld the decision of management to terminate the respondent.

It was the testimony of the respondent that his firing, which he attributed to a personality conflict, had made him bitter and that he was left with a bad attitude. The respondent felt that three years of hard work in the casino industry had been rewarded with his termination.

On August 17, 1981, nine days after his termination by Resorts International, the respondent was hired at the Playboy Hotel Casino in the position of slot booth cashier. The respondent's pay rate at Playboy was less than half his pay rate at Resorts. During his employment on the late shift, which began on the night of August 31, and ended on the

morning of September 1, 1981, the respondent stole $500 from his change booth and attempted to conceal this taking by inflating his coin inventory paperwork by $500. The respondent attributed his theft to his bitterness over his termination from Resorts International and the mood of self-destruction which that had caused. According to the respondent, he did not care if he was caught, because of the way he was feeling.

The respondent was summoned to Playboy and questioned concerning the shortage of $500. At that time, he admitted his theft and was arrested on September 2, 1981 and charged with theft by unlawful taking, contrary to N.J.S.A. 2C:20-3 (Exhibits P-1 through P-5).

Following his arrest, the respondent was admitted into the pretrial intervention program. Pursuant to this program, the respondent was required to make restitution and to perform 40 hours of community service, as well as to report monthly to a probation officer. The respondent performed his community service by working in an unpaid capacity as a porter and grounds keeper for the Ocean City Board of Education. The respondent satisfactorily completed the terms of the pretrial intervention program, and on June 17, 1982, the complaint against him for the offense of theft by unlawful taking was dismissed.

After his arrest for theft at the Playboy Hotel and Casino, the respondent worked as a driver for the AA Limousine Service in Atlantic City. His casino employee license had expired in September 1981 and had not been renewed. At the time of his arrest, the respondent's application for a casino key employee license was pending. In May 1982, the respondent applied for casino hotel registration and employment at the Sands Casino Hotel. It is undisputed that the respondent did not disclose his 1979 disorderly persons conviction in response to question number eight of the Personal History Disclosure Form (Exhibit P-15), which requires disclosure by the applicant of any convictions of crimes or disorderly persons offenses in New Jersey or any other jurisdiction. It should be noted that this question does not call for disclosure of arrests which did not result in convictions. It is also undisputed that the respondent did not disclose his employment at the Playboy Hotel and Casino in response to question number six of the Personal History Disclosure Form No. 4, which requires disclosure of the last three jobs which an applicant has held.

The respondent was hired by the Sands Hotel Casino as a house porter. However, he resigned from this position after approximately one week because he did not like the job. By letter (Exhibit P-13) dated April 1, 1982, the Division of Gaming Enforcement recommended to the Casino Control Commission that the casino key employee license application of the respondent be granted. This recommendation was made absent the knowledge of the respondent's arrest in September 1981 for theft by unlawful taking. The Casino Control Commission granted the respondent his casino key employee license and he was hired as a cashier at the Sands Casino Hotel. After approximately eight days of employment, the Division of Gaming Enforcement filed with the Commission its complaint seeking judgement revoking the respondent's casino key employee license and casino hotel employee registration. The respondent's casino key employee license and casino hotel employee registration were suspended by the Commission by its Order, dated June 8, 1982.

After the suspension of his license and registration, the respondent worked at the Waterfront Restaurant until August 16, 1982. Since October 16, 1982, the respondent has been employed by Atlantic Limousine.

Thomas Pratt, cashier manager for the Playboy Casino Hotel, testified on behalf of the Division of Gaming Enforcement. According to Mr. Pratt, he had been an assistant manager and a shift manager at the Resorts International Hotel and Casino. He possesses a casino key employee license and presently supervises approximately 140 employees at the Playboy Casino Hotel. When Mr. Pratt was employed by Resorts International, he recommended the hiring of the respondent for the position of slot cashier. In August 1981, Mr. Pratt hired the respondent as a slot cashier at the Playboy Casino Hotel.

Mr. Pratt assisted in the investigation of the shortage of $500 from the respondent's cashier booth. When the respondent was determined to have been responsible for the theft, he was terminated. According to Mr. Pratt, an employee who takes money from the casino will be terminated immediately, no matter what the amount. Mr. Pratt stated that he would not rehire such a person if he knew the person were responsible for a theft from the casino. It was his testimony that this policy would apply to the respondent, even though Mr. Pratt had a high opinion of the respondent's ability and character prior to the incident, and had twice promoted the respondent while he was employed at Resorts International.

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Michael Subotich, Superintendent of Schools in Ocean City, New Jersey, testified on behalf of the respondent. According to Superintendent Subotich, he has known the respondent for many years and he has had a close relationship with the respondent and considers him to be as a son. Superintendent Subotich assisted the respondent financially while he was attending college. It was his testimony that he believes the respondent to be an extremely honest person and he knows the respondent to have a fine reputation in Ocean City. The superintendent is aware of the respondent's arrest at the Playboy Casino Hotel for theft by unlawful taking, but this event has not affected his opinion concerning the respondent's good character.

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

The material factual dispute in this matter concerns the reason for the respondent's failure to disclose on his Personal History Disclosure Form No. 4 his 1979 disorderly persons conviction and his employment at the Playboy Casino Hotel. According to the respondent, he had simply forgotten about the 1979 conviction. However, this explanation is less than credible in light of his inclusion of the conviction on his casino key employee application which was then pending.

The respondent explained that he did not include his employment at the Playboy Casino Hotel on his Personal History Disclosure Form No. 4 because he was at that time admitted to the pretrial intervention program and he felt he was not obligated to reveal the employment. However, it is apparent that disclosure of the employment at Playboy would have led to discovery of his termination from that employment for theft by unlawful taking and thus, the respondent's explanation is less than credible.

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

1. The respondent failed to disclose on his Personal History Disclosure Form No. 4 his 1979 disorderly persons conviction and his employment at the Playboy Casino Hotel.

2. The respondent's record of conviction and his recent employment history were specifically required to be disclosed on his Personal History Disclosure Form No. 4.

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3. The respondent's failure to disclose on his Personal History Disclosure Form No. 4 his 1979 disorderly persons conviction and his employment at the Playboy Casino Hotel resulted from a conscious disregard of the request for such information, rather than from inadvertence.

CONCLUSIONS OF LAW

Pursuant to Section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. Section 129 (1) of the act authorizes the revocation of licensure of any person for the commission of any offense or violation under the act which would disqualify such person from holding his license. Pursuant to Section 86b of the act, licensure shall be denied to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criterion. I have FOUND that the respondent intentionally failed to disclose material information on his Personal History Disclosure Form No. 4. Therefore, his casino key employee license and his casino hotel employee registration are subject to revocation or some other appropriate sanction, pursuant to section 129 of the act.

Pursuant to sections 86c(4) and 86g of the act, the Commission shall deny licensure to any applicant who has committed an offense which would be inimical to the policies of the Casino Control Act, even if such offense has not or may not be prosecuted. It is undisputed that the respondent committed the offense of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3. Prosecution of this offense was interrupted by the respondent's admission into the pretrial intervention program. The respondent committed his theft by utilizing his position as a slot booth cashier in a casino. It is clear that licensure of an individual who has committed such a theft from his casino employer would be adverse to the public confidence in the strict regulation of legalized gaming. Therefore, since the respondent's commission of theft by unlawful taking would be inimical to the policies of the Casino Control Act and would disqualify him from licensure, pursuant to sections 86c(4) and 86g, his casino key employee license and casino hotel employee registration are subject to revocation or some other appropriate sanction, pursuant to section 129 of the act.

Pursuant to section 130 of the act, determination of an appropriate sanction should be based upon consideration of a number of factors, including the risk to the public and to the integrity of gaming operations created by the conduct of the licensee, and the corrective action taken by the licensee to prevent future misconduct of like nature from occurring. To the respondent's credit, his employment in the casino industry prior to his theft from the Playboy Casino Hotel had been satisfactory. In addition, the respondent satisfactorily completed the terms of the pretrial intervention program. These terms included making restitution and performing 40 hours of community service.

Nevertheless, the respondent's commission of an offense which is inimical to the policies of the Casino Control Act obviously reflects adversely upon his good character, honesty and integrity. Similarly, his intentional failure to disclose on his Personal History Disclosure Form No. 4 his 1979 disorderly persons conviction and his employment at the Playboy Casino Hotel reflects adversely upon his good character, honesty and integrity. The seriousness of his illegal conduct in the course of his employment as a casino employee requires the imposition of appropriate sanction. To do otherwise would be to ignore the legislature's expressed declaration of public policy set forth in the Casino Control Act. N.J.S.A. 5:12-1b(6) provides in part:

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

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing grounds for revocation of the respondent's casino key employee license and casino hotel registration, by a preponderance of the relevant and credible evidence, pursuant to Section 129 of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino key employee license and casino hotel employee registration of the respondent be **REVOKED**.

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

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

December 23, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

December 23, 1982
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 28 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

bm

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INVENTORY OF EXHIBITS

For the Petitioner:

P-1 Certified copy of Criminal Complaint, dated September 2, 1981

P-2 Investigation Report

P-3 Supplementary Investigation Report

P-4 Arrest Report

P-5 Miranda Warning

P-6 Internal Memorandum

P-7 Three Internal Memoranda

P-8 Check Out Documents

P-9 Playboy Employment Documents

P-10 Personal History Disclosure Form No. 2

P-11 Personal History Disclosure Form No. 2

P-12 Personal History Disclosure Form No. 1

P-13 Letter, dated November 5, 1982

P-14 Two Renewal Applications

P-15 Personal History Disclosure Form No. 4

P-16 Criminal Complaint, dated August 19, 1979

For the Respondent:

R-1 Pretrial Intervention letter, dated June 18, 1982

R-2 Order of Dismissal, dated June 17, 1982

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WITNESSES

For the Petitioner:

Thomas Pratt

Robert Ferreira

For the Respondent:

Michael Subotich

Tommy Jones, Jr.

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-EA-496
OAL DOCKET NO. CCC 8277-82
APP. NO. 18987-22

IN THE MATTER OF THE APPLICATION
OF JANICE LYNN KELLY FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on March 15, 1983, recommending that the casino employee license application of Janice Lynn Kelly be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on April 20, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Janice Lynn Kelly,

IT IS on this 20th day of April 1983, 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 Janice Lynn Kelly 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 Janice Lynn Kelly and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 20, 1983

FILED
NEW JERSEY
MAR 15 1983
CASINO CONTROL COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8277-82
(Formerly CCC 0036-82)
AGENCY DKT. NO. 81-EA-496

IN THE MATTER OF THE APPLICATION OF JANICE LYNN KELLY FOR LICENSURE AS A CASINO EMPLOYEE (ALCOHOLIC BEVERAGE EMPLOYEE)

APPEARANCES:

Nicholas J. Casiello, Jr., Esq., for the applicant, Janice Lynn Kelly (Horn, Kaplan, Goldberg & Gorny, P.C., attorneys)

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

Record Closed: January 27, 1983 Decided: March 14, 1983

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Janice Lynn Kelly, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (alcoholic beverage employee), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had committed a criminal offense and that she lacked the requisite good character, honesty and integrity for licensure.

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PROCEDURAL HISTORY

Ms. Kelly filed her Personal History Disclosure Form - 2 (PHDF-2), with the Commission on June 11, 1980. By letter, dated December 29, 1981, the Commission advised the applicant that, based upon information received in a report from the Division, dated November 30, 1981, there was a "substantial possibility" that the Commission would deny licensure and that she had a right to a hearing. The applicant requested a hearing. The Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 21, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Kelly is 31 years of age. She lived in Pennsylvania prior to her relocation to Atlantic City in May 1980 (P-1). The applicant is a 1969 graduate of Yeadon High School, Yeadon, Pennsylvania.

From October 1969 to January 1970, the applicant was employed as a dictaphone transcriber by Exxon Corporation in Bala-Cynwyd, Pennsylvania. From January 1970 to June 1971, the applicant was employed as a secretary by the Penn Mutual Life Insurance Company, Philadelphia, Pennsylvania. From October 1971 to January 1975, the applicant was employed as an administrative assistant in data processing by Day and Zimmermann, Inc., Philadelphia, Pennsylvania. From September 1975 to February 1976, the applicant was employed as a waitress by the Marriott Hot Shoppes in Havertown, Pennsylvania. From March 1976 to February 1977, the applicant was employed as a waitress by the Bryn Mawr Ale House, in Bryn Mawr, Pennsylvania. From February 1977 to November 1980, the applicant was employed as a cocktail waitress by Stouffer's Restaurant in Philadelphia, Pennsylvania. From April 1978 to September 1978, the applicant was also employed as a waitress by the Headhouse Inn in Philadelphia, Pennsylvania.

From November 1980 until the present, the applicant has been employed by Harrah's Marina Casino Hotel. For the first one and one-half months of her employment, the applicant was a food server. The applicant was then employed as a bar helper, until March 1981, when she became a cocktail waitress. The applicant has never been disciplined in the course of her employment at Harrah's. Monica Dever, a Beverage Shift Supervisor at Harrah's and the applicant's supervisor, testified on her behalf. Ms. Dever stated that the applicant is an excellent employee, that there have been no patron complaints and that the applicant has no problem handling money. Ms. Dever also stated that the applicant has been successfully employed as a cocktail waitress in the Bay Cabaret Lounge, which is the busiest lounge in the facility. The applicant currently holds a hotel employee registration.

On August 15, 1971, the applicant was arrested in Wildwood, New Jersey, and was charged with a violation of N.J.S.A. 24:21-20a1, possession of a controlled dangerous substance. The applicant was 19 years of age at the time of the incident. On November 30, 1971, the applicant pled guilty in the Wildwood Municipal Court to a downgraded charge of a violation of N.J.S.A. 24:21-20b, use of a controlled dangerous substance. The applicant received a six-month suspended sentence and was fined $150. The circumstances underlying this incident are in dispute and will be discussed, infra.

The applicant was also involved in an incident on July 3, 1975, in Dennis Township, Cape May County, New Jersey. The applicant and Peter Donahue, the applicant's boyfriend with whom she had had a relationship since 1971, and Thomas Pinak drove in the applicant's vehicle to Popeye's Clam Stand. At that time, the applicant knew that Peter Donahue had been incarcerated in the Cape May County Jail on a drug related charge, and also knew that he occasionally sold drugs. The applicant and Donahue entered the clam bar and ate and drank. Meanwhile, Pinak, who had remained in the vehicle, entered the attached home of the owner and stole $11,925. On July 8, 1975, the applicant was charged with violations of N.J.S.A. 2A:85-14 and N.J.S.A. 2A:94-1, aiding and abetting a breaking and entering with intent to steal, and with violations of N.J.S.A. 2A:85-14 and N.J.S.A. 2A:119-2, aiding and abetting a larceny. On July 23, 1975, the applicant was arrested in Yeadon, Pennsylvania. On February 6, 1976, the applicant voluntarily surrendered to the Cape May County Prosecutor's Office. Pinak admitted his

guilt and was sentenced. Donahue was found guilty and was sentenced to two-to-three years suspended, five years' probation, and he was fined $1,250. On October 26, 1976, the charges against Ms. Kelly were dismissed. The circumstances underlying the applicant's conduct on July 3, 1975, were in dispute and will be discussed, infra.

The applicant has not been involved in any other criminal proceedings.

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

(B) DISPUTED FACTS

In dispute were the applicant's conduct which led to charges being filed against her in 1971 and in 1975, the applicant's credibility and her good character, honesty and integrity.

The applicant described her conduct on August 15, 1971. The applicant was with her boyfriend, Peter Donahue, on the boardwalk in Wildwood. Donahue, who had occasionally sold drugs, gave her several bags, which were later determined to contain 120 LSD pills (R-2). The applicant placed the bags in her pocketbook, and she and Donahue then separated. The police stopped the applicant and ultimately discovered the pills during a search of her pocketbook. The applicant also testified that she did not inform the police that she intended to sell the drugs as was indicated on the arrest report. The applicant's description of the events was unrefuted except for the statement in the arrest report that she intended to sell the pills. The resolution of this conflict depends entirely upon the applicant's credibility, which will be discussed, infra.

The applicant also described her involvement in the incident of July 3, 1975. At that time, Donahue was still her boyfriend. The applicant and a female companion were in Wildwood on vacation. Donahue and Pinak met Ms. Kelly and asked her for a ride. At the time she did not think much of the request. They went to the clam bar, and she and Donahue entered the bar and Pinak remained in her car. After they ate, the applicant and Donahue returned to the car, and they returned with Pinak to Wildwood. The applicant stated that she first learned of the theft during the return trip to Wildwood

when Pinak displayed the monies he had taken. The applicant claimed that she had no prior knowledge of the intended theft. She did not call the police because she was too scared of Donahue. This incident ended the applicant's relationship with Donahue. Again, the applicant's testimony was unrefuted and its believability depends upon her credibility.

The primary determinative factor in this matter was the credibility of Ms. Kelly. As the applicant for licensure, she had a direct interest in the outcome and a bias in these proceedings. However, the applicant's testimony was candid, consistent with the documentary evidence presented (with the exception of the statement she purportedly gave to the Wildwood Police Department in 1971), believable and most persuasive. Other than the one element, there was no witness offered or any evidence presented to refute any fact to which the applicant testified. In the final analysis, I am persuaded to accept her testimony in full. The applicant openly acknowledged her relationship with Donahue and the type of person he is. Also, the applicant has not committed any other violations of the law.

The applicant offered the testimony of Monica Dever in regard to her character. Ms. Dever testified that she had some understanding of the applicant's criminal record, although she was unaware of the details. The witness stated that she has a high opinion of the applicant and believes the applicant to be an honest and nice person. The witness also stated that upon learning of some of the details of the incidents in which the applicant was involved, that her opinion has not changed. The witness has complete trust in the applicant and would have no reservations about having the applicant in her home.

The applicant also submitted the affidavit of Rondi Renee Bruggemeier, her supervisor during her employment at Stouffer's Restaurant. According to the applicant, Ms. Bruggemeier had a general understanding of her criminal record. In addition to characterizing the applicant as an excellent employee and a hard worker, Ms. Bruggemeier held the opinion that the applicant was "a person of good character, honesty and integrity."

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

1. On August 15, 1971, the applicant was in possession of illicit drugs; however, these drugs were the property of her boyfriend, Peter Donahue.

2. The applicant did not intend to sell the drugs.

3. There was no direct evidence to establish that the applicant was a knowing participant in the larceny committed by Messrs. Pinak and Donahue on July 3, 1975.

4. The applicant had no prior knowledge of the theft.

5. The applicant's testimony was credible, believable and persuasive in all respects.

6. The applicant enjoys a reputation for honesty, integrity and a good character among her present and former employment supervisors.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86g of the Casino Control Act (Act) provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. The Division alleged, under section 86g, that Ms. Kelly's conduct on July 3, 1975, constitutes a violation of N.J.S.A. 2A:85-14 and N.J.S.A. 2A:94-1, aiding and abetting a breaking and entering with intent to steal, and a violation of N.J.S.A. 2A:85-14 and N.J.S.A. 2A:119-2, aiding and abetting a larceny. However, the Division produced evidence that the applicant was only present during the theft. Given the believability of the applicant's exculpatory testimony, i.e., that she had no knowledge of the theft until after it had occurred, the Division failed to prove that the applicant committed any act which would constitute a violation of the cited statutes.

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

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

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

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

Under section 89b(2) of the Act, Ms. Kelly was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conduct during the incidents of August 15, 1971 and July 3, 1975.

There was no question that the applicant's conduct on August 15, 1971, does not reflect positively upon her character. However, at that time, she was 19 years of age. Given the applicant's credible explanation of the events, her conduct was not serious enough in and of itself to disqualify her from licensure. It was also evident that the applicant's conduct, on July 3, 1975, does not have a negative effect upon her application. However, between 1971 and 1975 the applicant maintained a relationship with Peter Donahue, whom she knew to be an occasional and a convicted drug dealer. The applicant also admitted that she had tried drugs. Nevertheless, following the incident in 1975, the applicant terminated her relationship with Donahue. That relationship has not resumed during the past seven years. Also, during the past seven years there has been no indication of any misconduct by the applicant. The applicant also possesses a very positive employment record. Most specifically, the applicant has been successfully

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employed in the casino industry for the past two and one-half years and she has held a hotel employee registration without difficulty. It was overwhelmingly evident that the applicant has overcome any possible obstacles to licensure. Ms. Kelly has affirmatively demonstrated that she presents no risk to the public or to the integrity of gaming operations. An examination of the whole person concept clearly and convincingly establishes that Ms. Kelly is a person of good character, honesty and integrity and is suitable for licensure in this State. Boardwalk Regency Corporation, Casino Control Commission, supra at 51, 52.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, her good character, honesty and integrity, under section 89b(2) of the Act.

ORDER OF DISPOSITION

It is **ORDERED** that the application of Janice Lynn Kelly for licensure as a casino employee (alcoholic beverage employee) be **GRANTED.**

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

452.

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

March 14, 1983
DATE

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

Receipt Acknowledged:

March 15, 1983
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

March 18, 1983
DATE

Ronald L. Larkenpee
OFFICE OF ADMINISTRATIVE LAW

ij/ee

453.

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1	Personal History Disclosure Form — 2, Janice Lynn Kelly, filed June 11, 1980 (30 pages)
P-2	Affidavit of Rondi Renee Bruggemeier, January 26, 1983 (2 pages)
R-1	United States Department of Justice, Federal Bureau of Investigation, Investigation Division — Rap Sheet
R-2	Wildwood Police Department — Uniform Arrest Report and Wildwood Municipal Court Disposition Sheet, Janice Lynn Kelly (2 pages)
R-3	New Jersey State Police — Investigation Report and Supplementary Investigation Reports, Janice Lynn Kelly (30 pages)

WITNESS LIST

FOR THE APPLICANT:

Monica Dever

Janice Lynn Kelly

FOR THE RESPONDENT:

None

454.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-38
OAL DOCKET NO. CCC 7353-81
LIC. NO. 00738-11

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

Complainant,

v.

ROBERT KESEL,

Respondent.

FINAL ORDER

This matter having been opened to the Casino Control Commission upon the filing of an "Initial Decision Settlement" (hereafter Initial Decision) by the Office of Administrative Law on March 25, 1983, wherein the Administrative Law Judge found that the parties had entered into a stipulation of settlement which fully disposed of all issues in controversy; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of April 13, 1983, to modify the Initial Decision, and impose a fine of $500 upon Robert Kesel for violation of N.J.S.A. 5:12-100(o)(1),

IT IS on this 23rd day of May 1983, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is modified as follows:

On page 1 of the Initial Decision, the citation to N.J.S.A. 5:12-100(n) should be corrected to read N.J.S.A. 5:12-100(o)(1).

IT IS FURTHER ORDERED that Robert Kesel pay a fine of $500 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 Robert Kesel and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

By: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: May 23, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 7353-81

AGENCY DKT. NO. 81-38

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

v.

ROBERT KESEL,
Respondent.

APPEARANCES:

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

Gerald F. Miksis, Esq., for respondent (William Goddard Lashman, attorney)

Record Closed: February 24, 1983 Decided: March 24, 1983

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

This matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The Division of Gaming Enforcement sought to penalize the respondent because of his having engaged in certain conduct prohibited by the Casino Control Act, N.J.S.A. 5:12-1 et seq., specifically section 5:12-100n, which bars a casino employee from accepting a gratuity from a casino patron.

New Jersey Is An Equal Opportunity Employer

Following discussions between counsel for the parties, the parties have prepared a Stipulation of Settlement, which document contains an agreement between the parties to settle all issues in dispute between them and assess a penalty against the respondent for his admitted violation of the statute. A copy of the Stipulation of Settlement is attached to this Initial Decision and made a part hereof as if the terms and conditions thereof were set forth in full in this Initial Decision.

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

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

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

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It appears that the settlement properly imposes upon the respondent a penalty for the violation which he admits and the penalty appears to be reasonable. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be concluded.

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

458.

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

March 24, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

March 25, 1983
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

March 29, 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

ks

459.

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: HOWARD M. BARMAN
Deputy Attorney General
(609) 633-7110

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO.: 81-38
OAL DOCKET NO.: CCC 07353-81

Civil Action

STIPULATION OF SETTLEMENT

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

Plaintiff,

vs.

ROBERT KESEL,

Respondent.

The matters involved in the above-captioned matter having been discussed by and between the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by Howard M. Barman, Deputy Attorney General, and Gerald F. Miksis, Esquire, of the office of William Goddard Lashman, Esquire, Attorneys for Respondent, Robert Kesel, and said matters having been resolved, it is hereby consented to and agreed by and between the parties that:

1) WHEREAS Respondent presently holds casino key employee license #00738-11 issued by the Casino Control Commission in February of 1980; and Respondent was issued a casino employee license #06578-21 by the Casino Control Commission in December of 1979 which is, at this time, inactive; and Respondent also has applied for a gaming instructor's license #00460-60 which is currently pending.

2) WHEREAS on February 27, 1981, Respondent was arrested and charged with accepting a gratuity from a casino patron, on or about November 9, 1980, in violation of Section 100(o)(1) of the Casino Control Act, N.J.S.A. 5:12-1 et seq. 5:12-100n.

3) WHEREAS on or about November 9, 1980, Respondent was employed at Bally Park Place Hotel/Casino as a casino shift manager.

4) WHEREAS it is admitted that the aforementioned conduct did, in fact, occur.

5) WHEREAS on or about February 28, 1981, Respondent was suspended and thereafter took a leave of absence, without compensation, from his employment with Bally Park Place Hotel/Casino.

6) WHEREAS Respondent did not return to his employment with Bally Park Place until May 18, 1981.

7) WHEREAS the criminal charges against Respondent were administratively dismissed on June 22, 1981.

8) WHEREAS Respondent sustained lost compensation for the aforementioned period of suspended employment, and this loss was a direct or proximate result of the aforementioned violation of the Casino Control Act.

9) WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Robert Kesel 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 and between he parties hereto that:

A. Pursuant to N.J.S.A. 5:12-129(5), Respondent agrees to pay a fine of $500.

B. This shall constitute full and final settlement of the matters contained herein, and shall not be used prospectively in any manner.

The undersigned agree and consent to the entry of the aforementioned settlement.

Howard M. Barman
Deputy Attorney General
Attorney for Plaintiff

Gerald F. Miksis, Esq.
William Goddard Lashman Law Office
Attorneys for Respondent

Robert Kesel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-EL-20

IN THE MATTER OF THE EXCLUSION OF PHILLIP LEONETTI FROM CASINO HOTEL FACILITIES

PRELIMINARY ORDER OF EXCLUSION

A preliminary hearing having been held before the Casino Control Commission upon the petition of the Division of Gaming Enforcement filed on November 10, 1982, seeking the immediate placement of Respondent's name on the Exclusion List; and Respondent having been duly served with notice of the petition and advised of his right to appear at the preliminary hearing; and the Respondent having appeared through counsel at the preliminary hearing; and the Commission having considered the entire record in this matter and having determined that there is a reasonable possibility that Respondent satisfies the criteria for the placement of his name on the Exclusion List pursuant to N.J.S.A. 5:12-71(a), N.J.A.C. 19:42-4.3 and N.J.A.C. 19:48-1.3 (a)(2); and the Commission having resolved at its public meeting of February 1, 1983, to place Respondent's name on the Exclusion List;

IT IS on this 2nd day of February 1983, ORDERED that the name of Phillip Leonetti be placed on the Exclusion List pending further Order of the Commission; and

IT IS FURTHER ORDERED that Phillip Leonetti be and hereby is declared to be an excluded person pursuant to Section 71 of the Act and Commission regulations, N.J.A.C. 19:42-4.1 et seq., and N.J.A.C. 19:48-1.1 et seq.; and

IT IS FURTHER ORDERED that Phillip Leonetti shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City; and

IT IS FURTHER ORDERED that a final hearing shall be initiated within 30 days after receipt by the Commission of a written request therefor pursuant to N.J.A.C. 19:42-4.4; and

IT IS FURTHER ORDERED that a copy of this Order shall be served upon the Respondent, the Division of Gaming Enforcement, and the authorized agent of all currently operating casinos in New Jersey within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: February 2, 1983

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IN THE MATTER OF THE EXCLUSION OF PHILIP LEONETTI AND LAWRENCE MERLINO FROM CASINO HOTEL FACILITIES
DOCKET NOS. 82-EL-20 and 82-EL-19

I. Introduction and Procedural History

These matters come before the Commission by means of Petitions for Placement on the Exclusion List filed by the Division of Gaming Enforcement (DGE) on November 10, 1982, against Respondents Philip Leonetti and Lawrence Merlino. Essentially, each petition contains allegations that the Respondent is a career offender, an associate of career offenders and a person whose presence in a licensed casino would be inimical to the interests of the State of New Jersey, of licensed gaming therein, or both. The petitions seek, among other things, a preliminary order of exclusion pursuant to N.J.A.C. 19:48-1.5(a), and a final judgment placing Respondents' names on the exclusion list pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.5(c). Presented for Commission action today is the request for a preliminary order only.

Following valid service of the petitions and notice of the proceedings pursuant to N.J.A.C. 19:42-4.2, a preliminary hearing was scheduled for December 14, 1982. However, at the request of Edwin Jacobs, Esq., then representing both Respondents, the matters were adjourned. A second date for the preliminary hearing was set for January 11, 1983, but adjourned at the request of Harold I. Garber, Esq., who appeared as substituted counsel for Respondent Merlino. Finally, a preliminary hearing was conducted on

January 25, 1983, at which counsel for each Respondent challenged the validity of the exclusion procedures as well as the merits of the petitions. Upon the motion of Commissioner Jacobson, duly seconded and unanimously passed, the rendering of a decision on the matter was carried over for one week to enable the Commission to consider the arguments advanced by the respective parties and to consult further with Commission counsel. In the interim, we have received and duly considered as part of the record in both cases (the limitations of N.J.A.C. 19:42-4.3(b) notwithstanding), a letter dated January 27, 1983, which was submitted by Mr. Jacobs and which essentially iterates the arguments of counsel for the Respondents at the preliminary hearing.

Upon careful consideration of the entire record and for the reasons hereafter stated, I, as one Commissioner, am satisfied that preliminary orders of exclusion should issue placing the names of both Respondent Leonetti and Respondent Merlino on the Exclusion List, pending the outcome of a full evidentiary hearing pursuant to N.J.A.C. 19:42-4.5, or absent such hearing, until further order of the Commission.

II. The Due Process Considerations

The Respondents contend that the preliminary hearing procedures established by recently adopted Commission regulations do not comport with established principles of due

process. The regulations under attack are N.J.A.C. 19:42-4.2 and 4.3, and N.J.A.C. 19:48-1.5(a), which were effective October 18, 1982.

Though not expressly stated, it must be assumed that the Respondents would also challenge the consitutional validity of the legislative source of the exclusion list and the above regulations, section 71 of the Casino Control Act, N.J.S.A. 5:12-71. No doubt the Respondents recognize the well-settled principle that an administrative agency is without authority to entertain challenges to the constitutionality of its own enabling act. See, e.g., Montana Chapt. of Ass'n of Liv. Tech. Inc. v. Young, 514 F.2d 1165, 1167 (9 Cir. 1975); Finnerty v. Caven, 508 F.2d 979, 982 (2 Cir. 1974. The Commission has previously declined to consider the constitutionality of the Casino Control Act and should not deviate from that policy here. In the Matter of the Applications of Martin, et al., Docket No. 78-EA-21, at 15-16 (Commission decision 1980) aff'd and mod. 90 N.J. 295 (1982); In the Matter of the Special Assessments Imposed by the New Jersey Casino Control Commission Pursuant to N.J.S.A. 5:12-153, 81-SA-1, at 6-7 (1982). To the extent that such challenges can be gleaned from the Respondents' arguments, they are rejected on the above noted principle.

It is nevertheless important to the resolution of these cases to examine section 71. The length of section 71 precludes its recitation in full. Certain portions, however, do warrant quotation. Section 71(a) requires the Commission to adopt regulations which "provide for the establishment of

a list of persons who are to be excluded or ejected from any licensed casino establishment...." The regulations must define the standards for exclusion including, but not limited to, standards relating to (1) persons who are "career or professional offenders" (as defined in N.J.A.C. 19:48-1.1); (2) persons who have been convicted of "a criminal offense punishable by more than 6 months imprisonment or of any crime or offense involving moral turpitude"; or (3) persons whose presence in a licensed casino would be inimical to the interest of the State of New Jersey or of licensed gaming therein or both. The Commission has adopted such regulations, N.J.A.C. 19:48-1.1 et seq. N.J.A.C. 19:48-1.3(a) enumerates the criteria for inclusion, essentially adding the notion of 'inimical presence' to criteria 1 and 2 of section 71(a) and adding the separate category of "an associate of a career or professional offender...whose association is such that his presence in a licensed casino establishment would, in the opinion of the Commission, be inimical...."

Section 71 does not detail any procedure for the initial placement of an individual's name on the exclusion list, nor does it envision any prior notice of actual placement. To the contrary, section 71 requires notice of placement on the list only after the fact (section 71(e)) and provides for a period of 30 days within which the named person may demand a hearing "and show cause why he should have his name removed from such list." Section 71(f). Subsection (g) provides that such hearing shall not be later than 30 days after receipt of the demand for a hearing. The

Commission determination following the hearing is to be incorporated into an order and served upon the interested parties. Section 71 (h) and (i).

The validity of section 71 is presumed and, as I previously noted, it is not within the jurisdiction of this Commission to even entertain, much less resolve, challenges to its constitutionality. The same may be true of the regulations implementing the statute. A regulation, too, is presumed reasonable and valid, and it is doubtful that the Commission would have the authority, even assuming it had the inclination, to declare its own regulations to be in fatal conflict with the State or federal constitution. That function is one that is better left to courts of law.

In my view, the Commission is not now required to reconsider the validity of the subject regulations which were so recently amended (effective October 18, 1982). Nevertheless, I shall offer a response to the arguments advanced by counsel for the Respondents and hereafter address the merits of the respective petitions upon the express understanding that my remarks are not intended as a formal Commission decision.

The Respondent's attack on the preliminary hearing portion of the exclusion procedures is too sharply focused. To properly evaluate the fairness of the exclusion procedures one must consider the entire regulatory scheme and determine

whether such procedures afford candidates for exclusion at least minimal due process required by law.

As noted above, section 71 envisions notice and opportunity for a hearing only after a candidate's name is placed upon the list. However, the Commission's regulations establish additional features which, while not required by section 71, are, in my opinion, more sensitive to due process considerations. See, N.J.A.C. 19:42-4.1 et seq. First, N.J.A.C. 19:42-4.2 provides for service of the DGE's petition upon the candidate for exclusion and adequate notice of the preliminary hearing at which the Commission shall determine whether the petition establishes a "reasonable possibility" that the candidate satisfies the exclusion criteria of N.J.A.C. 19:48-1.3. The candidate is advised of the nature of the preliminary hearing, which may be held no sooner than 15 days from the date of notice or service, and of his right to participate therein. Specifically, the candidate is advised of his right to be represented by counsel and of the fact that participation shall be limited to the presentation of oral argument on the sufficiency of the DGE's petition and supporting documents to meet the reasonable possibility standard. N.J.A.C. 19:42-4.3. The candidate is further advised that, should his name be preliminarily placed on the list, he will be afforded 30 days within which to submit a written request for a hearing.

Allow me to digress here for a moment to point out that, if at the conclusion of the preliminary hearing the

Commission finds in favor of the candidate and against the DGE, the petition is dismissed and the matter concluded; the DGE is not afforded the opportunity to proceed to a full evidentiary hearing.

Within 30 days of the Commission's receipt of a timely and sufficient request for a hearing, a final hearing will be initiated. N.J.A.C. 19:42-4.4. This final hearing is a full evidentiary proceeding, complete with the usual panoply of due process rights associated with administrative hearings under the Administrative Procedures Act, N.J.S.A. 52:14B-1. et seq. and the regulations adopted by the Office of Administrative Law, N.J.A.C. 1:1-1 et seq. At this hearing the burden is on the DGE to prove its case for exclusion by a fair preponderance of the evidence. N.J.A.C. 19:42-4.5(b).

These procedures in toto must be measured against reasonably well settled principles of due process. The applicability of the consitutional guarantee of procedural due process depends in the first instance upon the presence of a legitimate "property" or "liberty" interest within the meaning of the Fifth and Fourteenth Amendments to the Federal Constitution. Arnett v. Kennedy,416 U.S. 134 (1974). This is consistent with Article I, par. 1 of the New Jersey State Constitution, which also protects a person's liberty and property interests. Township of Montville v. Block 69, Lot 10, 74 N.J. 1 (1977).

Thus to determine whether due process is offended by Section 71, or the pertinent Commission regulations, it is necessary to inquire whether an individual whose name is placed on the Exclusion List has a protected liberty or property interest of which he is being deprived without due process. Prior to the New Jersey Supreme Court decision in Uston v. Resorts, 89 N.J. 163 (1982), it may have been cogently argued that one had no legal "right" to enter a gambling establishment, even a legalized casino. However, in Uston the Court recognized a "right of reasonable access to public places", including casino hotel facilities. The precise parameters of this right were not delineated or even explored in Uston, nor was it determined if this right of reasonable access is of constitutional dimensions i.e., a liberty interest within the meaning of the State and federal constitutions. Nevetheless, I would here assume that such a right is accompanied by some measure of due process protection.

The timing and the formality of the procedural requisites of a due process hearing may vary widely with the circumstances. See, e.g., Goldberg v. Kelly, 397 U.S. 254 (1970); Matthews v. Eldridge, 424 U.S. 319 (1976); Goss v. Lopez, 419 U.S. 565 (1975); Barry v. Barchi, 443 U.S. 55 (1976). The only inflexible rule would appear to be that some kind of a

hearing is required at some time before a person is finally deprived of his liberty or property interests, Wolff v. McDonnell, 418 U.S. 539, 557-58 (1974), or presumably his common law right of access under law, Uston v. Resorts, supra. The Supreme Court has recently reaffirmed the principle that due process is not a technical concept, divorced from the surrounding circumstances. Lassiter v. Dept. of Social Services, ____ U.S. ____, 101 S. Ct. 2153, (1981). Rather, it is a flexible concept that "calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

In determining what process is due, the courts have applied a balancing of interests test. Counsel for Respondent Leonetti referred to the appropriate test in the argument last week. It is that which the United Stated Supreme Court articulated in Mathews v. Eldridge, supra, and recently restated in Santosky v. Kramer, ___ U.S. ___, 102 S.Ct. 1388, (1982). As embraced by our State Supreme Court in In re Polk License Revocation, 90 N.J. 550 (1982), this test "...requires an examination and balancing of three factors: (1) the nature of the private interest affected by the proceeding; (2) the countervailing governmental interest to be furthered by the proceeding; and (3) the risk of error in the ultimate determination created by the use of the particular burden of proof." 90 N.J. at 562; citations omitted.

At the argument, Respondent Leonetti's counsel characterized the liberty interest at stake as being able

"to go where a person wishes to go". In the letter of January 27, 1983, it is proffered that the rights "to dine, gamble, sleep in and otherwise patronize hotel/casinos" are "fundamental interests and rights."

I would take a more conservative view. The interest of the individual Respondents involved here is the right to enter nine casino hotel facilties in one city within the State of New Jersey. Moreover, it must be borne in mind that, at the preliminary hearing stage, the interference in these "rights" is temporally limited to the time necessary for the convening of a prompt hearing.

The interests of the government have been identified by the legislature in the promulgation of section 71 itself, and in the declaration of policy contained in N.J.S.A. 5:12-1(b)(7) which provides:

> Legalized casino gaming in New Jersey can attain, maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest only under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations, and the exclusion or removal from any positions of authority or responsibility within casino gaming operations and establishments of any persons known to be so deficient in business probity, ability or experience, either generally or with specific reference to gaming, as to create or enhance the dangers of unsound, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incident thereto. [emphasis added]

I would interpret the phrase "the exclusion from participation [in legalized casino gaming in New Jersey]" to include participation as a patron as well as a licensed employee or other person required to be qualified in connection with any application for licensure or registration under the Casino Control Act. That language, when read in conjunction with section 71(a)(1) and (2), makes it abundantly clear that the legislature was determined to provide for the exclusion of those deemed undesirable due to past involvement in criminal enterprises. It is in the interest of the State to extend strict regulation of casinos to the patrons as well as the operators of and those who do business with Atlantic City casinos. It is only through such strict regulation that this Commission can hope to maintain the public confidence and trust that it has thus far engendered. See, N.J.S.A. 5:12-1(6); See also, Knight v. Margate, 86 N.J. 374 (1981).

The final factor in the balance is the risk of error created by the procedure specified in the regulations. Santosky v. Kramer, supra, 102 S.Ct. at 1394. The risk of error in a final order of exclusion is minimal, or at least no greater than that which exists in any civil proceeding. The burden of proof by a preponderance of evidence was

recently upheld in a case involving a physician's license revocation proceeding. Polk, supra.

But Respondents do not challenge the propriety of the process afforded at the final hearing. Rather they fix upon the preliminary hearing and the reasonable possibility standard. The significance of the temporary and limited nature of a preliminary order of exclusion can scarcely be overstated. As a federal appellate court has observed: "[A] lesser standard applies to determinations which are only tentative in character even though they have an immediate and significant impact on the litigant" Lucas v. Wisconsin Electric Power Company, 466 F.2d 638, 650 (7 Cir. 1972).

The concept of "reasonable possibility" in the context of temporary deprivation of liberty or property interests is not the fabrication of this Commission. This same standard was recognized by the United States Supreme Court's decision in Bell v. Burson, 402 U.S. 535 (1971). In Bell, the Court considered a Georgia statutory scheme which provided that the driver's license and vehicle registration of an uninsured motorist involved in an accident be suspended unless the driver posted security to cover the amount of damages claimed by aggrieved parties. The suspension was preceded by a

hearing at which the uninsured motorist's fault or liability were not an issue; the only issues were: (1) was the driver involved in an accident; (2) has he complied with the laws [i.e. posted security or obtained insurance]; and (3) does he come within any exceptions to the law. After establishing that 14th Amendment protections were triggered by the state's attempt to suspend a license previously issued, the Court turned to the "nature of the procedural due process which must be afforded the licensee on the question of his fault or liability for the accident." 402 U.S. 539-540; footnote omitted. After noting that a full adjudication on the question of liability was not required at that stage, the Court held "that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee." Id. at 548.

Numerous federal cases from various jurisdictions implementing the "reasonable possibility" standard can be found. Such cases succeed Bell v. Burson, supra, and mostly concern Financial Responsibility Laws in fault-oriented statutory schemes similar to Georgia's. See, e.g., Beazley v. Armour, 420 F.Supp. 503 (M.D. Tenn. 1976); Kilfoyle v. Heyison, 417 F.Supp. 239 (W.D. Pa. 1976); Sandoval v. Heckers, 350 F.Supp. 127 (D. Colo. 1972); MacBeth v. Utah, 332 F.Supp. 1191

(D. Utah 1971). Unfortunately, none of these cases provides a judicial interpretation of the operative phrase "reasonable possibility."

Lucas v. Wisconsin Electric Power Co., supra, invoked the reasonable possibility concept in a completely different context. That case involved a class action by electrical service subscribers against a power company and the utility commission. The plaintiffs challenged administrative regulations permitting the company to disconnect service upon notice of arrearages and subsequent failure to pay within a period of five days. Though this case also fails to embellish the standard, it does identify the purpose of a tentative determination such as that made following a preliminary hearing. It is, said the court, "...to prevent unfair and mistaken deprivations of property" when the moving party "has little probability of succeeding on the merits of the dispute." (Id. at 651; footnote omitted).

In the absence of a statutory or regulatory definition, it is the accepted practice of courts to apply the ordinary meaning of terms. Applying that approach I would define reasonable possibility as a potential event the occurrence of which is founded in fact and reason. It is neither fanciful nor purely speculative but rather has an appreciable likelihood of coming to pass. It falls between the merely

possible and the truly probable. I should note parenthetically here that Justice Powell, writing for the Court in Mathews v. Eldridge, observed in passing that the holding in Bell v. Burson was "that due process required only that the pre-revocation hearing involve a probable-cause determination...." 424 U.S. at 334. The reference is, I believe, inadvertent and not supported by the opinion in Bell. In any event, it is not my understanding that the term reasonable possibility as used in the exclusion regulations is intended to establish a standard of probable cause.

In my judgment the balancing of all of these considerations leads inexorably to the conclusion that the exclusion procedures established by our regulations constitute a reasonable accommodation of the competing interests with an acceptable risk of error. Indeed, I would find that the interests of the individual Respondents, while not unappreciable, pale to insignficance when contrasted with the public policy inherent in exclusion proceedings, especially in view of the limited duration of the deprivation which follows a preliminary order of exclusion.

III. Hearsay Evidence, the Residuum rule and Section 107(a)(6) of the Casino Control Act

The Respondents challenge the sufficiency of the materials supporting the petition for exclusion, contending

that the residuum rule applies. Respondents further contend that the materials proffered by the DGE in support of its petition are of such a hearsay nature as to not constitute legal and competent evidence. The DGE argues that section 107 of the Act controls and the residuum rule is inapplicable.

The residuum rule finds expression in N.J.A.C. 1:1-15.8 and holds that hearsay evidence alone cannot support an ultimate factual finding; there must be "a residuum of legal and competent evidence" to support any such finding. Weston v. State, 60 N.J. 36 (1972).

Section 107(a)(6) on the other hand provides:

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

In In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60 (Commission Decision 1980), the Commission determined that Section 107(a)(6) "is the precise antithesis of the 'residuum rule'" and rejected an ALJ's determination that the two were consistent. Alter at 49-51.

I do not perceive of any reason to deviate from our holding in the Alter case and others. However, this particular case does not require that we reach that issue. Even if I were to assume, despite my doubts to the contrary, that the Respondents are correct in asserting that everything proffered by the DGE in support of its petition is rank hearsay, and further that the residuum rule should otherwise apply to Commission hearings, Respondents arguments are unavailing. The reason lies in the preliminary nature of the present proceedings. Even in the criminal context where far more significant liberty interests are at stake, "hearsay is an adequate basis for finding probable cause and the issuance of a warrant, so long as there are facts which give the statement an appearance of trustworthiness." State v. DiRienzo, 53 N.J. 360, 385 (1969); State v. Kasabucki, 52 N.J. 110, 116 (1968). If hearsay is a sufficient basis to support an invasion of constitutionally protected privacy interests or even the penultimate deprivation of liberty, i.e. incarceration, a fortiori it suffices for purposes of exclusion from the Atlantic City casino hotels.

IV. Do the Respective Petitions Establish a Reasonable Possibility that Respondents Leonetti and Merlino Meet the Criteria for Exclusion

A. Respondent Leonetti

As to Respondent Leonetti, the DGE alleges that among other things he is a person whose presence in a licensed casino would be inimical to the interests of the State of New Jersey, of licensed gaming therein, or both.

An association with a career offender may also be grounds for exclusion in the regulations. N.J.A.C. 19:48-1.3(a)(2).

Association with career offenders is a concept that also finds expression in Section 86(f) of the Act, N.J.S.A. 5:12-86(f), where it stands as a basis for disqualification of applicants for licensure or registration under the Act. Previous Commission decisions have established that innocent relationships with career offenders or members of career offender cartels will not be the basis for disqualification under section 86(f). A number of factors must be considered including "the time of the association, its duration, its purpose, its intensity, its attenuation through third parties, the character of the associate, the associate's reputation, the applicant's knowledge of such reputation or character, the applicant's exercise of reasonable efforts to determine the

suitability of its associates, termination of the association and the reasons for termination." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1, at 10, 18 (Commission Decision 1979). These considerations apply with equal force to exclusion under N.J.A.C. 19:48-1.3(a)(2). In addition, the purported association must be such that it renders the candidate's presence inimical to the interests of the State or licensed gaming. N.J.A.C. 19:48-1.1.

The Attorney's Certification attached to the petition expressly incorporates pages 10 and 11 of this Commission's decision in In the Matter of the Hotel and Restaurant Employees and Bartenders Inernational Union Local 54, (hereinafter "Local 54") Docket No. 81-LO-1 (Commission Decision 1982). Among other things, we there found that Nick Scarfo is a career offender and an active member of a career offender cartel. (Id. at 10). We further found "that Philip Leonetti is closely associated with Scarfo and has engaged with him in a criminal enterprise." (Id. at 11).

I must note my disagreement with Respondent's counsel regarding judicial notice of prior proceedings. In my opinion the Commission, as the Supreme Court has done for at least the past 80 years, can and should take judicial notice of its own records and prior findings. See, Bienville Water Supply Co. v. Mobile, 186 U.S. 212, 217 (1902); N.J.S.A. 5:12-107(b).

While the qualifications of Respondent Leonetti were not specifically in issue in Local 54, I am confident that the above finding is sufficient for purposes of this preliminary proceeding to conclude that the DGE has established a reasonable possibility that Philip Leonetti is a close associate of a career offender and that such association is inimical within the meaning of N.J.A.C. 19:48-1.1. Accordingly, I conclude that a preliminary order should be issued placing Mr. Leonetti's name on the exclusion list and advising him of his right to a final hearing pursuant to N.J.A.C. 19:42-4.4.

B. Respondent Merlino

The petition against Merlino makes essentially the same allegations concerning the criteria for exclusion as did the Leonetti petition. The difference is that in the case of Merlino we are without benefit of a prior Commission determination as to association with a career offender.

The question then becomes whether the petition and supporting documentation are sufficient to establish the reasonable possibility of an "inimical presence" within the meaning of N.J.A.C. 19:48-1.3(a)(4) and N.J.S.A. 5:12-71(a)(3). It is concededly a close question on the record presented. However, I am prepared to make a finding in

favor of the DGE based upon the materials offered in support of its petition which, as in Leonetti, emanate from the Local 54 proceedings. In particular, those materials are: (1) the sworn testimony of Joseph Salerno to the effect that Respondent Merlino had dinner with Scarfo, Leonetti, Robert Lumio and Salerno immediately after the murder of Vincent Falcone; (2) Salerno's further testimony that Respondent appeared along with Scarfo, Leonetti, Salvatore Merlino, Frank Gerace and Salerno, at the grand opening of the My Way Lounge in Atlantic City; (3) the testimony of SCI Investigator Dennis McGuigan, who observed Merlino at the My Way opening in the company of, among others, those witnessed by Salerno; and, most significantly, (4) Pennsylvania Crime Commission agent Gino Lazzari's testimony that Respondent Merlino was "recently made a member of the LCN [La Cosa Nostra] family." This evidence is, in my view, sufficient to warrant preliminary exclusion under the pertinent standards.

Thus, for the reasons I have expressed at some length, I would support the issuance of a preliminary order of exclusion in each case. However, I am constrained to add that no one should construe my remarks at this preliminary juncture as indicative of my views on the sufficiency of this same evidence to sustain a final order of exclusion.

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Thus, for the reasons I have expressed at some length, I would support the issuance of a preliminary order of exclusion in each case. However, I am constrained to add that no one should construe my remarks at this preliminary juncture as indicative of my views on the sufficiency of this same evidence to sustain a final order of exclusion.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Walter N. Read

WALTER N. READ,
CHAIRMAN

DATED: Feb. 1, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-31
OAL DOCKET NO. CCC 1316-82
LIC. NO. 15613-21
APP. NO. 02017-11

IN THE MATTER OF THE APPLICATION OF PAUL LISNYJ FOR RENEWAL OF HIS CASINO EMPLOYEE LICENSE

AND

IN THE MATTER OF THE APPLICATION OF PAUL LISNYJ FOR A CASINO KEY EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law with the Commission on April 4, 1983, recommending that the applications of Paul Lisnyj for a casino key employee license and renewal of his casino employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the initial decision on May 2, 1983; and Paul Lisnyj having filed a response to the Division's exceptions on May 12, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on May 18, 1983, to affirm and adopt the said initial decision and to grant the aforementioned applications,

IT IS on this 1st day of June 1983, 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 applications of Paul Lisnyj for a casino key employee license and renewal of his casino employee license 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 based further upon the reasons stated on the record at the Commission's public meeting of May 18, 1983; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June / , 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1316-82

AGENCY DKT. NO. 82-EA-31

PAUL LISNYJ,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

John A. Almeida, Esq., for petitioner (Farr, Reifsteck, Wolf and Ware, attorneys)

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

Record Closed: January 31, 1983 Decided: March 31, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Paul Lisnyj to the Casino Control Commission for renewal of a casino employee license permitting him to work in a casino as a security officer. The petitioner also seeks licensure as a casino key employee, which would permit him to work in a casino as a security supervisor. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issue to be determined in this matter is as follows:

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Whether the petitioner, with specific reference to his alleged attempt to have a Waterford Township police officer mold or alter testimony in a municipal court proceeding, has committed conduct which reflects negatively on his good character, honesty and integrity, pursuant to section 89b(2) of the Casino Control Act, or which would indicate that licensure would be inimical to the policies of the act and casino operations, within the meaning of section 86c(4), 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.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner as a casino key employee by letter report to the Casino Control Commission, dated January 4, 1982. Subsequently, the Division of Gaming Enforcement also objected to the renewal of the petitioner's present casino employee license. The petitioner requested a hearing on his key employee license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference in this matter was held on July 13, 1982. On August 23, 1982, an order was entered consolidating the hearing on the renewal of the petitioner's casino employee license application with the hearing on the petitioner's application for a key employee license. The hearing was held on December 28, 1982, and the record in this matter was closed on January 31, 1983, upon the receipt of the final post hearing brief.

FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. The petitioner is a 34-year-old naturalized American citizen who has lived in Atco, New Jersey, for approximately 30 years. He is married and is the father of a three-year-old daughter.

The petitioner was hired as a security officer for the Brighton Hotel and Casino (the predecessor of the Sands Hotel and Casino) in March 1980. He is presently employed as a security supervisor at the Sands Hotel and Casino, working on the midnight to 8:00 a.m. shift. In August 1980, the Casino Control Commission issued to the

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petitioner a casino employee license which permits him to work in a casino as a security officer.

Testifying on behalf of the petitioner was Arthur Lewis, Vice President of Security for the Sands Casino Hotel. Prior to being hired by the Sands as Director of Security in March 1980, Mr. Lewis was a special agent for the United States Treasury and Justice Departments for 27 years. According to Mr. Lewis, he first met the petitioner in June 1980. After supervising the petitioner's performance on a daily basis, Mr. Lewis concluded that the petitioner is a man of great integrity. In particular, Mr. Lewis noted that the petitioner contributed significantly to the effort of the casino to be approved for its initial opening. It was the testimony of Mr. Lewis that the petitioner's outstanding performance has been reflected in his personnel evaluations (Exhibits P-4, P-5 and P-7) and that he recommends the petitioner for a casino key employee position in security.

Also testifying on behalf of the petitioner was Samuel Valenti, Clerk-Treasurer for Waterford Township, New Jersey. According to Mr. Valenti, he has known the petitioner for approximately 20 years. During four of those years, the petitioner was on the Township Committee, and in 1980, the petitioner was the Township Mayor. Mr. Valenti worked regularly with the petitioner and he stated that the petitioner is a man of excellent honesty and integrity.

An incident concerning the petitioner's conduct while serving as Mayor of Waterford Township in June 1980 is material to this proceeding on his applications for licensure. On June 12, 1980, Patrolman Steven McCandless of the Waterford Township Police Department issued motor vehicle summonses to Alexander Sinelnik for the offenses of speeding, driving without a valid insurance card in his possession and driving without a vehicle registration in his possession. The petitioner's family and the Sinelnik family had been friendly for many years, beginning prior to immigrating to the United States after World War II. Alexander Sinelnik's father telephoned the petitioner to complain that his son had received a group of motor vehicle summonses only a few blocks from his destination and to further assert that he felt a township police officer should not have treated a township resident in this manner. As a result of this telephone conversation, the petitioner had his sister, who was the Township Court Clerk, leave a note (Exhibit R-5) in the mailbox of Patrolman McCandless, asking that the patrolman visit the petitioner at his home concerning a private matter.

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Patrolman McCandless received the note from the court clerk when he reported for duty on the afternoon of June 13, 1980. Not knowing why the Mayor wished to see him, Patrolman McCandless contacted his supervisor, Sergeant Leone. At the suggestion of Sergeant Leone, Patrolman McCandless agreed to tape record the conversation which he was to have with the Mayor.

At approximately 7:00 p.m., Patrolman McCandless arrived at the petitioner's home and learned that the Mayor wished to discuss the three summonses which had been issued to Alexander Sinelnik. The transcript of this conversation was admitted into evidence as Exhibit R-3. The petitioner wanted to know if anything could be done about the summonses, but he acknowledged that it would not be possible for the summonses to be voided. In essence, the conversation concerned whether there were any possible inaccuracies or mistakes that the officer could bring to the attention of the municipal court which might result in not guilty verdicts. The conversation ended after Patrolman McCandless told the petitioner that he would think the matter over.

Patrolman McCandless and his supervisors presented the tape recorded conversation to the office of the Camden County Prosecutor. The prosecutor's office arranged for Patrolman McCandless to telephone the petitioner on June 17, 1980. This telephone conversation was recorded, and a transcript of the conversation was admitted into evidence as Exhibit R-4. Again, the essence of the conversation concerned whether Patrolman McCandless would be able to testify in municipal court that there were inaccuracies or mistakes which might result in not guilty verdicts. The second conversation ended after Patrolman McCandless indicated that he felt Mr. Sinelnik had been in violation of the motor vehicle laws and that the patrolman would be obligated to perform his job by so testifying in municipal court. It is undisputed that the petitioner did not have any further conversation with Patrolman McCandless concerning the motor vehicle summonses issued to Mr. Sinelnik.

On July 25, 1980, the petitioner testified before the Camden County Grand Jury concerning the allegation of Patrolman McCandless that the petitioner had attempted to persuade the patrolman to perjure himself in municipal court with respect to the traffic tickets issued to Alexander Sinelnik on June 12, 1980. It is undisputed that the grand jury "no billed" the matter, declining to indict the petitioner. It is also undisputed that no formal charges were made against the petitioner concerning this incident.

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Assistant Camden County Prosecutor Robert Bernardi reviewed and investigated this matter during May 1981. As a result of his investigation, Assistant Prosecutor Bernardi determined the following:

1. A complete review of the Waterford Township Municipal Court records indicates that Mr. Sinelnik ultimately pled guilty to all three tickets as indicated by the attached tickets.

2. There was never any contact between Mayor Paul Lisnyj and Frederic Bor, Esq., Municipal Court Judge of Waterford Township, concerning the traffic tickets in question. Further, Mr. Bor indicated that he had never been approached by the Mayor on behalf of any individual in order to secure a favorable outcome in a municipal court matter.

3. In a recorded conversation, Mr. Gregory Sinelnik stated that he contacted the Mayor to protest the number of tickets issued, but never attempted to have the Mayor induce tbe officer to change his story.

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

The factual dispute in this matter concerns the intent of the petitioner when he discussed with Patrolman McCandless the traffic summonses which were issued by the patrolman to Alexander Senelnik. As indicated previously, the transcripts of the two conversations between the petitioner and Patrolman McCandless were admitted into evidence as Exhibits R-3 and R-4. Testifying on behalf of the Division of Gaming Enforcement, Patrolman McCandless stated that the transcripts accurately reflect the conversations which he had with the petitioner.

Patrolman McCandless was permitted to testify concerning his understanding of the petitioner's comments during the two transcribed conversations. According to the patrolman, it was his understanding that the petitioner wanted the patrolman to testify falsely in municipal court concerning the circumstances which led to the issuance of the three motor vehicle summonses to Mr. Sinelnik. Patrolman McCandless acknowledged that he never testified in municipal court concerning this matter and that he was advised that Mr. Sinelnik pled guilty to all three of the summonses.

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Testifying on his own behalf, the petitioner stated that his intention when he first discussed the matter with Patrolman McCandless was to ascertain the patrolman's purpose for issuing the summonses, to find out if Alexander Sinelnik has been a "wise guy," and to compare what the patrolman had to say concerning the matter with the version related to him by Alexander Sinelnik's father. The petitioner stated that he did not in any way attempt to influence or alter the patrolman's testimony. The petitioner acknowledged that his second conversation with the patrolman reached a point where the petitioner was suggesting to the patrolman that he could testify in a manner which the patrolman had suggested was not factual. The petitioner acknowledged that this was wrong and that he should not have carried the conversation with the patrolman to that extent. Finally, the petitioner told the patrolman that if he were troubled by the suggestions concerning his testimony that the matter should stand as it was and that the patrolman should do his job.

The testimony of the petitioner was straightforward and sincere and entirely worthy of credit. The testimony of Patrolman McCandless was equally worthy of credit. However, his impressions concerning the intent of the petitioner provide little guidance. The petitioner's own testimony concerning his intent during the two conversations with the patrolman has far greater weight.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter, I additionally **FIND:**

1. The petitioner spoke to Patrolman McCandless with the intention of determining whether it would be possible for the officer to testify in a manner which would result in a not guilty verdict.

2. When it became clear to the petitioner that he would be asking Patrolman McCandless to commit perjury if he were to ask the patrolman to testify in a manner which would result in a not guilty verdict, the petitioner acknowledged that the patrolman had a job to do and the petitioner dropped the matter, never pursuing it further.

CONCLUSIONS OF LAW

Pursuant to sections 89 and 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license and for a casino key employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. These sections of the Act also incorporate the disqualification criteria set forth in section 86. Pursuant to section 86c(4), the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the Act and to casino operations. Pursuant to section 86g, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

It is apparent from the foregoing Findings of Fact that the petitioner, while serving as Mayor of Waterford Township, spoke to a township police officer to determine if the officer were able to testify in municipal court in a manner which would result in a not guilty verdict for an individual who had been issued three traffic summonses. This conduct represented an aberrational lapse of judgment by the petitioner. However, when it became apparent to the petitioner that he would, in fact, be asking the police officer to commit perjury if he asked the officer to testify in a manner which would result in a not guilty verdict, the petitioner pursued the matter no further.

The petitioner should not have approached Patrolman McCandless to discuss his issuance of the three motor vehicle summonses. However, it is apparent that his conduct was not of such a nature as to justifiably undermine public confidence in the integrity of the legalized gaming industry. In addition, the petitioner had been satisfactorily employed by a casino hotel in Atlantic City as a security officer and security supervisor since March 1980. The petitioner has performed in these capacities while licensed as a casino employee.

Based upon the foregoing, I must **CONCLUDE** that the petitioner has not committed any offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations. Based upon the relevant and credible evidence in the record, I further **CONCLUDE** that the petitioner has established, by clear and convincing evidence, that he possesses the requisite good character, honesty

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and integrity for licensure, within the meaning of section 89b(2) of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the applications of the petitioner, Paul Lisnyj, for renewal of a casino employee license, permitting him to work in a casino as a security officer, and for a casino key employee license, permitting him to work in a casino as a security supervisor, be **GRANTED.**

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

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

March 31, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

March 4, 1983
DATE

Bernadette M. Fiore
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 7 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

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fms

INVENTORY OF EXHIBITS

JOINT EXHIBITS:

J-1 Stipulated statement of Assistant Prosecutor Robert Bernardi

FOR THE PETITIONER:

P-1 Letter, dated January 19, 1982
P-2 Commendation
P-3 Not in evidence
P-4 Evaluation, dated May 3, 1981
P-5 Evaluation, dated April 19, 1982
P-6 Certificate of achievement, dated March 3, 1982
P-7 Evaluation, dated December 15, 1982

FOR THE RESPONDENT:

R-1 Performance evaluation, dated October 1, 1980
R-2 Not in evidence
R-3 Transcript, dated June 13, 1980
R-4 Transcript, dated June 17, 1980
R-5 Memo, dated June 13, 1980
R-6 Summons
R-7 Summons
R-8 Petitioner's answers to interrogatories
R-9 Grand Jury transcript, dated July 25, 1980

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WITNESSES

FOR THE PETITIONER:

Arthur Lewis
Samuel Valenti
Paul Lisnyj

FOR THE RESPONDENT:

Steven McCandless

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-78
OAL DOCKET NO. CCC 6148-82
APP. NO. 25321-22

IN THE MATTER OF THE APPLICATION
OF RITA LOGAN FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Cas Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on February 25, 1983, recommending that the application of Rita Logan for a casino employee license be granted; and neither party having filed exceptions thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 30, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Rita Logan,

IT IS on this 30th day of March 1983, 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 Rita Logan 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 Rita Logan and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 30, 1983

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
FEB 25 1983
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 6148-82
AGENCY DKT. NO. 25321-22

IN THE MATTER OF THE APPLICATION OF RITA LOGAN FOR LICENSURE AS A CASINO EMPLOYEE (ALCOHOLIC BEVERAGE EMPLOYEE)

APPEARANCES:

Gary Dinenberg, Esq., for the petitioner, Rita Logan (Peter A. Levin, attorneys)

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

Record Closed: January 10, 1983 Decided: February 24, 1983

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Rita Logan, applicant, for licensure by the Casino Control Commission (Comission) as a casino employee (alcoholic beverage employee), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had committed a disqualifying criminal offense and that the applicant lacked the requisite good character, honesty and integrity.

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PROCEDURAL HISTORY

Ms. Logan filed her Personal History Disclosure Form - 2 (PHDF-2) with the Commission in September 1980. By letter, the Commission advised the applicant that based upon information received in a report from the Division, dated September 22, 1981, and a supplemental report, dated April 29, 1982, there was a "substantial possibility" that the Commission would deny licensure and that she had a right to a hearing. On June 1, 1982, the applicant requested a hearing. On June 14, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. A prehearing conference was held, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Logan is 27 years of age. She has lived in New Jersey for many years (P-1). The applicant is a 1974 graduate of East Orange High School. The applicant also earned a certificate from the Lyons Institute in August 1975.

From March 1974 until August 1976, the applicant was employed by the Veteran's Administration Hospital in Orange, New Jersey as a file clerk. From August until September 1976, the applicant was employed by Co-Op Dental Lab in Bloomfield. From September 1976 to March 1977, the applicant was employed by Yorkwood Savings and Loan Association in West Caldwell as a teller. From March to July 1977, the applicant was employed by the Lincoln State Bank in East Orange as a teller. From July to September 1977, the applicant was employed by Howard Savings as a teller. Thereafter, and for a period of approximately three months, the applicant was again employed by the Co-Op Dental Lab. From February 1978 to April 1979, the applicant was employed by the United States Savings Bank as a teller. From April to November 1979, the applicant was again employed by the Lincoln State Bank as a teller. She returned to work at the Lincoln at the request of the President of the bank. On November 29, 1979, the applicant was discharged from this position. This termination will be discussed in greater detail, infra. From December 1979 to November 1980, the applicant was employed by Investor Savings and Loan Association in Millburn as a teller.

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Ms. Logan's duties and responsibilities as a teller at the Lincoln, which was the busiest position she held, involved many functions. On an average day she handled between $30,000 and $50,000, was responsible for the night deposit box and completed many various customer transactions. At the end of the work day, the applicant was required to balance her cash box, which was reported on a proof sheet. Much of the money in her cash box was strapped. The applicant did not count the money in the straps because of time constraints. It was not uncommon for the applicant, or any other teller, to have an occasional shortage or surplus for the day's transactions. A $20-$30 shortage or surplus was not unusual. At night, all cash boxes were locked and placed into the vault.

From March 12 to November 29, 1979, the applicant had cash shortages of $999.53. Included within this amount was a cash shortage for November 27, 1979, of $450. The applicant's proof sheet for November 27, 1979, showed a shortage of $.57. The applicant never had any other shortage of such an amount. On November 29, 1979, the applicant was terminated from her position.

From November 1980 until the present, the applicant has been employed by Harrah's Marina Hotel Casino as a cocktail waitress. The applicant's work performance has been satisfactory (P-1). The applicant has held a hotel employee registration since 1980, and she has held a temporary casino employee license since March 1981,

The applicant does not have a criminal record.

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

(B) DISPUTED FACTS

In dispute was whether the applicant took the monies which her cash box was short.

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On the evening of November 27, 1979/early morning of November 28, 1979, the Lincoln conducted an audit of Ms. Logan's cash box. This audit revealed that she had a shortage of $450 (R-1). The applicant had no explanation when confronted with the shortage.

There was no direct evidence offered to establish that Ms. Logan took the monies. Further, the document offered by the Division, although it could be inferred to conclude that the applicant had taken the money, does not establish any such fact. The applicant acknowledged that the shortage existed; however, she had no explanation of how the shortage occurred. Nevertheless, it is necessary to evaluate Ms. Logan's testimony.

The primary determinative factor in this matter was Ms. Logan's credibility. As the applicant for licensure, she had a direct interest in the outcome and a bias in these proceedings. However, the applicant's testimony was believable, consistent with the documentary evidence presented (specifically, the Division's exhibit R-1) and persuasive. There was no witness or any evidence offered to refute that to which the applicant testified. In the final analysis, I am persuaded to accept her testimony in full. The applicant's lack of an explanation for the shortage which occurred is the same statement she gave over three years ago.

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

1. There was no direct evidence to establish that the applicant took the monies which her cash box was short during the period of her employment by the Lincoln from March 12 to November 29, 1979.

2. The applicant has consistently maintained that she has no knowledge of the cause of the shortage.

3. The applicant's testimony was credible, believable and persuasive in all respects.

505.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86g of the Casino Control Act (Act) provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. The Division alleged, under section 86g, that Ms. Logan's conduct between March 12 and November 29, 1979 constitutes a violation of N.J.S.A. 2C:20-3 or 4, and is a statutory disqualifier under section 86c(1) of the Act. However, the Division failed to prove that Ms. Logan committed any act which would constitute a violation of the cited statutes.

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

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

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

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

Under section 89b(2) of the Act, Ms. Logan was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel.,Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission' (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conduct while employed by the Lincoln as a teller from March 12 to November 29, 1979.

Although it is clear that something was amiss during the applicant's second period of employment at the Lincoln in regard to substantial cash shortages in her cash box, there was no proof that she was at fault. The fact that she was responsible for her cash box does not establish that she took the money. Although limited, other persons did have access to her cash box. The applicant was not charged with any criminal wrongdoing when the facts were fresh and nothing additional has been presented now. The most significant factor is the applicant's credible testimony and consistent position that she has no explanation for the shortage. Accordingly, in the absence of any evidence of misconduct of any type, and given an otherwise positive employment record and personal history, the applicant has demonstrated her qualifications for licensure.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, her good character, honesty and integrity under section 89b(2) of the Act.

ORDER OF DISPOSITION

IT IS ORDERED that the application of Rita Logan for licensure as a casino employee be **GRANTED.**

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

508.

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

February 24, 1983
DATE

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

Receipt Acknowledged:

February 25, 1983
DATE

Nancy C. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

March 1, 1983
DATE

Ronald L. Lorkenzer
OFFICE OF ADMINISTRATIVE LAW

ks/e

509.

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form - 2, Rita Logan, September 12, 1980 (29 pages)

P-1 Letter to Gary Dinenbury [sic] from Katherine Watkins, January 3, 1983

R-1 Copy of Memorandum to Board of Directors from Lemuel A. Dickinson, November 29, 1979

WITNESS LIST

FOR THE APPLICANT:

Rita Logan

FOR THE RESPONDENT:

Augustin Garcia

510.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-65
OAL DOCKET NO. CCC 7369-82
LICENSE NO.31497-22

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

Complainant,

V.

JAMES MARTIN MEIS,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 6, 1982, recommending that the casino employee license held by James Martin Meis (Respondent) be revoked to which neither party excepted or objected; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of January 18, 1983, to affirm and adopt the said Initial Decision and to revoke the casino employee license held by Respondent,

IT IS on this 20th day of January 1983 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 held by Respondent be and hereby is revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Respondent is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order, unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 20, 1983

FILED
NE
DEC 06 1982
CASINO CONTROL COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7369-82
AGENCY DKT. NO. 82-65

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner
v.
JAMES MARTIN MEIS,
Respondent.

APPEARANCES:

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

D. William Subin, Esq. for respondent (Subin, Armstrong & Armstrong, attorneys)

Record Closed October 21, 1982 Decided December 6, 1982

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement has brought a complaint against the respondent alleging that he was directly involved in the rigging of a lottery drawing, known as the "Tropicana $100 Sweepstakes," held at the Tropicana Hotel and Casino on March 24, 1982. The matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 2, 1982, and a prehearing order was issued on September 13, 1982. Thereafter, a hearing was held before Administrative Law Judge Jeff S. Masin at the Atlantic City City Hall on October 21, 1982. At the time of the hearing the parties

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entered into a Stipulation of Facts, a copy of which is attached to this Initial Decision. The facts contained in paragraphs 1 through 28 of said Stipulation are found as facts in this case.

The Stipulation of Facts documents completely Mr. Meis' involvement in the rigging of the Tropicana $100 Sweepstakes game. As is noted, the recipients of the $100 prize were Mr. Meis' brother and another individual. Mr. Meis confessed his involvement, after initially denying the same. A municipal court charge filed in the Atlantic City Municipal Court, charging Mr. Meis with a violation of N.J.S.A. 2C:20-4, Theft by Deception by way of purposely creating a false impression, was dismissed by the municipal court. At the time of the dismissal, the parties entered into a stipulation that Mr. Meis "would not seek employment within the casino industry within a 'reasonable period of time' as determined by the Casino Control Commission."

It appears that the facts relevant to this matter are completely set forth in the Stipulation of Facts and the accompanying reports filed by the police and other investigators which are supportive of the factual representations in the Stipulation. Mr. Meis' resume is also in evidence as exhibit R-1. Neither party chose to present any testimony at the hearing. The sole question which must be dealt with is what punishment Mr. Meis must suffer as a result of his involvement in this episode.

As agreed to by the parties, the actions committed by Mr. Meis do not constitute a violation of any of the articulated criminal acts requiring automatic disqualification from licensure, pursuant to N.J.S.A. 5:12-86c(1). However, it is contended that Mr. Meis' actions do fall within the category of "inimical" actions under N.J.S.A. 5:12-86c(4). With this the court quite agrees. There can be no more egregious violation of the responsibility of anyone holding a license under the Casino Control Act than involvement in the fixing of any sort of game of chance or other contest or gambling activity connected in any way with the casinos or the hotels. The entire basis of the Atlantic City experiment in legalized casino gambling rests on the games themselves. If it were not for the existence of the casinos there would be no economic revival in Atlantic City, no increased jobs, no increased revenues, and the city would quite probably be in the moribund state in which it existed prior to the advent of casino gambling. While by no means the exclusive basis upon which people gamble, one must assume that the average individual feels that when he enters into any contest at the casino or at the hotel that he has as good a chance as anyone else to win. The spector of "fixing," the rigging of

games, is one which can raise only nightmares to the entire casino industry, as well as to the regulators who are entrusted with the responsibility of assuring the sanctity of the games. Thus any individual, whatever his position, who engages in any action, even on a limited scale, which might in any way endanger the trust and confidence of the public in the legitimacy of the games must suffer a severe sanction.

The stipulated facts in this case readily establish that Mr. Meis was a knowing and full participant in the rigging of the sweepstakes. While it is unclear whose idea the scheme originally was, the stipulation indicates that Mr. Meis informed his family members, presumably including his brother and quite probably his brother's friend, either directly or indirectly, of his involvement in the sweepstakes and his position as the individual selected by the casino to perform the task of choosing the winner by drawing a coupon in a random fashion. That Mr. Meis was a direct and fully involved participant in the rigging of this contest cannot be denied.

The evidence indicates that Mr. Meis has, up until this incident, been an upstanding citizen who has never before been in trouble. The court notes this, but finds nothing about Mr. Meis' prior conduct which is sufficient to overcome the extreme seriousness of this incident. While the amount of money involved in the game was small, and it appears that this was Mr. Meis' first such illegal action, I can conceive of no possible sanction appropriate here short of a full and complete revocation of Mr. Meis' casino employee license. Although the court is well aware that the statute permits suspensions of licenses for less than the full term of revocation, under the circumstances of this case, and in consideration of the fact that this illegal activity strikes at the very heart of the gambling industry, the court can see no other alternative, but to impose the maximum penalty.

It is **ORDERED** that casino employee license no. 31497-22 issued to James M. Meis by the Casino Control Commission be and the same is hereby **REVOKED.**

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

515.

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

December 6, 1982
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

November 6, 1982
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Dec 8, 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

ml

516.

EVIDENCE LIST

Joint Exhibit:

J-1 Stipulation of Facts

On Behalf of the Petitioner:

P-1 Complaint No. SI 54057

P-2 Incident Report prepared by Joseph Babick, dated March 25, 1982

P-3 Investigation Report prepared by Patrick Gerbig, dated March 25, 1982

P-4 Miranda Warning Card signed by James M. Meis on March 25, 1982

P-5 Statement of James M. Meis, dated March 25, 1982

P-6 Arrest Report, dated March 25, 1982

P-7 Supplementary Investigation Report, dated March 30, 1982

P-8 Memorandum, dated February 16, 1982, March 1, 1982, and March 15, 1982, from Ron Peterson to the Marketing Duty Staff

P-9 Excerpt from notebook log of PBX operator Debbie Coster

P-10 Excerpt from notebook log of PBX operator Marlene McCoy

P-11 Congratulatory letter from Tropicana Hotel and Casino signed by John F. Reilly, Jr.

P-12 Cage Paid Out Receipt for $100, dated March 24, 1982

P-13 Memorandum, dated February 9, 1982, from Ron Peterson

P-14 Memorandum, dated February 4, 1982, from Tony DiRaimondo

P-15 Sample newspaper coupon used in connection with the sweepstakes

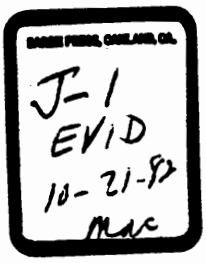
P-16 Supplementary Investigation Report prepared by Patrick Gerbig, dated May 28, 1982

P-17 Memorandum, dated June 1, 1982, from Deputy Attorney General Michael Vukcevich to Deputy Attorney General T. Barry Goas

On Behalf of the Respondent:

R-1 Background Summary

517.



IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: KEVIN F. O'TOOLE
Deputy Attorney General
(609) 984-6197

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 7369-82
AGENCY DOCKET NO. 82-65

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

Plaintiff,

vs.

JAMES MARTIN MEIS,

Respondent.

Civil Action

STIPULATION OF FACTS

With the above-captioned matter having been discussed by and between the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin F. O'Toole, Deputy Attorney General, and D. William Subin, Esquire, Attorney for Respondent, James Martin Meis, the following facts have been agreed upon and stipulated to as Findings of Fact:

1. James M. Meis presently holds casino employee license #31497-22 issued by the Casino Control Commission on July 22, 1981.

2. On March 24, 1982, James M. Meis was employed by the Tropicana Hotel and Casino as a Hotel Sales Manager, a position within the Marketing Department.

3. On or about February 4, 1982, the Tropicana Hotel and Casino began a "Tropicana $100.00 Sweepstakes" drawing under the direction and supervision of the Marketing Department.

4. Contestants for the "Tropicana $100.00 Sweepstakes" drawing were solicited by the Tropicana Hotel and Casino through coupons that could be obtained by the public through newspaper clippings appearing in publications throughout New Jersey, plus out-of-state locations such as Philadelphia, Baltimore, and New York City.

5. Pursuant to the Official Rules of the Sweepstakes Drawing, employees of the Tropicana Hotel and Casino were not eligible to enter the contest, nor were any members of their families or any member of the household of any prohibited category of persons permitted to enter the contest.

6. Pursuant to the Tropicana Marketing Department's procedures for selecting a winner in the "Tropicana $100.00 Sweepstakes" drawing it was the responsibility of the Marketing Duty Staff person to draw the winning coupon at the 6:00 p.m., 7:00 p.m., 8:00 p.m., 9:00 p.m., and 10:00 p.m. drawings held on Monday through Friday during the contest period.

7. On Wednesday, March 24, 1982, James M. Meis was the Marketing Duty Staff person responsible for drawing the winning coupon for the 9:00 p.m. sweepstakes drawing.

8. On March 24, 1982 James M. Meis' brother, William Meis, and another individual by the name of John Reilly were both present at the Tropicana Hotel and Casino. William Meis and John Reilly were, at that time, medical students

attending the Philadelphia College of Osteopathic Medicine located in Philadelphia, Pennsylvania.

9. At approximately 8:45 p.m. on March 24, 1982 a person identifying himself as John Reilly placed an intra-house telephone call on Tropicana phone #4986 to Tropicana telephone operator, Deborah Koster, and requested that she page Jim Meis. Jim Meis responded to the page call by picking up Tropicana intra-house telephone #4840.

10. The 8:45 p.m. intra-house telephone call as described in paragraph 9, supra, was in fact made by Jim Meis' brother, William Meis, and by John Reilly. William Meis notified his brother Jim Meis of his and John Reilly's arrival at the Tropicana Hotel and Casino and of their intention to deposit a Tropicana $100.00 sweepstakes coupon in the name of John Reilly at the box office to be drawn by his brother at the 9:00 p.m. sweepstakes drawing on March 24, 1982.

11. At approximately 9:00 p.m. on March 24, 1982 James M. Meis went to the Tropicana box office for the purpose of picking up the additional coupon entries for the 9:00 p.m. sweepstakes drawing, including therein was the coupon in the name of John Reilly. James M. Meis then deposited the additional entry coupons into the contest hopper, deliberately placing the John Reilly coupon in a specific location within the hopper. James M. Meis then intentionally selected John Reilly's coupon as the 9:00 p.m. sweepstakes winner, thereby giving no other contestant a chance to win the sweepstakes drawing.

12. The Tropicana Hotel and Casino had no security precautions in effect at the contest hopper nor were there any other employees of the Tropicana Hotel and Casino present at the contest hopper when James M. Meis selected the winner of the 9:00 p.m. sweepstakes drawing on March 24, 1982.

520.

13. Shortly after selecting the John Reilly coupon as the 9:00 p.m. sweepstakes winner on March 24, 1982, James M. Meis notified Tropicana telephone operator, Marlene McCoy, and instructed her to announce over the public address system that John Reilly was the 9:00 p.m. sweepstakes winner.

14. John Reilly, who was present at the Tropicana Hotel and Casino with William Meis on March 24, 1982, went to the Tropicana Box Office for the purpose of claiming the $100.00 and at that time he received a congratulatory letter which he signed "J.F. Reilly Jr.".

15. John Reilly then proceeded with the congratulatory letter to the casino cashier's cage where he presented the congratulatory letter to casino cage cashier, Susan Nicodemus, who, after obtaining the necessary authorization from casino cage manager, Thomas Elam, paid John Reilly $100.00 cash after John Reilly signed a cage paid out receipt.

16. On March 24, 1982 the Tropicana telephone operator who received the page request from John Reilly and William Meis at 8:45 p.m. as described in paragraph 9, supra, and the telephone operator who subsequently paged "John Reilly" as the 9:00 p.m. sweepstakes winner pursuant to the instruction of James Meis, as described in paragraph 13, supra, notified their shift supervisor, Patricia Johnson, of this coincidence.

17. On March 25, 1982 Patricia Johnson, shift supervisor of the Tropicana Communications Department, notified her supervisor, Kathleen Teefy, Tropicana Director of Communications, of the coincidence that was observed the prior night, March 24, 1982.

18. On March 25, 1982 Kathleen Teefy, Tropicana Director of Communications, notified Richard Clement, Vice President and Director of Security, of the coincidence observed by the telephone operators on March 24, 1982. Mr. Clement then directed Joseph Babick, Deputy Director of Security, to investigate the matter.

19. Joseph Babick contacted James Meis at his office at Tropicana on March 25, 1982 and requested that he come to the Tropicana Security Dept. office for questioning. After first stating that the selection of John Reilly as the 9:00 p.m. sweepstakes winner was merely by chance, Mr. Meis recanted and admitted that the drawing had been "rigged" so that his brother, William Meis, and John Reilly would receive the $100.00 cash.

20. Joseph Babick also contacted James Meis' supervisor, Anthony DiRaimondo, Tropicana Director of Sales, who appeared at Mr. Babick's office on March 25, 1982 at which time James Meis related the entire sequence of events to Mr. DiRaimondo. At this time, Mr. DiRaimondo suspended James Meis from his position as Hotel Sales Manager.

21. Joseph Babick then contacted the Division of Gaming Enforcement on March 25, 1982 at which time Investigators John Albert and Patrick Gerbig of the Casino Investigations Section of the Division of Gaming Enforcement responded.

22. Investigators Albert and Gerbig escorted James Meis to the Division of Gaming Enforcement office located on the premises of the Tropicana Hotel and Casino at which time they read James Meis the Miranda Warning prior to questioning him. At this time James Meis gave a written statement to Investigators Albert and Gerbig in which he admitted his participation in the rigged drawing.

23. James M. Meis stated to Investigators Albert and Gerbig on March 25, 1982 that his duties as Manager on Duty were known by his family, including his duty to draw the $100.00 sweepstakes winners. James M. Meis further stated that he discussed with members of his family the procedures and method for selecting a winner in the sweepstakes drawing.

24. James M. Meis stated to Investigators Albert and Gerbig that the incident of March 24, 1982 was the first occurrence in regard to rigging the

sweepstakes drawing, and that at no time did he obtain any of the proceeds of the rigged contest.

25. On March 25, 1982, Investigators Albert and Gerbig arrested James M. Meis pursuant to criminal complaint No. SI 54057 charging him with theft by deception, in violation of N.J.S. 2C:20-4.

26. On March 26, 1982, James M. Meis officially notified his direct supervisor, Anthony DiRaimondo, that he was resigning from the position of Sales Manager at the Tropicana Hotel and Casino effective immediately.

27. James M. Meis has no previous criminal record prior to his arrest on March 25, 1982 and he has not been subsequently arrested for the commission of any offense since that date.

28. On May 28, 1982, the Honorable David Schepps, Judge of the Atlantic City Municipal Court, dismissed the criminal charges against James M. Meis. The disposition of the criminal charges against James M. Meis included a stipulation between the parties that James M. Meis would not seek employment within the casino industry within a "reasonable period of time" as determined by the Casino Control Commission.

Kevin F. O'Toole
Kevin F. O'Toole
Deputy Attorney General
For the Plaintiff

D. William Subin
D. William Subin, Esquire
Subin, Armstrong & Armstrong, P.A.
Attorneys for Respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-EL-19

IN THE MATTER OF THE EXCLUSION OF LAWRENCE MERLINO FROM CASINO HOTEL FACILITIES

PRELIMINARY ORDER OF EXCLUSION

A preliminary hearing having been held before the Casino Control Commission upon the petition of the Division of Gaming Enforcement filed on November 10, 1982, seeking the immediate placement of Respondent's name on the Exclusion List; and Respondent having been duly served with notice of the petition and advised of his right to appear at the preliminary hearing; and the Respondent having appeared through counsel at the preliminary hearing; and the Commission having considered the entire record in this matter and having determined that there is a reasonable possibility that Respondent satisfies the criteria for the placement of his name on the Exclusion List pursuant to N.J.S.A. 5:12-71(a)(3), N.J.A.C. 19:42-4.3 and N.J.A.C. 19:48-1.3 (a)(4); and the Commission having resolved at its public meeting of February 1, 1983, to place Respondent's name on the Exclusion List;

IT IS on this 2nd day of February 1983, ORDERED that the name of Lawrence Merlino be placed on the Exclusion List pending further Order of the Commission; and

IT IS FURTHER ORDERED that Lawrence Merlino be and hereby is declared to be an excluded person pursuant to Section 71 of the Act and Commission regulations, N.J.A.C. 19:42-4.1 et seq., and N.J.A.C. 19:48-1.1 et seq.; and

IT IS FURTHER ORDERED that Lawrence Merlino shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City; and

IT IS FURTHER ORDERED that a final hearing shall be initiated within 30 days after receipt by the Commission of a written request therefor pursuant to N.J.A.C. 19:42-4.4; and

IT IS FURTHER ORDERED that a copy of this Order shall be served upon the Respondent, the Division of Gaming Enforcement, and the authorized agent of all currently operating casinos in New Jersey within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: February 2, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-EL-19

IN THE MATTER OF THE EXCLUSION

OF LAWRENCE MERLINO FROM

CASINO HOTEL FACILITIES

OPINION OF THE CASINO CONTROL COMMISSION

see: IN THE MATTER OF THE EXCLUSION OF PHILLIP LEONETTI FROM CASINO HOTEL FACILITIES commencing at page 466

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-34
OAL DOCKET NO. CCC 0287-82
LIC. NO. 00574-11

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

Complainant,

v.

DOMINIC GERALD MIGLIARO,

Respondent.

FINAL ORDER

This matter having been opened to the Casino Control Commission upon the filing of an "Initial Decision Settlement Agreement" (hereafter Initial Decision) by the Office of Administrative Law on April 13, 1983, wherein the Administrative Law Judge found that the parties had entered into a stipulation of settlement which fully disposed of all issues in controversy; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of May 11, 1983, to affirm and adopt the Initial Decision, and impose a fine of $500 upon Dominic Gerald Migliaro for violation of N.J.S.A. 5:12-100(o)(1),

IT IS on this 31st day of May 1983, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is affirmed and adopted.

IT IS FURTHER ORDERED that Dominic Gerald Migliaro pay a fine of $500 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 Dominic Gerald Migliaro and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

By: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: May 31, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT AGREEMENT
OAL DKT. NO. CCC 0287-82
AGENCY DKT. NO. 81-34

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

v.

DOMINIC GERALD MIGLIARO,
Respondent.

APPEARANCES:

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

Paul R. D'Amato, Esq., for respondent
(Hankin and D'Amato, attorneys)

Record Closed: April 5, 1983 Decided: April 11, 1983

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OAL DKT. NO. CCC 0287-82

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

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement before the Casino Control Commission on June 30, 1981 seeking appropriate relief against respondent's casino key employee license pursuant to Section 100(o) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) On October 5, 1981, respondent filed an answer to the Division's complaint with the Commission. The matter was thereafter transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was scheduled for August 2, 1982, at which time, respondent was residing in the State of Nevada. The administrative law judge granted counsel's motion that the matter be adjourned.

The parties have agreed to a settlement and have prepared a Stipulation of Settlement indicating the terms thereof which is attached and fully incorporated herein. I have reviewed the record and the terms of the settlement and **I FIND:**

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

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

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

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

OAL DKT. NO. MVH 6005-82

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

April 11, 1983
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

April 13, 1983
DATE

Nancy I. Stahl
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed To Parties:

April 13, 1983
DATE

Ronald L. Parker/jrp
FOR OFFICE OF ADMINISTRATIVE LAW

jrp/e

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: HOWARD M. BARMAN
Deputy Attorney General
(609) 633-7110

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO.: 81-34
OAL DOCKET NO.: CCC 00287-82

Civil Action

STIPULATION OF SETTLEMENT

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

Plaintiff,

vs.

DOMINIC GERALD MIGLIARO,

Respondent.

The matters involved in the above-captioned matter having been discussed by and between the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by Howard M. Barman, Deputy Attorney General, and Paul R. D'Amato, of Hankin and D'Amato, Attorneys for Respondent, Dominic Migliaro, and said matters having been resolved, it is hereby consented to and agreed by and between the parties that:

1) WHEREAS Respondent presently holds casino key employee license #00574-11 issued by the Casino Control Commission in December of 1979; and Respondent was issued casino employee license #06570-21 by the Casino Control Commission in October of 1980 which is, at this time, inactive; and Respondent also has applied for a gaming instructor's license #00446-60 which is currently pending.

2) WHEREAS on February 27, 1981, Respondent was arrested and charged with accepting a gratuity from a casino patron, on or about November 9, 1980, in violation of Section 100(o)(1) of the Casino Control Act, N.J.S.A. 5:12-1 et seq. 5:12-100n.

3) WHEREAS on or about November 9, 1980, Respondent was employed at Bally Park Place Hotel/Casino as a pit boss in craps.

4) WHEREAS it is admitted that the aforementioned conduct did, in fact, occur.

5) WHEREAS on or about February 28, 1981, Respondent was suspended and thereafter took a leave of absence, without compensation, from his employment with Bally Park Place Hotel/Casino.

6) WHEREAS Respondent did not return to his employment with Bally Park Place until June 12, 1981.

7) WHEREAS Respondent sustained lost compensation for the aforementioned period of suspended employment, and this loss was a direct or proximate result of the aforementioned violation of the Casino Control Act.

8) WHEREAS the criminal charges against Respondent were administratively dismissed on June 22, 1981.

9) WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Dominic Migliaro 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 and between he parties hereto that:

A. Pursuant to N.J.S.A. 5:12-129(5), Respondent agrees to pay a fine of $500.

B. This shall constitute full and final settlement of the matters contained herein.

The undersigned agree and consent to the entry of the aforementioned settlement.

Howard M. Barman
Deputy Attorney General
Attorney for Plaintiff

Paul R. D'Amato, Esq.
Hankin & D'Amato
Attorneys for Respondent

Dominic Migliaro
Dominic Migliaro

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-39
OAL DOCKET NO. CCC 2745-82
APP. NO. 25850-82

IN THE MATTER OF THE APPLICATION
OF RAMON NAVARRO FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on March 18, 1983, recommending that the application of Ramon Navarro be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on April 20, 1983, to modify the said Initial Decision and to grant the casino employee license application of Ramon Navarro,

IT IS on this 21st day of April 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as hereinafter stated and, as modified, affirmed and adopted:

(1) That portion of the Initial Decision concluding that Mr. Navarro is disqualified pursuant to N.J.S.A. 5:12-86(c)(2) is rejected as inconsistent with the Commission's construction of Section 86 of the act as set forth in In the Matter of the Application of Robert A. Ferrin for Licensure as a Casino Employee, Docket No. 79-EA-207 (Commission Decision 1981).

Mr. Navarro's application having been filed on or about February 2, 1981, the pertinent list of disqualifying offenses is that contained in section 86(c)(1). The Applicant not having been convicted of any offense equivalent to those listed in section 86(c)(1), it is not necessary to decide the issue of his rehabilitation. Therefor that portion of the Initial Decision finding Mr. Navarro rehabilitated is rejected as unnecessary.

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 22, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2745-82

AGENCY DKT. NO. 82-EA-39

IN THE MATTER OF THE APPLICATION OF RAMON NAVARRO FOR LICENSURE AS A CASINO EMPLOYEE (MAINTENANCE AND CLEANING)

APPEARANCES:

Ramon Navarro, Pro Se

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

Record Closed: February 1, 1983 Decided: March 17, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Ramon Navarro, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had been convicted of a disqualifying criminal offense and that the applicant lacked the requisite good character, honesty and integrity.

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PROCEDURAL HISTORY

Mr. Navarro filed his Personal History Disclosure Form - 2 (PHDF-2) with the Commission in early 1981. By letter, dated February 18, 1982, the Commission advised the applicant that, based upon information received in a report from the Division, dated February 4, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter, dated March 11, 1982, the applicant requested a hearing. On March 16, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 30, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

Mr. Navarro is 40 years of age. He was a resident of New York until he relocated to New Jersey in 1971. The applicant is a 1960 graduate of the East New York Vocational School, where he trained to be an aviation mechanic. The applicant is also the father of three children, and he has always met his support obligations.

The applicant's recent employment history revealed that from 1971 to 1973 he was employed as a firefighter and helicopter mechanic by the Military Sea Life Command (Merchant Marine) (P-1). From 1974 to 1975, the applicant was employed as a mechanic by Bill's Arco in Camden, New Jersey. From 1975 to 1980, the applicant was employed as a mechanic by Haddon Exxon in Camden, New Jersey.

Since August 1980, the applicant has been employed as a diesel mechanic by the Golden Nugget of Atlantic City (GNAC). The applicant has held a hotel employee registration. Thomas P. Cooper, Director of Engineering for the GNAC and formerly the applicant's direct supervisor, John D'Ortona, Executive Housekeeper for the GNAC, and Morton L. Bates, formerly a Draftsman for the GNAC, each testified to the applicant's employment record. Mr. D'Ortona and Mr. Bates had not supervised the applicant, but they had worked with him on a close and frequent basis. It was well-established that the applicant was a professional, knowledgeable, hardworking, reliable, cooperative, friendly and competent diesel mechanic.

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The applicant was arrested on April 7, 1960, in New York City, New York, and was charged with three counts of burglary. He was a juvenile at this time. The applicant pled guilty and was sentenced to an indeterminate term at the New York Reformatory.

On November 29, 1968, the applicant was arrested in Roselle Park, New Jersey, and was charged with a violation of N.J.S.A. 2A:170-29, failure to give a good account of himself, a disorderly person's offense. On December 3, 1968, the applicant pled guilty and was fined $100 and $5 costs. Mr. Navarro explained that the arrest occurred while he was en route from a visit with his mother in Camden to his home in New York City. The applicant stated that he had been drinking and got lost. The applicant never understood the nature of the charges.

On January 7, 1978, the applicant was arrested in Haddon Heights, and was charged with a violation of N.J.S.A. 2A:151-41, possession of a gun. On December 19, 1978, the applicant pled guilty to a violation of N.J.S.A. 2A:151-41(a) and was sentenced to a suspended term of two to three years and a two-year period of probation (R-1). Mr. Navarro acknowledged that he had possession of a gun. He explained that he had purchased the gun one month prior to his arrest because he had been assaulted and seriously injured, and he feared for his safety.

On July 7, 1978, the applicant was arrested in Pennsauken, and was charged with violations of N.J.S.A. 2A:119-2, larceny and N.J.S.A. 2A:139-1, receipt of stolen property. On October 23, 1979, the applicant pled guilty to larceny and was sentenced to a suspended term of two to three years, a two-year period of probation, and he was fined $250 (R-2). The remaining charge was dismissed. Again, the applicant described the circumstances underlying the incident. He had been shopping at a store when an employee in the shipping department of the store offered the applicant a "good deal" on three bicycles. The applicant knew that the transaction was unlawful. Nevertheless, the applicant paid $50 for each of three bicycles. The applicant satisfactorily completed his probation and on May 18, 1981, he was granted an early termination (P-2).

Mr. Navarro was involved in an incident during early January 1983 in the course of his employment at GNAC, which led to the issuance of a verbal reprimand. This incident came to light during the course of the hearing. The applicant and his female companion, Vicki L. Depoali, who is a secretary in the executive offices of the GNAC, had a personal dispute. Upon returning to his office, the applicant placed a call to

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Ms. Depoali and informed her that he intended to appear at her office to continue their discussion. Ms. Depoali objected. Ms. Dipoali then contacted an acquaintance of hers in the GNAC security offices. Her intention was to have this person tell the applicant not to come to the executive offices; it was not to initate any official action. The applicant appeared at the GNAC executive offices. Although no negative incident occurred, a security officer escorted the applicant from the executive offices. Mr. Cooper then issued the applicant a verbal warning, based upon the fact that the executive offices are off limits to most employees, including the applicant. Mr. Cooper testified that the "off limits" designation for the executive offices is an internal regulation of the GNAC. Further, Mr. Cooper stated that the applicant was unaware that the area was off-limits to him, since he had worked there on previous occasions. Mr. Cooper also testified that the issuance of a verbal warning was common with employees and was not significant. In any event, it was evident that the applicant's presence in the executive offices did not create a disturbance or any other problem. During the course of the hearing, a great deal of time was spent in regard to this incident. This emphasis was necessary in order to determine the nature of the applicant's actions which were not previously known. It was overwhelmingly clear that the applicant's conduct was well within the bounds of propriety and does not reflect negatively against his application. The time spent on the incident at the hearing was far out of proportion to the significance of the incident.

The applicant called four witnesses to testify on his behalf. First, John D'Ortona, is the Executive Housekeeper at the GNAC. His department frequently works with the engineering department, and the witness has worked closely with the applicant during the past two years. Mr. D'Ortona had a high regard for the applicant's employment capabilities.

Morton L. Bates, the applicant's second witness, has known the applicant for several years. As a draftsman, the witness frequently worked with the applicant and they often had lunch together. Mr. Bates had a high opinion of the applicant and a high regard for his employment capabilities. Upon being informed of some of the details of the applicant's prior record, Mr. Bates stated that his opinion was not changed.

The applicant's third witness, Thomas P. Cooper, was the Chief Engineer at GNAC, prior to his promotion in December 1981 to Director of Engineering. As Chief Engineer, the witness was the applicant's direct supervisor. Also as Chief Engineer, the witness assessed the applicant as being very professional and very knowledgeable.

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Mr. Cooper stated that he always relied heavily upon the applicant, even in areas which were not within the applicant's specific area of expertise. After the witness became the Director of Engineering, he acquired access to the applicant's personnel file, in which he found documents regarding the applicant's criminal record. Mr. Cooper stated that this information caused him to have doubts regarding the applicant and caused him to reassess his opinion of the applicant. However, based upon the applicant's performance on the job and attitude towards others, Mr. Cooper has regained his respect for Mr. Navarro. Further, the witness testified that the applicant is held in high regard by his co-employees. Mr. Cooper also stated that the applicant is a valuable employee because of his extensive knowledge of diesel mechanics and his proficiency as a diesel mechanic. The witness is of the opinion that the applicant is important to the GNAC and that it is essential he be licensed to work on the gaming floor. Other than the one incident which Mr. Cooper described as insignificant, the applicant has not been involved in any disciplinary matters. Mr. Cooper held the opinion that the applicant is more honest than most people and that he is reliable and responsible.

The applicant's fourth witness was Donna D. Mitchell, an Engineering Clerk at the GNAC. The witness has known Mr. Navarro since November 1980 and sees him on a daily basis. The witness is in a carpool with the applicant. Ms. Mitchell also related an incident when Mr. Navarro voluntarily repaired her automobile. Ms. Mitchell is of the opinion that the applicant is a nice and good person who is always willing to help others. The witness also testified that the applicant is well-liked throughout the GNAC.

Mr. Navarro also offered several letters in support of his application. Peter A. Tortoreto, a probation officer with Camden County, held the opinion that the applicant was a dedicated and cooperative worker (P-2). Charles I. Malamut, Director of Hotel Operations for Bally's Park Place Casino Hotel and formerly Director of Hotel Operations at the GNAC, stated that the applicant is a dependable, capable, trustworthy, willing and conscientious person (P-3). Harry R. Hurley, Health Club Manager for the GNAC, stated that the applicant is industrious and resourceful in the performance of his duties (P-4). Roger K. Barnhart, Superintendent of Services for the GNAC, stated that the applicant is a person of excellent character (P-6). Preston Swain, Convention Service Supervisor with the GNAC, stated that the applicant is dependable, reliable, conscientious and well-regarded by his co-workers (P-9).

An important factor in this matter was the credibility of Mr. Navarro. As the applicant for licensure, he had a direct interst in the outcome and a bias in these proceedings. However, the applicant's testimony was candid, consistent with all of the documentary evidence, believable and highly persuasive. Further, there was no witness offered or any evidence presented to refute any fact to which the applicant testified. In the final analysis, I am persuaded to accept his testimony in full.

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

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(2)

Section 86c(2) of the Casino Control Act (Act) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2A of the New Jersey Statutes be disqualified from licensure. Mr. Navarro pled guilty to a violation of N.J.S.A. 2A:119-2, larceny, which is an enumerated disqualifying offense.

I **CONCLUDE** that Mr. Navarro's conviction for a violation of N.J.S.A. 2A:119-2 mandates that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(2).

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;
(3) The circumstances under which the offense occurred;

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(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

First, Mr. Navarro has applied for licensure to be employed as a diesel mechanic. He would not have any responsibilities for actual gaming activities, nor would he have substantial contact with patrons of the casino. However, the applicant would work occasionally in the casino and would have contact with casino key employees.

Second, the applicant was convicted of a violation of N.J.S.A. 2A:119-2, larceny. Under section 86c(2) of the Act, this is a statutory disqualifier. However, under section 86c(1), which sets forth statutory disqualifying offenses under Title 2C of the New Jersey statutes and which superceded Title 2A, the applicant's conviction would not constitute a disqualifying offense. The applicant was convicted of the statutory equivalent of a violation of N.J.S.A. 2C:20-1 et seq. Because the value of the property stolen by the applicant was less than $500, under N.J.S.A. 2C:20-2b(3) his crime would have been of the fourth degree and would not have been a disqualifying offense. Although the nature of the applicant's conduct remains the same and the adoption of section 86c(1) of the Act did not repeal the listing of a violation of N.J.S.A. 2A:119-2 as a disqualifier, the modification has a substantial impact in an evaluation of the seriousness of the offense, which is mitigated accordingly.

Third, the applicant's actions were not planned or premeditated; rather, they were the product of a spur of the moment temptation. Nevertheless, the applicant has accepted full responsibility for his misconduct, paid his fine and satisfied the terms of probation.

Fourth, the applicant committed the crime on July 7, 1978, approximately four and one-half years ago.

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Fifth, at the time of the offense, the applicant was 36 years of age; his conduct was not the result of immaturity.

Sixth, the applicant's conduct was the most recent of four incidents of misconduct which occurred since April 7, 1960 (when he was a juvenile). Also, this incident was the most serious of the three adult offenses. The first, in 1968, was insignificant. In any event, the applicant has not been involved in any misconduct since July 7, 1978, and there is no indication that a repetition of his misconduct will occur.

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

Eighth, the applicant has made substantial rehabilitative efforts. The applicant pled guilty to the charge, paid his fine on the date he was sentenced and completed satisfactorily his term of probation. The applicant fully acknowledged his wrongdoing. He also has established a very positive employment record. Also significant was the testimony of Mr. Thomas regarding his opinion of the applicant. Upon learning of the applicant's criminal record, Mr. Thomas stated candidly that he was disturbed and uncertain about the applicant's employment at GNAC. However, and unbeknownst to the applicant, the applicant's continued commendable work performance and demonstrated character on the job re-earned him the respect of Mr. Thomas. Also, the applicant has demonstrated satisfactorily his rehabilitation by means of his successful employment within the gaming industry since 1980.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under section 89b(2) of the Act, Mr. Navarro was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, for a Casino License, Casino Control Commission (February 26, 1979), at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The

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reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conduct underlying the several charges which were filed against him.

Although the applicant's record as an adult indicates sporadic instances of misconduct, he has well-established his rehabilitation therefrom. Mr. Navarro demonstrated his qualifications for licensure by means of his own candid, believable and credible testimony, and the testimony of responsible and reasonable witnesses. An examination of the "whole man" clearly and convincingly establishes that Mr. Navarro is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corporation, Casino Control Commission, supra, at 51, 52.

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

ORDER OF DISPOSITION

It is **ORDERED** that the application of Ramon Navarro for licensure as a casino employee be **GRANTED.**

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

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

March 17, 1983
DATE

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

Receipt Acknowledged:

March 17, 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

March 22, 1983
DATE

Ronald L. Parker Jr.
OFFICE OF ADMINISTRATIVE LAW

fms/ee

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Personal History Disclosure Form-2, Ramon Navarro, February 7, 1981 (28 pages)

P-2 Letter to Casino Control Commission from Peter A. Tortoreto, October 21, 1982

P-3 Letter from Charles I. Malamut, October 27, 1982

P-4 Letter from Harry R. Hurley, November 15, 1982

P-5 Letter from Morton L. Bates

P-6 Letter from Roger K. Barnhart, January 31, 1983

P-7 Letter from John D'Ortona, October 15, 1982

P-8 Letter from Thomas P. Cooper, October 28, 1982

P-9 Letter from Preston Swain, January 28, 1983

R-1 State of New Jersey v. Ramon Navarro, Indictment No. 1981-77 and Judgment of Conviction, December 19, 1978 (5 pages)

R-2 State of New Jersey v. Ramon Navarro, Indictment No. 1164-78 and Judgment of Conviction, October 23, 1979 (8 pages)

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WITNESS LIST

FOR THE APPLICANT:

Morton L. Bates

Thomas P. Cooper

Vicki L. Depoali

John D'Ortona

Donna D. Mitchell

Ramon Navarro

FOR THE RESPONDENT:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-115
OAL DOCKET NO. CCC 6618-82
APP. NO. 31176-21

IN THE MATTER OF THE APPLICATION:
OF RAFAEL OTERO FOR LICENSURE : FINAL ORDER
AS A CASINO EMPLOYEE :

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on January 3, 1983, recommending that the application of Rafael Otero for a casino employee license be granted; and neither party having filed exceptions or objections to the Initial Decision; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of February 8, 1983, to modify the said Initial Decision and to grant the casino employee license application of Rafael Otero,

IT IS on this 7th day of March 1983, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is modified as follows:

1. The Commission disagrees with the Administrative Law Judge's reasoning to the extent that it understates the significance of three disorderly persons offenses of

which Rafael Otero was convicted in 1978, during the course of his employment as a dealer in an illegal casino in New York City.

2. The Commission finds that, because the aforementioned convictions pertained to unlawful casino gambling operations, such offenses are presumptively inimical and require a compelling demonstration that, under all the circumstances, the offense does not render Mr. Otero's licensure inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86(c)(4).

3. The Commission further finds that Rafael Otero has demonstrated such compelling circumstances by clear and convincing evidence, specifically that evidence which demonstrates that: (1) Rafael Otero's termination of his involvement with the unlawful gaming operation; (2) the passage of more than four years without any further involvement with the criminal justice system; (3) his gainful employment in various capacities subsequent to his illegal conduct.

IT IS FURTHER ORDERED that the casino employee license application of Rafael Otero be and hereby is granted based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 7, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6618-82

AGENCY DKT. NO. 82-EA-115

RAFAEL OTERO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

John H. Fitzgerald, Esq. for petitioner (Cape Atlantic Legal Services, attorneys)

William J. Walsh, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed November 19, 1982 Decided January 3, 1983

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Rafael Otero to the Casino Control Commission for a license permitting him to work in a casino as a floorperson. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

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1. Whether the petitioner, with specific reference to his three arrests in 1978 for illegal gaming activity, has committed any offense which would indicate that licensure would be inimical to the policies of the Casino Control Act and to casino operations, within the meaning of section 86c(4) of the Casino Control Act.

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

3. Whether the petitioner, notwithstanding any possible disqualification which may exist pursuant to section 86c of the Act, has demonstrated his rehabilitation, within the meaning of section 90h of the Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated June 3, 1982. The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 47 year old resident of Elizabeth, New Jersey, who was born in Puerto Rico and lived there until he moved to New York City in 1974. From 1962 until 1974, the petitioner was employed as a blackjack and roulette dealer at the Americana Hotel in Puerto Rico. While he lived in Puerto Rico, the petitioner also owned a part interest in a restaurant. On two occasions he was arrested for writing a bad check. The petitioner explained that he and his two partners were each authorized to write checks. On two occasions, the petitioner wrote checks for substantial amounts, erroneously thinking that there was sufficient money in the restaurant's account to cover the checks. In court, the

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judge simply required that the petitioner make good the checks, and no convictions were entered against the petitioner.

The petitioner left Puerto Rico for New York City in 1974, when his marriage failed. After being unemployed for approximately one month, the petitioner obtained a position as a salesman in a clothing store. From 1974 until 1978, the petitioner worked as a clothing salesman, earning $100 per week. From September 1977 until October 1978, the petitioner worked two nights per week as a blackjack dealer in a synagogue in Brooklyn, New York, which hosted a "Las Vegas night," ostensibly for charity. The petitioner explained that he did not earn enough as a clothing salesman to support himself and his children from his previous marriage. A friend he had known in Puerto Rico introduced him to the operators of the "Las Vegas night," who informed the petitioner that they needed dealers to work for the charity in the temple. It was the petitioner's testimony that he did not realize that the gaming was illegal.

On May 24, 1978, the New York City police raided the building where the illegal gambling was taking place, and arrested the petitioner and the other dealers. The next day, the petitioner pled guilty to a disorderly persons offense and was fined $25, which was paid by the illegal casino's operator. The petitioner was then told by the operators that they would get a license to operate their "Las Vegas night," and that they wanted the petitioner to continue working for them. The illegal casino opened again after two weeks and the petitioner resumed dealing blackjack. On June 20, 1978, the petitioner and the other dealers were again arrested by the New York City Police Department. The next day, the petitioner again pled guilty and was fined $50, which was paid by the casino operator.

The petitioner was again asked by the casino operators if he would return as a dealer. Although he knew the operation to be illegal, the petitioner agreed to return because he needed the money. On October 26, 1978, the illegal casino was again raided by the New York City Police Department and the petitioner and the other dealers were arrested. The petitioner again pled guilty to a disorderly persons offense and was fined $50, which was paid by the casino operator. The petitioner was again asked to return to the illegal casino as a dealer, but he refused.

After being unemployed for approximately a month, the petitioner was able to work for a short while as a clothing salesman. In 1979, with the help of a loan from a

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relative, the petitioner opened a delicatessen and grocery in Brooklyn. The petitioner sold his business after approximately 13 months, because it was losing money. After being unemployed for approximately three months, the petitioner obtained employment as a packer in the shipping department of a frozen foods company. The petitioner has maintained this employment to the present time.

The petitioner's wife, Harriet Otero, testified on her husband's behalf. She has known her husband since 1977, and they were married in March 1979. According to Mrs. Otero, the petitioner had been concerned that his low earnings as a clothing salesman made it difficult for him to meet his child support commitments. She stated that her husband did not want to work as a dealer in an illegal gaming operation, but it was all that he knew and he needed the money. It was her testimony that her husband has applied for a casino employee license because he wants to obtain a decent job and to provide a decent living for his children.

Also testifying on behalf of the petitioner was Louis DeJesus, who is employed as a floorperson at the Tropicana Casino Hotel. Mr. DeJesus and the petitioner worked together as dealers at the Americana Hotel in Puerto Rico for approximately 12 years. According to the witness, the petitioner is a good family provider and a good worker who had a reputation for honesty among his fellow workers.

The testimony of the petitioner and the witnesses on his behalf was straightforward and sincere. It is undisputed that he disclosed his arrests, both in Puerto Rico and in New York City, in his Personal History Disclosure Form. The petitioner also candidly disclosed his employment as a blackjack and roulette dealer in the illegal casino in New York City. It is also undisputed that no objection has been entered concerning the petitioner's possession of the requisite skill and experience to qualify him for licensure as a floorperson.

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(4), the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the act and to casino operations. Pursuant to section 86g of the act, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

There is no genuine dispute concerning the nature of the petitioner's conduct and the circumstances surrounding each of the disorderly persons charges entered against him. All three disorderly persons convictions occurred in 1978, and they were the direct result of the petitioner's participation as a blackjack dealer in an illegal casino in New York City. The petitioner's participation as a dealer in the illegal casino continued during 1978 because of his difficult financial situation. However, after three arrests, the petitioner declined to continue as a dealer in the illegal casino, although he was afforded an opportunity to do so. Subsequently, the petitioner participated in his own business venture and also obtained employment as a frozen food packer, which employment continues to the present time.

The petitioner's participation in illegal gaming raised serious questions concerning his character, honesty and integrity. However, the petitioner's participation was of a relatively short duration, especially in comparison to his many years of unquestioned performance as a dealer in a legal casino in Puerto Rico. In light of the petitioner's return to honest, gainful employment during the past four years, it is apparent that his earlier offenses are not so significant as to justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I CONCLUDE that the petitioner has not committed, nor been convicted of, any offense which would indicate that licensure of the petitioner would be inimical to the policy of the Act and to casino operations. Based upon the facts adduced at the hearing and the applicable statutory provisions, I further CONCLUDE that the petitioner has established by clear and convincing evidence, that he possesses the requisite good

character, honesty and integrity for licensure, within the meaning of section 89b(2), as incorporated in section 90 of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, Rafael Otero, for licensure permitting him to work in a casino as a 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.

January 3, 1983
DATE

Joseph E. Fidler
JOSEPH E. FIDLER, ALJ

Receipt Acknowledged:

January 3, 1983
DATE

Bernadette T. Frugo, Paralegal
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan 6, 1983
DATE

Ronald L. Rubin/ps
OFFICE OF ADMINISTRATIVE LAW

fms

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INVENTORY OF EXHIBITS

JOINT EXHIBIT:

J-1 Personal History Disclosure Form No. 2

FOR THE PETITIONER:

P-1 Affirmation of Joseph F. DeFelice

FOR THE RESPONDENT:

R-1 FBI record

R-2 State of New York Criminal History

WITNESSES

FOR THE PETITIONER:

Rafael Otero

Harriet Otero

Louis DeJesus

FOR THE RESPONDENT:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-44
OAL DOCKET NO. CCC 6631-82
LIC. NO. 02965-21

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

Complainant,

v.

KAREN RENE RINGGOLD,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the "Initial Decision Order on Motion" (hereafter Initial Decision) filed by the Office of Administrative Law (hereafter OAL) on February 9, 1983, wherein the Administrative Law Judge found that Respondent failed to file a timely renewal application and therefore does not possess a current casino employee license and concluded that: (1) Respondent's Motion nunc pro tunc should be denied; (2) the complaint for revocation of Respondent's casino employee license is moot and no longer constitutes a contested case; and (3) the proceedings in the OAL should be dismissed and the matter returned to the Commission; and the Respondent having filed exceptions to the Initial Decision on March 3, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of April 13, 1983, to affirm and adopt the Initial Decision and to dismiss the complaint of the Division of Gaming Enforcement,

IT IS on this 23rd day of May 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement filed against Respondent be and hereby is 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 Final Order be served upon Karen Rene Ringgold and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: May 23, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED
FEB 09 1983
CASINO CONTROL COMMISSION

INITIAL DECISION
ORDER ON MOTION
OAL DKT. NO. CCC 6631-82
AGENCY DKT. NO. 82-44

KAREN RENE RINGGOLD,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

John H. Fitzgerald, Esq., on behalf of the petitioner (Cape-Atlantic Legal Services)

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

Record Closed: January 7, 1983 Decided: February 8, 1983

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

This matter concerns the licensure of Karen Rene Ringgold as a Count Room Employee. By letter dated June 10, 1982, the Casino Control Commission advised the petitioner that a complaint had been filed against her by the Division of Gaming Enforcement on June 10, 1982, and that she could request a hearing. The petitioner requested a hearing and the matter was transferred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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At the prehearing conference held on September 23, 1982, Ms. Ringgold, appearing pro se, indicated that her casino license had expired in April 1982. Until the time of the conference, the Division of Gaming Enforcement was not aware that Ms. Ringgold had not renewed her casino license.

By letter dated October 29, 1982, Deputy Attorney General Kevin F. O'Toole withdrew the complaint against the petitioner, pursuant to N.J.A.C. 1:1-17.2. In response to this letter, John H. Fitzgerald, Cape-Atlantic Legal Services, on behalf of petitioner, requested that I retain jurisdiction in the matter. Mr. Fitzgerald stated that if the Division of Gaming Enforcement was permitted to withdraw its complaint, Ms. Ringgold would have to apply for a new license and that the burden of proof would be on her to show that she was qualified for a license rather than on the respondent to show why she should not be licensed.

Also in his November 12, 1982 letter, Mr. Fitzgerald stated that "In the spring of this year Ms. Ringgold was put in the untenable position of trying to decide whether or not to spend $150.00 in order to resubmit her application when she knew that the Division of Gaming Enforcement would soon move to have her license suspended. Ms. Ringgold had recently been fired and understanably [sic] decided not to spend the money to resubmit her application."

By letter dated November 18, 1982, I advised the parties that I considered Mr. Fitzgerald's letter to be a motion for a nunc pro tunc order and requested that the parties submit legal memoranda. I received a legal memorandum from Mr. Fitzgerald on December 13, 1982, and a response from Mr. O'Toole on January 7, 1983. If the nunc pro tunc motion were granted, this matter would be continued as if the petitioner had made a timely application for the renewal of her casino license.

Having reviewed the papers submitted, I **FIND** that the undisputed pertinent facts relating to the motion are:

(1) Petitioner worked for Harrah's Marine Hotel and Casino as a General Cage Cashier from June 10, 1981 to February 6, 1982. Her employment was terminated after she allegedly tried to conceal a $1,500 shortage.

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(2) Petitioner was initially licensed as a Count Room Employee in April 1979. Ms. Ringgold filed timely renewal applications for 1980-81 and 1981-82 and her most current casino license expired in April 1982.

(3) The Casino Control Commission approved petitioner's 1981-82 renewal application on April 6, 1982.

(4) Ms. Ringgold did not file a timely renewal application for 1982-83.

(5) The Division of Gaming Enforcement filed a complaint regarding the petitioner's licensure with the Casino Control Commission on June 10, 1982.

The issue in this matter is whether the Casino Control Commission should grant the nunc pro tunc motion based on the facts in this matter.

The pertinent statute regarding license renewals provides:

> Subject to the power of the commission to deny, revoke or suspend any license or registration, any license other than a casino license or any registration may be renewed upon proper application for renewal no later than 120 days prior to the expiration of the current license or registration, and the payment of fees as provided by law on or before the date of expiration of the current license or registration. The Commission shall act upon such application for renewal no later than 30 days prior to the date of expiration of the current license or registration. [N.J.S.A. 5:12-95], [See also, N.J.A.C. 19:42-3.7]

Based on this statute, Ms. Ringgold should have filed a renewal application for 1982-83 in December 1981 and should have paid the fee sometime before her casino license expired in April 1982. No reason was given for her failure to file in December 1981. Mr. Fitzgerald's argument that the petitioner was reluctant to submit the $150 fee after she was fired by Harrah's on February 6, 1982, does not explain why she did not take the required action in December 1981.

In general, nunc pro tunc motions are granted to correct ministerial/clerical errors resulting from an oversight or mistake and are denied if there would be a change as

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to the legal status of the proponent, Emmons v. Stillwell, 58 N.J. Super. 307 (Law Div. 1959); Rinehart v. Rinehart, 91 N.J. Eq. 354 (Ch. Div. 1920).

In this matter there appears to be no justifiable reason for the petitioner's failure to file a renewal application in December 1981. Her failure to take any action to renew her casino license cannot be considered to be an insignificant oversight since it changed her legal status as admitted in Mr. Fitzgerald's letter of November 12, 1982. Also the probability that the Casino Control Commission would have held its decision regarding the renewal of her casino license in abeyance pending the hearing in this matter, pursuant to N.J.A.C. 19:42-3.8, does not excuse the petitioner's nonaction.

In this matter, I accept Deputy Attorney General O'Toole's argument that there is no longer a contested case since the petitioner does not have a current casino license and since she took no action to protect her interest in a license. Additionally, as argued by Deputy Attorney General O'Toole, I agree that a due process issue does not exist since the petitioner voluntarily allowed her casino license to expire.

Therefore, I **CONCLUDE** that the nunc pro tunc motion should not be granted, and that the matter is moot and is no longer a contested case before the Office of Administrative Law.

I **ORDER** that the proceedings in this matter be **DISMISSED** and that it be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and regulations adopted thereunder.

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

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

February 8, 1983
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

Feb 9, 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Feb 10, 1983
DATE

Ronald L. Lakewood
OFFICE OF ADMINISTRATIVE LAW

ml/E

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-EA-74
OAL DOCKET NO. CCC 04763-82
APP. NO. 26333-21

IN THE MATTER OF THE APPLICATION :
OF KARL ROSENSTEIN 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 filed November 8, 1982, recommending that the application of Karl Rosenstein (Applicant) for a casino employee license be denied; no written exceptions or objections thereto having been filed; and the Commission, having carefully considered the entire record of the proceedings including the arguments of counsel, resolved at its public meeting of January 11, 1983, to reject certain findings and conclusions in the Initial Decision and to grant the application for licensure,

IT IS on this 20th day of January 1983 ORDERED that the following findings and conclusions of law reached by the Office of Administrative Law be and hereby are rejected by the Commission:

(1) the Applicant intentionally failed to disclose a 1975 arrest for issuing a bad check in violation of N.J.S.A. 2A:111-16 and his involvement in 19 civil lawsuits in response to questions 46 and 51 of the Personal History Disclosure Form and is disqualified from licensure pursuant to N.J.S.A. 5:12-86(b);

(2) due to the Applicant's misrepresentations regarding his arrest and civil lawsuits, he has failed to establish by clear and convincing evidence that he possesses the requisite financial stability, integrity, and responsibility and good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(1) and (2) and 90(b); and

(3) the application of Karl Rosenstein for a casino employee license be denied.

IT IS FURTHER ORDERED that the application of Karl Rosenstein for licensure as a casino employee be and hereby is granted based upon the following Commission findings:

(1) the Applicant's explanations for his failure to disclose his 1975 arrest was credible;

(2) the Applicant did not with intent or conscious disregard of the regulatory process fail to disclose information pertaining to his civil lawsuits;

(3) the Applicant's satisfaction of 14 of 19 civil judgments render the remaining unsatisfied judgments insufficient reason to deny licensure on the basis of the Applicant's failure to establish financial stability, integrity and responsibility; and

(4) there being no other bases for objection other than the nondisclosures which have been found to be unintentional and the unsatisfied civil judgments which have been found by the Commission not to be an impediment to licensure, the Applicant has by clear and convincing evidence satisfactorily demonstrated his good character, honesty and integrity; 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
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: JANUARY 20, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4763-82

AGENCY DKT. NO. 82-EA-74

KARL ROSENSTEIN,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Darrell Fineman, Esq. for petitioner (Capizola, O'Neill& Fineman, attorneys)

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

Record Closed September 23, 1982 Decided November 8, 1982

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Karl Rosenstein to the Casino Control Commission for a license permitting him to work in a casino as a security officer. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

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

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2. Whether the petitioner has established by clear and convincing evidence his financial stability, integrity and responsibility, within the meaning of section 89b(1) of the act, as incorporated in section 90 of the Casino Control Act.

3. Whether the petitioner, with specific reference to approximately 19 alleged involvements in civil suits occurring during the years 1967 through 1978, 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.

4. Whether the petitioner, with specific reference to his alleged arrest in July 1975 for issuance of a bad check, in violation of N.J.S.A. 2A:111-16, has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the act.

5. Whether the petitioner, with specific reference to a lien issued by the New Jersey Division of Taxation for taxes due and owing from petitioner, has failed to reveal any fact material to qualification, or has supplied information which is untrue or misleading as a material fact pertaining to the qualification criteria, within the meaning of section 86b of the Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated March 29, 1982. The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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FINDINGS OF FACT

The petitioner is a 43-year-old resident of Vineland, New Jersey. Born in Poland, the petitioner came to the United States in 1949, and he became a naturalized citizen in 1961. The petitioner served in the United States Army from 1959 until 1961, and in the United States Air Force from 1963 until 1966. He was honorably discharged from both branches of the military services.

The petitioner was first married in 1963. This marriage ended in divorce, and his former wife has custody of the petitioner's two daughters. The petitioner married again in 1979. On September 11, 1979, the petitioner and his wife, who was pregnant at the time, were in an automobile collision. The petitioner's wife and unborn child died from injuries received in the collision, and the petitioner suffered a broken hip which prevented him from working for approximately six months. As a result of his injuries, it is necessary that the petitioner take pain relieving and muscle-relaxing medication. In addition, the petitioner takes medication for a blood pressure condition.

From approximately 1972 until 1975, the petitioner operated Diamond Kitchens, a business which supplied kitchen cabinets and appliances. According to the petitioner, he was unable to continue the business because of high interest rates. The petitioner acknowledged that he accumulated a number of debts as a result of his problems with the kitchen supply business. It was the petitioner's testimony that he thought most of these debts had been satisfied with the proceeds of the sale of some real estate which he had owned in Cumberland County. The petitioner is presently employed on a part-time basis as a salesman for Sentinel Motor Club Insurance. The petitioner also continues to sell kitchen cabinets.

Testifying on behalf of the petitioner were Frank A. Richert and Debra A. Surace. Mr. Richert is self-employed in the poultry business, and he has been a resident of Vineland, New Jersey for approximately 40 years. According to Mr. Richert, he has known the petitioner for at least 15 years, and he believes the petitioner to be a sincere and honest man. Ms. Surace is also a resident of Vineland, and she is employed by the Claridge Hotel and Casino as a training manager for new employees. Ms. Surace has known the petitioner for approximately seven years, and she also believes the petitioner to be a very honest person.

571.

In connection with his application for licensure as a casino employee, the petitioner filed a personal history disclosure form number 2 with the Casino Control Commission in October 1980 (Exhibit J-1). It was the testimony of Ms. Surace that she assisted the petitioner in the preparation of his application by reading him each question on the disclosure form and then typing his answer as he gave it. Number 51 of the disclosure form asks, "Have you ever been a party in a civil suit?" The petitioner's response to this question was "No," and he placed his initials, as required, in the appropriate place on the page of the disclosure form which contains question number 51.

Despite his answer to the contrary on the disclosure form, it is undisputed that the petitioner actually was involved as a defendant in approximately 19 civil suits between 1969 and 1978. It is also undisputed that four undocketed court judgments against defendant for a total of $784 remain unsatisfied. Finally, it is also undisputed that a certificate of debt in the amount of $1,950 has been entered upon the Superior Court's record of docketed judgments against the petitioner. The Department of the Treasury certified the petitioner's indebtedness by reason of his failure to pay sales, business personal property and unincorporated business taxes. This tax indebtedness remains unsatisfied. The petitioner testified that he was not aware of the certificate of debt when he prepared his disclosure form.

In 1975, the petitioner was charged with a violation of N.J.S.A. 2A:111-16 (false pretenses), as a result of a customer's attempt to cash a check which the petitioner had postdated. The petitioner pled not guilty to this charge, and the charge was dismissed for lack of prosecution (Exhibit P-4). Question number 46 of personal history disclosure form number 2 inquires as follows: "Have you or has any member of your immediate family, (as defined on page 2 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?" In response to this question, the petitioner answered, "No." The petitioner explained that he did not reveal the 1975 incident concerning a bad check in response to question 46 because he had not been arrested. Rather, he had voluntarily gone to police headquarters in response to the request of the police, and therefore he did not believe that he had been arrested. However, the petitioner did not dispute that he had been charged with the violation of N.J.S.A. 2A:111-16 in 1975, and he did not explain why he had not revealed this charge, as required by question 46 of the disclosure form.

572.

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

The essential factual dispute in this matter concerns the reasons for the petitioner's failure to disclose on his personal history disclosure form his involvement in 19 civil suits between 1969 and 1978. The petitioner offered conflicting explanations for his failure to disclose. Although the question as to whether he had ever been involved as a party in a civil suit was answered, "No," the petitioner explained that his involvement in the many civil suits had not been disclosed because he had either missed the question or he had not understood it. Later in his testimony, the petitioner repeated that he had not answered the question because he had not seen it. However, this explanation is contradicted by his answer, "No," and by the testimony of his witness, Debra Surace, who stated that she had read to the petitioner each question on the disclosure form and had typed the answer which he had given her.

The petitioner also testified that it was his understanding that most of his business debts had been satisfied from the proceeds of the sale of real estate which he owned in Cumberland County. A fair inference to be drawn from this testimony is that the proceeds of the sale of real estate were applied to docketed judgments against the petitioner in order to clear the title of the real estate which the petitioner was conveying. Consequently, it is difficult to give credence to the petitioner's assertion that he did not know what a civil suit was at the time of his preparation of the personal history disclosure form. In addition, the petitioner testified that the less the state investigators knew about his personal business, the better he felt. This testimony tends to support the assertion of the Division of Gaming Enforcement that the petitioner was less than candid in the preparation of his personal history disclosure form.

Finally, the petitioner testified that he never engaged an attorney to represent him in defense of any of the civil suits against him. Notwithstanding this testimony, Exhibit R-7, which includes pleadings and other papers filed in the matter of Moore's Super Stores v. Karl Rosenstein, demonstrates that the petitioner engaged the services of counsel to file an answer to the civil suit. This exhibit directly contradicts the petitioner's testimony, and it illustrates his lack of candor.

573.

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

1. The petitioner failed to disclose on his personal history disclosure form his involvement in 19 civil suits between 1969 and 1978.

2. The petitioner's record of involvement in civil suits was specifically required to be disclosed on his personal history disclosure form.

3. The petitioner's failure to disclose on his personal history disclosure form his record of involvement in civil suits between 1969 and 1978 resulted from a conscious disregard of the request for such information, rather than from inadvertence.

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. Such an applicant must also demonstrate, by the same burden, his financial stability, integrity and responsibility. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Section 86b of the act provides that licensure shall be denied to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria.

While the credible evidence in the record (Exhibit R-2) establishes the docketing of a certificate of debt against the petitioner in the Superior Court of New Jersey, the proofs presented do not establish either that the petitioner knew of the docketing of this certificate of debt or that he was required to disclose such a debt on his personal history disclosure form. However, it is undisputed that the petitioner failed to reveal in response to question number 46 on his personal history disclosure form the entry of a criminal charge against him, for issuance of a bad check in violation of N.J.S.A. 2A:111-16. Although the petitioner explained that he did not disclose this incident because he did not believe he had been arrested, he failed to offer any explanation for his failure to disclose the charge against him, as required by the personal history disclosure form.

574.

It is also undisputed that the petitioner failed to disclose his involvement in 19 civil suits between 1969 and 1978, as required by question number 51 of his personal history disclosure form. Having carefully reviewed the testimony and other evidence offered, I found that the petitioner's failure to disclose his involvement in civil suits resulted from a conscious disregard of the request for such information. Having so found, I must **CONCLUDE** that the petitioner is disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

It is undisputed that four undocketed judgments against the petitioner, as well as the docketed certificate of debt, remain unsatisfied. Therefore, I further **CONCLUDE** that the petitioner has failed to sustain his affirmative burden of establishing by clear and convincing evidence his financial stability, integrity and responsibility, within the meaning of N.J.S.A. 5:12-89b(1).

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

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Karl Rosenstein 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.

575.

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

November 8, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 8, 1982
DATE

Bernadette T. Fryer
CASINO CONTROL COMMISSION

Mailed to Parties:

Nov. 12, 1982
DATE

Ronald L. Lankenau
OFFICE OF ADMINISTRATIVE LAW

bm

576.

INVENTORY OF EXHIBITS

JOINT EXHIBIT:

J-1 Personal History Disclosure Form

FOR THE PETITIONER:

P-1 Letter from Clairidge Hotel-Casino Public Relations, dated September 17, 1982

P-2 Interrogatory page

P-3 Letter from Mr. Fineman to Mr. Fusco

P-4 Transcript of Municipal Court Docket, dated September 22, 1982

FOR THE RESPONDENT:

R-1 Not in evidence
R-2 Certificate of Debt
R-3 Transcript of Judgment
R-4 Transcript of Judgment
R-5 Transcript of Judgment
R-6 Transcript of Judgment
R-7 Civil Action pleadings and other documents
R-8 Not in evidence

WITNESSES

FOR THE PETITIONER:

Frank A. Richert
Debra A. Surace
Ronald E. Rauer
Karl Rosenstein

FOR THE RESPONDENT:

Ronald E. Rauer

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-40
OAL DOCKET NO. CCC 2121-82
APP. NO. 30033-21

IN THE MATTER OF THE APPLICATION
OF MICHAEL R. SABATINI FOR
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on May 13, 1983, recommending that the casino employee license application of Michael R. Sabatini be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on June 15, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Michael R. Sabatini,

IT IS on this 17th day of June 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Michael R. Sabatini 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 Michael R. Sabatini and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 17, 1983

FILED
NEW JERSEY
MAY 13 1983
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2121-82
AGENCY DKT. NO. 82-EA-40

MICHAEL SABATINI,
Petitioner
v.
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

APPEARANCES:

William W. Schultz, Esq., for petitioner

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

Record Closed: March 29, 1983* Decided: May 13, 1983

BEFORE NORMAN D. SMITH, ALJ:

The Division of Gaming Enforcement objected to Michael Sabatini's application to the Casino Control Commission for licensure as a casino employee (Dealer). The objection was based upon Mr. Sabatini's arrest and conviction arrest. Mr. Sabatini requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

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*Date of receipt of the last letter from the petitioner's attorney.

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The basic facts in this case are not in dispute. Mr. Sabatini is a 23-year-old single man who currently resides with his parents. On October 23, 1980, he was residing by himself in an apartment in Atlantic City. On that date, he was arrested in his apartment for possession of a stolen stereo system which he had purchased from a neighbor approximately six months earlier. He admits that he suspected the stereo system might have been stolen because of the low price and its source. Three amphetamine capsules were also found. As a result of that arrest, he was indicted in December 1980 and charged with receiving stolen property valued in excess of $500, in violation of N.J.S.A. 2C:20-7, and possessing a controlled dangerous substance, in violation of N.J.S.A. 24:21-20a(1). As the result of a plea bargain, the latter charge was dismissed when Mr. Sabatini pled guilty to the former charge. That charge, violating N.J.S.A. 2C:20-7, constitutes an automatic disqualification from licensure. N.J.S.A. 5:12-86c. The issue in this case, therefore, is whether Mr. Sabatini has affirmatively established rehabilitation, in accordance with N.J.S.A. 5:12-90h. An answer to that question will also answer the underlying issue, i.e., has Mr. Sabatini established by clear and convincing evidence his reputation for good character, honesty and integrity, as required by N.J.S.A. 5:12-89b(2)?

Although Mr. Sabatini is still a relatively young man, the receipt of stolen goods and possession of amphetamines, as described above, seems to be an isolated incident, and generally symptomatic of his youth. He was placed on probation for one year, from February 13, 1981, until February 11, 1982. During that time, he complied with all rules and regulations of probation. He successfully complied with a payment schedule for the $500 fine that had been imposed upon him. On the recommendation of his probation officer and the Atlantic County Chief Probation Officer, his probation was terminated with improvement (P-1). He returned to live with his parents and generally submitted to their guidance. His father, Vincent Sabatini, testified at length before me. I was impressed by his candor about his son, as well as his general appearance of responsibility and integrity. Mr. Sabatini closely supervised his son after Michael returned to live with him. Michael worked for 10 to 12 hours a day, six days a week, in his father's restaurant, doing everything from waiting tables to generally supervising the operation. Vincent Sabatini has taken pains to inculcate his son with the need for responsibility, and his son has apparently learned the lesson. Michael has successfully completed a 200-hour course in order to learn to become a casino dealer and feels that it would be a matter of some pride if he were awarded a license and could find employment as a dealer. I paid close attention to Michael's appearance and demeanor. While it is never possible to know

for a certainty the inner workings of a man's mind, it seems to me that the petitioner has acquired a responsible and mature outlook on life, regrets his earlier conduct, and has successfully rehabilitated himself.

Based upon the foregoing findings, I **CONCLUDE** that the petitioner has affirmatively demonstrated rehabilitation. I further **CONCLUDE** that he is now a man of good character, honesty and integrity and meets the licensure requirements of the Casino Control Act. For these reasons, it is hereby **ORDERED** that a casino employee license (Dealer) be issued to the petitioner.

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

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

5/13/83
DATE

Thomas D. Smith
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

13 May 1983
DATE

Christina E. Weaver, Asst Counsel
CASINO CONTROL COMMISSION

Mailed to Parties:

May 19, 1983
DATE

Ronald L. Lacey/slb
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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WITNESSES

As set forth in transcript.

EXHIBITS

As set forth in transcript.

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-41
OAL DOCKET NO. CCC 2091-82
APP. NO. 25051-21

IN THE MATTER OF THE APPLICATION
OF FREDERICK H. SANTIAGO FOR
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 28, 1983, recommending that the casino employee license application of Frederick H. Santiago be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on February 10, 1983, to which Frederick H. Santiago replied on February 22, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 16, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Frederick H. Santiago.

IT IS on this 16th day of March 1983, 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 Frederick H. Santiago 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 Frederick H. Santiago and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 16, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2091-82

AGENCY DKT. NO. 82-EA-41

FREDERICK H. SANTIAGO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Frederick H. Santiago, Pro Se

Edward P. Busichio, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: December 8, 1982 Decided: January 28, 1983

BEFORE NORMAN D. SMITH, ALJ:

The Division of Gaming Enforcement objected to Frederick H. Santiago's application to the Casino Control Commission for licensure as a casino employee (Dealer). Mr. Santiago requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case in accordance with N.J.S.A. 52:14F-1 et seq.

One incident in Mr. Santiago's life caused the Division to object to his licensure; he was arrested on March 14, 1975, and charged with obstruction of U.S. mail in violation of 18 U.S.C.A. § 1701. He was convicted upon his plea of guilty, entered on March 17, 1975, before the United States District Court for the Eastern District of

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A second, more serious charge, of embezzlement of mail, 18 U.S.C.A. 1709, was dismissed. Mr. Santiago paid his fine of $100 and resigned from the postal service.

On the morning of March 14, 1975, while collecting mail on a morning route in Philadelphia, he came across three letters that appeared to have dollar bills in them. He removed the dollar bills and destroyed the letters. The dollar bills were marked as part of an investigation by postal authorities. Mr. Santiago's charge, guilty plea, conviction and sentencing followed in rapid order. This incident has caused great personal humiliation and emotional pain to Mr. Santiago. This is clear both from his sincere testimony before me and by his actions since the conviction in 1975. He moved to another area, Egg Harbor Township, in order to begin life anew. Since that time he has been active as a coach in Little League, in which his son also participates. Certificates of Achievement awarded to him by the Egg Harbor Township Youth Organization have been marked into evidence as part of P-1 exhibit. He received those awards for coaching and umpiring.

Since his separation from the postal service, he has supported himself by working in the exterminating industry for various companies. From October 1979 until the present time he has been employed by Environmental Exterminating Systems Limited, Andover, New Jersey. He is currently manager of the Atlantic City division of this company and is responsible for servicing Bally's Park Place Casino Hotel. His competence and honesty have been praised in correspondence from his employer and from the housekeeping manager at Bally's.

In order to fully evaluate the impact of the 1975 conviction for mail obstruction, it is important to understand what Mr. Santiago did prior to that time as well as subsequent thereto. Having left high school at the end of the eleventh grade, Mr. Santiago joined the United States Army. He entered in January 1967 and was honorably discharged as a Specialist 5, Grade E-5, in January 1970. During his period of service, he received the National Defense Service Medal, the Viet Nam Service Medal with two bronze stars, Viet Nam Campaign Medal with 60 Device, two 0/S bars, and a Marksman (Rifle M-14). He received a citation by direction of the President, entitled "The Air Medal" because he

> . . . distinguished himself by meritorious achievement, while participating in sustained aerial flight, in support of combat ground forces in the Republic of Viet Nam. During the period 5 September 1968 to 3 October 1968 he actively participated in more than

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> twenty-five aerial missions over hostile territory in support of operations against communist agression. During all of these flights, he displayed the highest order of air discipline and acted in accordance with the best traditions of the service.

Mr. Santiago successfully completed a 160-hour course in blackjack from a licensed school.

All of the foregoing facts are supported by substantial evidence and are uncontradicted.

The Division contends that the conduct of Mr. Santiago would violate N.J.S.A. 2C:20-9, "Theft by failure to make required disposition of property received." This is the offense formerly known as embezzlement. Although Mr. Santiago was not charged with this offense, it is, nevertheless, appropriate to inquire whether his conduct, as described above, would constitute violation of that offense. Such an inquiry is specifically authorized by N.J.S.A. 5:12-86g. The answer must be in the affirmative. However, having concluded that Mr. Santiago's conduct constituted theft, the legal effect of that conclusion cannot be reached until it is learned what degree of theft has been perpetrated. This is so because N.J.S.A. 5:12-86c(1) establishes a list of disqualifying offenses, which list includes theft only of the second and third degrees.

Because we are talking about a small sum of money, approximately $13, the only condition which might render Mr. Santiago's conduct theft in the third degree or higher, is the condition set forth in N.J.S.A. 2C:20-2b(2)(e). That section grades the offense of theft as one in the third degree where "it is in breach of an obligation by a person in his capacity as a fiduciary." This is precisely the argument the Deputy Attorney General makes: that Mr. Santiago, as a fiduciary of the postal service, breached his obligation to deliver the mails. The Code of Criminal Justice contains a lengthy definition of the word "fiduciary," in N.J.S.A. 2C:20-1b. It contains a list of relationships that obviously imposes a high degree of responsibility on one person on behalf of another person, such as executor, general administrator of an intestate, guardian, and others. The only relationship in that section that might apply to Mr. Santiago is an ". . . agent or officer of a corporation, public or private. . . ." I may assume that the United States Postal Service is a corporation, public or private. But is Mr. Santiago an officer or agent? I think it clear that he is not an officer of the U.S. Postal Service. We finally come then

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to the narrow question: Was Mr. Santiago an agent of the U.S. Postal Service when he was a letter carrier for that service?

The word "employee" (or servant) is noticeably absent from the statute. A concise explanation of the difference between an agent and a servant or employee is set forth in 2A C.J.S. § 16 at 578, 579:

> There are a number of features which distinguish the relation of principal and agent from that of master and servant, one of which is the nature of the employment. Usually the agent is employed in a capacity superior to that of the servant, being entitled, in general, to use his discretion as to the means to accomplish the end for which he is employed, while the servant is directed by the master, not only as to what is to be done, but how it shall be done.
>
> Agency, properly speaking, relates to commercial or business transactions, while service deals with matters of manual or mechanical execution; and the essential distinction is that the agent is employed to establish contractual relations between his principal and third persons, while the servant is not. If a person is employed to perform service for another and his physical movements in the performance of such service are subject to the other's control, he is a servant, while if he is employed to represent another in contractual negotiations or similar transactions, he is an agent.

Thus, it seems clear to me, and I hold, that Mr. Santiago, as a letter carrier, was an employee or servant of the postal service, but not an agent. This is consistent with the other types of fiduciary relationships set forth in N.J.S.A. 2C:20-1b, that is, relationships that impose a special degree of trust and obligation above and beyond that of a mere employee.

Concluding this discussion, I **CONCLUDE** that Mr. Santiago was not an agent; therefore, he was not a fiduciary; therefore, the theft which he perpetrated was not of the third degree or higher; therefore, the theft was not an offense which would automatically disqualify him from licensure.

Even if I were to conclude the opposite, that Mr. Santiago's conduct did constitute a statutory disqualifier, I would, nevertheless, find that he has been rehabilitated. In the close to eight years that have elapsed since the offense, he has moved to a community to avoid what has apparently been a great public humiliation for him; he has been active in Little League and received certificates for that activity; he has been a

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good family man; he has been a hard-working, competent and honest employee and attained managerial responsibilities; he has successfully completed a 160-hour course of education in blackjack at a licensed school in order to improve the prospects of his family. Although his military feats predated his conviction, nevertheless, they illuminate the quality of the person and make it easier to find that he has, in fact, rehabilitated himself.

For the same reasons that I have found rehabilitation, I also **CONCLUDE** that Mr. Santiago has proven, by clear and convincing evidence, that he is now a man of good character, honesty and integrity and has a reputation as such, satisfying the requirements of N.J.S.A. 5:12-89(b)2.

All of the statutory requirements for licensure having been met, it is hereby **ORDERED** that a casino employee's license (Blackjack Dealer) be issued to Mr. Santiago.

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

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

1/24/83
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

1/31/83
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 2 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

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WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-19
OAL DOCKET NO. CCC 03118-82
APP. NO. 20999-21

IN THE MATTER OF THE APPLICATION
OF MICHAEL S. SHER FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 22, 1982, recommending that the application of Michael S. Sher for a casino employee license be granted to which neither party excepted or objected; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 8, 1983, to affirm and adopt the said Initial Decision and to grant the application of Michael S. Sher for a casino employee license,

IT IS on this 10th day of February 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Michael S. Sher 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 Michael S. Sher and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: February 10, 1983

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
DEC 22 1982
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 3118-82
AGENCY DKT. NO. 82-EA-19

IN THE MATTER OF THE APPLICATION OF MICHAEL S. SHER FOR LICENSURE AS A CASINO EMPLOYEE (ALCOHOLIC BEVERAGE EMPLOYEE)

APPEARANCES:

Mario J. D'Alfonso, Esq., for the applicant, Michael S. Sher (Avina, Hendren, Friedman and D'Alfonso, P.A., attorneys)

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

Record Closed November 8, 1982 Decided December 21, 1982

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Michael S. Sher, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (alcoholic beverage employee), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had been convicted of an offense which is the equivalent of a statutory disqualifier and lacked the requisite good character, honesty and integrity required for licensure.

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PROCEDURAL HISTORY

Mr. Sher filed his Personal History Disclosure Form -2 (PHDF-2), with the Commission on July 29, 1980. By letter, dated March 5, 1982, the Commission advised the applicant that, based upon information received in a report from the Division, dated December 28, 1981, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter, dated March 10, 1982, the applicant requested a hearing. On March 25, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 22, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Sher is 28 years of age. He has resided in the Atlantic City area since March 1980. Previously, he was a resident of Pennsylvania.

The applicant is a June 1972 graduate of Abington High School, Abington, Pennsylvania. He attended Emerson College in Boston, Massachusetts for two and one-half years.

From September 1968 to September 1978, the applicant was employed by Exclusive Fabrics in Jenkintown, Pennsylvania. The applicant held various positions, including sales, stock manager, etc. Exclusive Fabrics is a family owned and operated business.

From October 1978 until February 1980, the applicant was employed as a laborer by Sa-So Poultry.

Beginning in March 1980 and for a period of approximately one year, the applicant was employed by Schiff Enterprises of Atlantic City as a parking lot attendant.

In July 1981, the applicant was employed by Harrah's Marina Hotel and Casino as a barporter. He was subsequently promoted to the position of bartender, which he has

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held for the past 14 months, except for a brief period when he was laid off for reasons of economy. The applicant was also recently employed as a bartender for a private club, on a part-time basis.

The applicant was involved in an incident on June 20, 1975, which led to his arrest in Elkins Park, Pennsylvania. The applicant was 21 years of age at the time. He was charged with various drug-related offenses. Essentially, the applicant's conduct consisted of an attempted sale of a controlled dangerous substance, Phencyclidine, to a police officer (R-1). On February 6, 1976 and pursuant to a plea bargain agreement, the applicant pled guilty to a violation of Act 64 Section 13a30 of the Pennsylvania statutes, unlawful delivery of a controlled dangerous substance (R-1). He was sentenced to five years probation, a $2,000 fine and a restitution of $150.

During 1975, the applicant admitted himself into the Godenzy House, a drug clinic. He attended a group therapy session there once a week for six months. Hover, he quit the program.

During 1976, the applicant admitted himself into Eaglesville Hospital, another drug abuse clinic. He remained there for 16 days and received group and private counseling. He again quit the program, because drugs were present and because he learned that he would not be incarcerated as a result of the pending criminal proceedings.

The applicant was involved in another incident on October 10, 1977, which led to his arrest by the New Hope Police Department, New Hope, Pennsylvania. He was again charged with various drug related offenses (R-2). On July 13, 1978, the applicant was found guilty of possession of Methaqualone. The remaining charges were dismissed. The applicant was sentenced to one year probation, a $200 fine plus costs. The applicant successfully completed his probation. With respect to this incident, the applicant admitted that he was in possession of other controlled dangerous substances, although the charges were dismissed.

Because of his conviction on charges from his arrest on October 10, 1977, it was determined, on March 20, 1979, that the applicant had violated his probation ordered as a result of the first incident (R-1). The applicant was court-committed to White Deer

Run, a drug rehabilitation center. He remained there for a period of 60 days. The applicant successfully completed the program, which included group therapy and private counseling sessions. Thereafter, the applicant successfully completed the remainder of his probation.

The applicant has not been involved in any other criminal proceedings.

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

(B) DISPUTED FACTS

Mr. Sher testified that he began consuming alcoholic beverages at age nine and began using marijuana at age 16. Subsequently, he used many various types of drugs. This he candidly admitted in response to Question no. 49 on his PHDF-2. The applicant was a frequent drug user from approximately 1970 until mid-1979. Nevertheless, the applicant testified that the incident of June 20, 1975, was the only occasion when he attempted to sell drugs. The applicant intended to make a profit from the sale.

The applicant testified, and persuasively so, that he has not used or otherwise been involved with drugs since his successful completion of the drug rehabilitation program at White Deer Run in 1979. The applicant described his efforts to terminate his drug use. His primary objective was to eliminate all prior negative associations. This was the primary reason for his relocation to Atlantic City. Further, he tries to avoid places where drugs are used. The applicant stated that he had attended one party in Atlantic City where drugs were available, but he did not use them.

The applicant's testimony regarding his use of drugs and rehabilitation was corroborated by Patrick Byrnes, an owner and operator of a karate school in Landsdale, Pennsylvania. Mr. Byrnes has been a close friend of the applicant since 1973. The applicant has occasionally resided with Mr. Byrnes for short periods of time. Mr. Byrnes is a staunch opponent of drugs. Mr. Byrnes testified that, from his observations of the applicant, he is a totally different person since he completed the rehabilitation program at White Deer Run. More specifically, Mr. Byrnes is of the opinion that the applicant has

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learned that the lack of control of himself due to drug use poses a potential harm not only to himself but to others. Further, the applicant has learned to be responsible for his actions. Mr. Byrnes was of the opinion that the applicant has fully rehabilitated himself.

The primary determinative factor in this matter was the credibility of Mr. Sher. As the applicant for licensure, he has a direct interest in the outcome and a bias in these proceedings. However, the applicant's testimony was candid, brutally honest, believable and most persuasive. Mr. Byrnes' testimony fully corroborated the applicant's contention that he no longer used drugs and was most persuasive. Further, there was no witness offered or any evidence presented to refute any fact to which the applicant testified. In the final analysis, I am persuaded to accept his testimony.

In addition to the testimony of Mr. Byrnes, the applicant offered two character witnesses. The first was Barry Sher, the applicant's father. This witness described, with great difficulty, the unpleasant relationship which existed between himself and the applicant prior to 1979. Further, the witness described the changes which the applicant has undergone since. More specifically, the applicant has reestablished a relationship with his parents, which involves an open and honest understanding of his past drug problem. The witness has observed the applicant now to possess an ability to deal with pressure, to control his temper and to be responsible for himself.

The applicant's next witness was Edward Newman, his uncle. Mr. Newman was employed for a period of one and one-half years at the Golden Nugget. The witness testified that the applicant now has a very definite direction in regard to a career and a life style. The witness also recalled his observations of the applicant during the period when he was unemployed. The applicant handled the pressure without difficulty and made every attempt to secure substitute employment before he was rehired. The witness was of the opinion that the applicant has successfully overcome his unfavorable past.

The applicant also offered letters of recommendation in support of his application (P-1 through P-7). These letters are from persons who have known Mr. Sher for a substantial period of time in both personal and employment related capacities. Unanimously, the letters attest to the proposition that Mr. Sher has successfully overcome his drug-related problems and has established himself as a trustworthy, dependable and hard working person.

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

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(3)

Section 86c(3) of the Casino Control Act (Act) provides for the disqualification from licensure of a person who has been convicted of a high misdemeanor under N.J.S.A. 24:21-19 et seq. The Division contends that the applicant's conviction of a violation of Act 64 Section 13a30 is equivalent to a violation of N.J.S.A. 24:21-19a1, a high misdemeanor.

Act 64 Section 13a30, similarly cited as Penna. S. E. 35 § 780-113(30) provides:

> Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled dangerous substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State Board, or knowingly creating, delivering or possessing with an intent to deliver, a counterfeit controlled dangerous substance.

A violation of this section was a felony in Pennsylvania.

N.J.S.A. 24:21-19a provides, an in pertinent part, that:

> It shall be unlawful for any person knowingly or intentionally:
>
> 1. To manufacture, distribute, or dispense, or to possess or to have under his control with intent to manufacture, distribute or dispense, a control dangerous substance."

Phencyclidine is listed in Schedule III as a controlled dangerous substance. N.J.S.A. 24:21-7.

My review of the statutes indicates that the fundamental elements of an offense in each are substantially similar.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the applicant's conviction of a violation of Act 64 Section 13a30 of

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the Pennsylvania statutes is equivalent to a violation of N.J.S.A. 24:21-19a1; I further CONCLUDE that this conviction mandates that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(3).

Assuming, arguendo, the applicant's contention that the Pennsylvania statute under which he was convicted is not a statutory equivalent of the cited New Jersey statute, there would be no difference in the outcome. On February 6, 1976, the applicant pled guilty to the fifth count of the indictment (R-1). The fifth count charged the following:

> That on the same day and year, in said County, the above defendant(s) did feloniously manufacture, knowingly create, deliver or possess with intent to manufacture or deliver, a controlled dangerous substance or counterfeit controlled substance classified in Schedule I, II or III. (emphasis added)

It is evident that Mr. Sher pled guilty to knowingly possessing Phencyclidine with the intent to distribute. The underlying conduct to which he pled guilty would constitute a violation of N.J.S.A. 24:21-19a1, which, pursuant to N.J.S.A. 5:12-86g, is also a statutory disqualifier.

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

An applicant faced with the existance of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90b. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

First, Mr. Sher has applied for licensure as an alcoholic beverage employee in the casino area. Although he would have no responsibilities for actual gaming activities, he would be in constant and direct contact with patrons of the casino.

Second, the applicant was convicted of a violation of Act 64 Section 13a30 of the Pennsylvania statutes, for knowingly attempting to sell a controlled dangerous substance. This is a serious drug related violation of the criminal laws. Similarly, it is very serious in regard to the application for licensure.

Third, the applicant candidly admitted that the circumstances underlying his conduct were an attempt by him to make a profit, which would have been used to purchase additional drugs.

Fourth, the offense occurred on June 20, 1975.

Fifth, at the time of the offense, the applicant was 21 years of age. It has been well established that the applicant generally conducted himself in an irresponsible manner at that time, as concerned drug abuse.

Sixth, the applicant argued that his offense was isolated. Although there is no evidence which would indicate that the applicant sold drugs at any other time, there was substantial evidence of his drug abuse during the period from 1970 to 1979. Therefore, his drug abuse was not isolated.

Seventh, there was no evidence of any social condition which may have contributed to the offense.

Eighth, it was evident that the applicant has made substantial progress by way of rehabilitation. The applicant successfully completed a drug rehabilitation program at White Deer Run. Since that time, he has not used drugs. This is the most significant evidence possible of his rehabilitation. Further, the applicant has disassociated himself

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from persons who use or are otherwise involved in drug-related activities. In order to effectuate this disassociation, the applicant relocated to Atlantic City and has pursued a new career. Clearly, the applicant has recognized the responsibility he has not only to himself but to others. It was also evident that the applicant has been successfully employed in the casino industry since July 1981, and received a promotion. The demonstration of successful employment within the casino industry is also a most significant showing of rehabilitation. It is no secret that drugs are readily available anywhere, let alone in Atlantic City. The applicant even testified that he has observed drugs in the casino hotel facility. Nevertheless, the applicant has avoided any recurrence of drug use and has successfully performed his employment responsibilities.

Given the nature of drug abuse, the issue of the applicant's rehabilitation is a close question. However, his proven ability to remain free from the use of drugs and his successful employment within the casino industry are an adequate demonstration of his rehabilitation.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under section 89b(2) of the Act, Mr. Sher was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 1979) at 8. In Resorts the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In Re Boardwalk Regency Casino License Application, 190 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the

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Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conviction for the sale of a controlled dangerous substance.

Mr. Sher has affirmatively demonstrated his rehabilitation from drug use, which was substantial and significantly affected his life at that time. However, it was evident from the applicant's successful employment within the casino industry for the past two and one-half years that he presents no risk to the public and the integrity of gaming operations. An examination of the "whole man" clearly and convincingly establishes that Mr. Sher is a person of good character, honesty and integrity and is suitable for licensure in this State. Boardwalk Regency Corporation Casino Control Commission, supra at pp. 51, 52.

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

ORDER OF DISPOSITION

It is ORDERED that the application of Michael Sher for licensure as a casino employee be GRANTED.

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

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

December 21, 1982
DATE

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

Receipt Acknowledged:

December 22, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

DEC 27 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Letter from Louis Rosen

P-2 Letter from Audrey E. Vincent

P-3 Letter from William Simpson

P-4 Letter from John P. Adlam, August 28, 1982

P-5 Letter from Billy Levin, August 31, 1982

P-6 Letter from Horold Levin, August 31, 1982

P-7 Letter from Joseph Allen

R-1 Commonwealth of Pennsylvania v. Michael Sher, Court of Common Pleas of the County of Montgomery, No. 2804, Indictment, Sentence and Order for Tax and Costs, Bill of Costs, Criminal Docket and Transcript, Criminal Complaint, Order and Waiver of Gagnon II Hearing (10 pages)

R-2 Commonwealth of Pennsylvania v. Michael Stuart Sher, in the Criminal Court of the County of Bucks, Criminal Action No. 2948 (2 pages)

WITNESS LIST

FOR THE APPLICANT:

Patrick Byrnes

Barry Sher

Michael Sher

Edward Newman

FOR THE RESPONDENT:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-174
OAL DOCKET NO. CCC 08582-82
APP. NO. 32558-21

IN THE MATTER OF THE APPLICATION OF
THOMAS F. STABILE FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on April 12, 1983, recommending that the casino employee license application of Thomas F. Stabile be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on April 25, 1983, to which Thomas F. Stabile filed a reply on May 2, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on June 15, 1983, to modify the said Initial Decision and to grant the casino employee license application of Thomas F. Stabile,

IT IS on this 24th day of June 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) That portion of the Initial Decision concluding that Mr. Stabile's conviction for violations of N.J.S.A. 2A:105-1 and N.J.S.A. 2A:98-1 [sic; the correct statutory reference is N.J.S.A. 2A:99-1] is a basis for

disqualification pursuant to N.J.S.A. 5:12-86(c)(2) is rejected as inconsistent with the Commission's construction of N.J.S.A. 5:12-86 as set forth in In the Matter of the Application of Robert A. Ferrin for Licensure as a Casino Employee, Docket No. 79-EA-207 (Commission Decision 1981). Mr. Stabile having filed his application on or about February 15, 1980, the pertinent list of disqualifying offenses is that contained in N.J.S.A. 5:12-86(c)(1). Mr. Stabile's conviction for extortion equates to violations of N.J.S.A. 2C:20-5, N.J.S.A. 2C:27-2 and N.J.S.A. 2C:27-6, all of which are disqualifying offenses pursuant to N.J.S.A. 5:12-86(c)(1). His conviction for conspiracy to obstruct justice equates to a violation of N.J.S.A. 2C:12-1 and N.J.S.A. 2C:29-1, neither of which is a disqualifying offense under N.J.S.A. 5:12-86(c)(1).

We concur with that portion of the initial decision which concludes that Mr. Stabile has adequately demonstrated his rehabilitation from his disqualifying offense.

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 24, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8582-82

AGENCY DKT. NO. 82-EA-174

IN THE MATTER OF THE APPLICATION OF THOMAS F. STABILE FOR LICENSURE AS A CASINO EMPLOYEE (SECURITY)

APPEARANCES:

D. William Subin, Esq., for the applicant, Thomas F. Stabile (Subin, Armstrong & Armstrong, P.C., attorneys)

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

Record Closed: February 24, 1983 Decided: April 11, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Thomas F. Stabile, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (security), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had been convicted of a disqualifying criminal offense and that the applicant lacked the requisite good character, honesty and integrity.

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PROCEDURAL HISTORY

Mr. Stabile filed his Personal History Disclosure Form-2 (PHDF-2) with the Commission on July 8, 1981. By letter, dated August 23, 1982, the Commission advised the applicant that, based upon information received in a report from the Division, dated July 23, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter, dated September 3, 1982, the applicant requested a hearing. On September 9, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 5, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Stabile is 47 years of age. He has been a lifelong resident of the Atlantic County area. The applicant is a 1954 graduate of Atlantic City High School. He attended Juniata College and Rider College (J-1).

The applicant served in the United States Air Force from March 1956 to March 1960. He earned an honorable discharge.

The applicant was married in September 1959 and remains so to this day. He is the father of two children, ages 23 and 5.

The applicant's employment history reveals that from April to June 1960, he was employed as an insurance investigator and salesman by Retail Credit Corporation. From May 1960 to June 1961, he was employed by John Hancock Insurance Company. From June 1961 to June 1965, he was employed by Boardwalk National Bank as a teller.

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During 1965, the applicant successfully completed a civil service examination to become a police officer. From September to November 1965, the applicant attended the Atlantic City Police Department Academy, which program he completed satisfactorily. In November 1965, the applicant was employed by the Atlantic City Police Department (ACPD) as a patrolman. On August 28, 1970, the applicant was suspended from duty because of his arrest and charges filed against him.

During the end of July 1970, and while the patrolman was on duty in a patrol car with John Devine, another patrolman, an incident occurred which led ultimately to his arrest. Patrolman Devine was not the applicant's regular partner. They were on an early morning patrol on the boardwalk, when they heard an alarm. They saw a figure emerge from a doorway and run away. They pursued the person and eventually arrested a James Simpson. Approximately two weeks after the arrest, Simpson approached the applicant and Patrolman Devine and offered them money in exchange for their not identifying Simpson, during their testimony in municipal court, as the person they had seen emerge from the store, where a robbery had occurred. The applicant did not agree or disagree at that time. The applicant was again approached by Simpson. The applicant's regular partner, Patrolman Albert Salvatore, and Patrolman Devine were also purportedly present at this time. Simpson reiterated his desire that he not be identified and expressed concern regarding his prior record. The applicant was again approached by Simpson just prior to August 28, 1970, while the applicant was seated in a patrol car. At that time, the applicant agreed to Simpson's request. The applicant testified that the agreement with Simpson included the participation of Patrolman Devine. However, Simpson had previously notified the ACPD of the anticipated transaction and was provided with marked bills. On the evening of August 28, 1970, the applicant, while off duty and while alone, met with Simpson. Simpson gave the applicant $400 in cash. The applicant stated that he intended to split the money with Patrolman Devine. While en route to either his home or Patrolman Devine's residence, the applicant was arrested. The applicant was immediately suspended from his duties.

The applicant was indicted for alleged violations of N.J.S.A. 2A:105-1, extortion, and N.J.S.A. 2A:98-1, conspiracy to obstruct justice. Patrolman Devine was similarly charged.

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In October 1972, the two officers went on trial; however, a mistrial was declared. The applicant had earlier rejected a plea bargain offer, which consisted of a one-year sentence and his testimony against Patrolman Devine. However, subsequent to the mistrial the applicant accepted a plea bargain, which consisted of a six month sentence and his testimony against Patrolman Devine.

On November 27, 1972, the applicant pled guilty to the charges. He was subsequently sentenced to a six-month period of incarceration. He served four and one-half months in the Atlantic City Jail and received an early release by earning good behavior credits. Also, after two and one-half months of his sentence, the applicant qualified for and participated in a work release program. The applicant did testify against Patrolman Devine. However, Patrolman Devine was found not guilty by a jury and is now a Captain of Police with the ACPD.

From September to November 1970, the applicant was employed as an Assistant Manager by the Wawa Food Market Company in Pleasantville. From January to July 1971, the applicant was employed by the Bachman Pretzel Company as a driver-salesman. From August 3, 1971 to March 1, 1979, the applicant was employed by the Diocese of Camden, Cemetery Department, as a ground maintenance worker. He worked in this capacity while he was on work release.

From March 1, 1979 to the present, the applicant has been employed by the Atlantic County Supported Work Program (Program). The applicant was originally hired as a Project Supervisor. During late 1980, the applicant was promoted to the position of Project Supervisor. The Program is designed for past offenders and the hard core unemployed. The Program teaches basic work skills, including carpentry, maintenance, painting, day care, secretarial, etc. It is a last ditch effort to readjust these people to the employment force. As a project manager, Mr. Stabile supervises seven project supervisors, who have responsibility for 65-70 participants. For the two-year period following May 1980, John M. Bettis was the Director of the Program and the applicant's immediate supervisor. It was Mr. Bettis who promoted the applicant to the position of project manager. Mr. Bettis described the applicant's performance as more than adequate and productive, and described the applicant as cooperative and innovative. Mr. Bettis further described the applicant's supervisory responsibilities as including counselling

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of a personal and vocational nature to ex-offenders. Mr. Bettis assessed the applicant's performance as very positive and stated that the applicant was firm in dealing with people. Further, the applicant is responsible, in part, for a budget of approximately $1 million and for a vehicular fleet with a value in excess of $100,000. The applicant has not had any difficulty with the administration of his responsibilities.

From September 1980 to January 1981, the applicant also was employed by the Masland Security Agency as a part-time security guard. His responsibilities included local businesses. Masland is a licensed New Jersey private detective agency. The applicant was approved to be an employee of a private detective license holder on December 2, 1980 (P-1). Also, for the past three years the applicant has been employed by the Ventnor Cigar and Tobacco Store on a part-time basis. The applicant resigned from his employment with Masland because he could not continue to hold three jobs at one time and because there was no opportunity for full-time employment.

For the past eight years, the applicant has been a high school basketball official. Also, since 1975 the applicant has coached the Babe Ruth Travel Team for boys of ages 13 to 15.

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

(B) DISPUTED FACTS

In dispute was the applicant's character, honesty and integrity.

The applicant testified that he has reflected upon his misconduct every day for the past twelve and one-half years He regrets his misconduct and considers it to have been a stupid act. The applicant stated that he never anticipated the impact upon himself or his family. He readily acknowledges the seriousness of his offense and stated that it would not happen again. The applicant further testified that he wants to return to security work, because it is the work he enjoys. He also recognizes that a security position is the closest he could come to law enforcement-type work.

The applicant called three witnesses to testify on his behalf. First, Charles E. Gordon is the Chief Probation Officer for Atlantic County. Chief Gordon has been employed by the probation office since June 1953. The witness knew the applicant casually while the applicant was employed as a police officer. The Chief had discussions with Mr. Stabile at the time he was sentenced. The supervision of the applicant's probation was handled by the section of the probation office administered by Chief Gordon. The witness also had contacts with the applicant subsequent to his release, which consisted of career counseling discussions. The witness stated that the applicant's reputation among his employment supervisors and others is that of a good worker and an honest person. The witness also held the personal opinion that the applicant has recognized fully the impact of his misconduct and has attempted to rehabilitate himself. The witness was also of the opinion that the applicant has succeeded in his rehabilitation and is deserving of another chance.

Frank McGrath, the applicant's second witness, has known the applicant since they were employed together by the Diocese of Camden. For the past five years, Mr. McGrath has been self-employed as the owner-operator of Ventnor Cigar and Tobacco, Inc. For approximately the past three years, the witness has employed the applicant on a part-time basis. During that time, Mr. McGrath became a licensed lottery agent and purchased a liquor license. In order to remain employed by Mr. McGrath, the applicant applied for and received an order from the Director of the Division of Alcoholic Beverage Control removing his disqualification from employment in the alcoholic beverage industry, pursuant to N.J.S.A. 33:1-31.2 (P-5). Mr. McGrath testified that he is of the opinion that the applicant is an honest person and is a person of integrity. The witness has sufficient faith in the applicant to warrant the placing of his trust in him with regard to his lottery and alcoholic beverage licenses. Further, the witness has placed the applicant in charge of the store during his vacation absences. Mr. McGrath was aware of the nature of the applicant's conviction. The witness has observed the applicant to be a hard worker, involved in community activities and a dedicated family person.

The applicant's third witness, John M. Bettis, was, as stated, his supervisor for a two-year period at the Program. Mr. Bettis is a graduate of the Atlantic County Community College and Stockton State College, where he earned a bachelor's degree in criminal justice. From 1967 to 1980, he was employed as an investigator by the Atlantic County Prosecutor's Office. He ultimately held the position of Lieutenant of County

Detectives and occasionally served as Acting Chief of Detectives. At various times his supervisory responsibilities included the white collar crime and official corruption unit, narcotics and office management. In May 1980, Mr. Bettis was appointed as the Executive Director of the Program, which was a unit of the Division of Manpower. In May 1982, the witness was promoted to the position of Director of the Division of Manpower (which is now designated as the Division of Training and Employment), within the Department of Administration. The Program was suffering from general administrative problems and was in need of substantial revision. At the time Mr. Bettis became the Director of the Program, the applicant was already an employee. The witness knew of the applicant from his employment with the County Prosecutor's Office. Mr. Bettis fired many people but not the applicant. After a period of evaluation, Mr. Bettis promoted the applicant to the position of project manager. The witness stated that the applicant had earned his promotion.

Mr. Bettis next testified regarding the subject application. He acknowledged that the applicant had violated a position of trust as a law enforcement officer. As a former law enforcement officer, the witness considered this violation to be very serious in nature. However, the witness testified that he was of the opinion that the applicant was rehabilitated. His opinion was based upon the applicant's expressions of remorse for his misconduct, his regret at losing his career in law enforcement and his candid admission of his wrongdoing. Also, the witness stated that the applicant had often expressed the desire to demonstrate that he is a better person. Mr. Bettis further stated that the passage of time and the absence of any repetition of misconduct was significant. However, most significant to the witness was his observation that the applicant has performed well in his present position, which is one of public trust. The responsibilities of the applicant's present position are similar to that of a police officer; because it is a position of public employment and trust, the applicant is responsible for public monies and there are substantial opportunities for misconduct. The witness has observed the applicant to be a watchman over others in regard to the public trust, and has reported the mismanagement or abuse of county resources by others. The witness is of the opinion that the applicant has demonstrated his rehabilitation. I was impressed by the fact that Mr. Bettis is personally very sensitive to the public trust and appears to be a person with extremely high personal standards, by which he evaluates others.

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The applicant also offered letters in support of his application from the following persons: James W. Masland, III, President of Masland Security Associates (P-2); Michael J. Dougherty, County Treasurer of Atlantic County (P-3); Willie B. Clayton, Jr., Inspector, Comanding Services Bureau of the ACPD (P-4); Walter L. Collette, Captain of the ACPD, retired (P-6); Samuel J. Kligerman, Atlantic County Freeholder (P-7); The Reverend Monsignor Edward J. O'Connor, Pastor of St. James Catholic Church in Ventnor City (P-8); Dr. Gastone A. Milano (P-9); John A. English, a plumbing and heating contractor (P-10); James F. Waters, a former associate (P-11); Ed Harrold, also a former associate (P-12); Dr. Stanley P. Rogers (P-13); and Charles Cianci, a long-time friend (P-14). These character witnesses were people from the religious, business, governmental and general civic communities of the Atlantic County area. Each of these witnesses personally held Mr. Stabile in high regard. Also, those persons who knew the applicant at the time of his conviction, stated emphatically their belief that he had rehabilitated himself completely and was worthy of assuming a position of trust.

Also significant, was the testimony of Mr. Stabile. Initially, his position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during my review of the record, and from my observations of the applicant's demeanor, of the witnesses who supported his application and my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was candid, consistent with the record, believable, sincere and persuasive. In the final analysis, I am persuaded to accept the applicant's testimony in all respects.

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

1. Mr. Stabile was a credible witness, and his testimony was candid, consistent with the documentary evidence and believable.

2. The applicant fully acknowledged his misconduct.

3. The applicant has accepted full responsibility for his misconduct.

4. The applicant has exhibited remorse for his misconduct since the incident. The applicant maintains to this day a strong feeling of regret for his misconduct.

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5. The applicant's present position at the Atlantic County Supported Work Program is a position of public trust. The applicant's work performance and his administration of the public trust reposed in him has been commendable in every respect.

6. The applicant has rehabilitated himself to the extent that there is little, if any, likelihood that he would again commit a wrongful act.

7. Close friends, associates and past and present employers of the applicant are of the opinion that he has successfully undergone rehabilitation.

8. Close friends, associates and past and present employers of the applicant are of the opinion that he is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(2)

Section 86c(2) of the Casino Control Act (Act) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2A of the New Jersey statutes be disqualified from licensure. Mr. Stabile pled guilty to violations of N.J.S.A. 2A:105-1, extortion, and N.J.S.A. 2A:98-1, conspiracy to obstruct justice, which are enumerated disqualifying offenses.

I **CONCLUDE** that Mr. Stabile's conviction for violations of N.J.S.A. 2A:105-1 and N.J.S.A. 2A:98-1 mandate that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(2).

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(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 Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operation or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

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

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

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The Division raised nothing other than the applicant's conviction to establish that licensure would be inimical to the Act. However, the inimicality of the misconduct has been established by the inclusion of the violated statutes as per se disqualifiers under section 86c(2) of the Act. Absent any additional characteristic of inimicality, section 86c(4) does not apply.

I **CONCLUDE** that the Division has not established that the licensure of the applicant would be inimical to the policies of the Act, pursuant to section 86c(4).

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

First, Mr. Stabile has applied for licensure to be employed as a security officer. He would have regular responsibilities for functions directly involved in gaming activities and would have direct contact with patrons of the casino.

Second, the applicant was convicted of violations of N.J.S.A. 2A:105-1, extortion, and N.J.S.A. 2A:98-1, conspiracy to obstruct justice, concerning his role as a police officer charged with the responsibility of enforcing the laws of this State. His conduct constituted a knowing breach of that trust. As such, his misconduct constitutes one of the most serious violations of the public trust.

Third, the applicant had a substantial opportunity to weigh the consequences of his potential conduct and to withdraw therefrom. He did not. There were no pressures which contributed to his misconduct. The applicant has accepted full responsibility for his misconduct.

Fourth, the applicant committed the crime on November 28, 1970, twelve and one-half years ago.

Fifth, at the time of the offense, the applicant was 34 years of age. His conduct was not the result of immaturity.

Sixth, the applicant's misconduct occurred only once. Nevertheless, he did have a four-week period during which time he could have decided not to participate, as well as to report the perpetrator's actions to his superior officers. There was no other indication of wrongdoing of any kind.

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

Eighth, it is evident that the applicant has made substantial rehabilitative efforts. He pled guilty to the charges and accepted fully his responsibility for his misconduct. He served his time, which was spent in a prison with persons whom he had arrested. During his incarceration, the applicant was admitted into and successfully completed a work release program. The applicant has made a sincere and deep expression of remorse, which continues to this day. The applicant has also established a very positive employment record and has sought to improve his position. The applicant has earned the respect of his past and present employers and supervisors.

Nevertheless, the Division argues that the applicant has not met the standard for rehabilitation, because his misconduct constituted a breach of the public trust. The extraordinary seriousness of the applicant's misconduct was not in dispute. However, the

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Division's objection poses the question whether this applicant can, under any circumstances, establish his rehabilitation under section 90h. Clearly, the Act does not preclude any person convicted of any form of misconduct from attempting to establish rehabilitation in an effort to seek licensure as a casino employee. At the very core of our system of justice is the opportunity for rehabilitation. Therefore, the opportunity must exist for this applicant to attempt to establish his rehabilitation.

The issue then becomes what must this applicant establish to meet the statutory burden of proving his rehabilitation. I believe the standard was best stated by Mr. Bettis, who impressed me as being a person of extraordinarily high principles and standards, especially in regard to the public trust. The witness identified five factors by which to assess rehabilitation: first, is a sincere expression of remorse; second, is the recognition and acceptance of responsibility for the wrongful conduct; third, is the passage of time; fourth, is commendable performance under the stress of similar responsibilities; and fifth, especially in regard to public employees, is the demonstration of responsibility when a similar degree of trust is placed in the person. Clearly, Mr. Stabile has demonstrated that he has more than satisfied each of these criteria. In addition, the applicant has re-earned the respect of persons who were personally offended by his misconduct, and he has been an active and sincere participant in community activities, including youth activities. The issue now becomes what more could this applicant have done or can this applicant do in order to establish his rehabilitation under the Act. Although he can never eliminate his tarnished record, there is nothing more the applicant could do to establish his rehabilitation, but for the passage of additional time. However, sufficient time has passed since the incident during which the applicant's character, honesty and integrity have been tested. Against substantial odds, the applicant has affirmatively demonstrated his rehabilitation.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under section 89b(2) of the Act, Mr. Stabile was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, for a Casino License, Casino

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Control Commission (February 26, 1979), at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conduct underlying his conviction.

The burden this applicant carried was far more substantial than most applicants by reason of his violation of a position of public trust. Nevertheless, the applicant has affirmatively demonstrated his complete rehabilitation. There is virtually no likelihood of the applicant committing any unlawful acts in the future. The applicant presents no risk to the public or to the integrity of casino gaming in this State. The applicant has earned the privilege of licensure. An examination of the "whole man" clearly and convincingly establishes that Mr. Stabile is a person of good character, honesty and integrity and is entirely suitable for licensure in this State. Boardwalk Regency Corporation, Casino Control Comission, supra at 51, 52.

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

DISPOSITION

It is **ORDERED** that the application of Thomas F. Stabile for licensure as a casino employee be **GRANTED.**

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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 11, 1983
DATE

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

Receipt Acknowledged:

April 13 1983
DATE

Lynn S. McDowell
CASINO CONTROL COMMISSION

Mailed to Parties:

April 14, 1983
DATE

Ronald L. Lukens
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-2, Thomas Francis Stabile, filed on July 8, 1981 (27 pages)

P-1 Letter to James Masland III, from Anthony J. DeMasi, December 2, 1980

P-2 Letter from James W. Masland III, September 20, 1982

P-3 Letter from Michael J. Dougherty, September 8, 1982

P-4 Letter from Willie D. Clayton, Jr., October 12, 1982 (2 pages)

P-5 Letter to Thomas F. Stabile from Lee Barry, December 3, 1982, and copy of Conclusions and Order of the Director of the Division of Alcoholic Beverage Control, case no. 4484, December 3, 1982 (2 pages)

P-6 Letter from Walter L. Collette, October 6, 1982

P-7 Letter from Samuel J. Kligerman, October 1, 1982

P-8 Letter from the Reverend Monsignor Edward J. O'Connor, September 9, 1982

P-9 Letter from Gastone A. Milano, M.D., September 9, 1982

P-10 Letter from John A. English, September 3, 1981

P-11 Letter from James F. Waters, October 4, 1982 (2 pages)

P-12 Letter to Thomas Stabile from Ed Harrold, February 14, 1979

P-13 Letter from Stanley P. Rogers, M.D., October 6, 1981 (2 pages)

P-14 Letter from Charles Cianci, September 11, 1982

R-1 Atlantic City Police Department - Investigation Report, prepared by Albert E. Wilson, August 28, 1970

R-2 Atlantic City Police Department - Supplementary Investigation Report, prepared by Albert E. Wilson, August 29, 1970 (2 pages)

R-3 Atlantic City Police Department - Supplementary Investigation Report, prepared by Albert E. Wilson, August 31, 1970

R-4 Atlantic County Superior and County Court Criminal Record, State v. Thomas F. Stabile and John C. Devine (7 pages)

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R-5 Untied States Department of Justice, Federal Bureau of Investigation, Identification Division-Rap Sheet (2 pages)

R-6 State of New Jersey, Department of Law and Public Safety, Division of State Police, State Bureau of Identification-Rap Sheet (2 pages)

WITNESS LIST

For the applicant:

John M. Bettis
Charles E. Gordon
Frank McGrath
Thomas F. Stabile

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 80-EL-6
OAL DOCKET NO. CCC 3616-82

IN THE MATTER OF EXCLUSION OF RALPH STAINO, JR. FROM CASINO HOTEL FACILITIES

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on January 4, 1983, recommending that the name of Ralph Staino, Jr. be placed on the Exclusion List pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of March 9, 1983, to modify the said Initial Decision, and to place the name of Ralph Staino, Jr. on the Exclusion List,

IT IS on this 30th day of March 1983, ORDERED that said Initial Decision of the Office of Administrative Law be and hereby is modified as follows:

1. In addition to the reasons cited by the Administrative Law Judge, the Commission considers the circumstances surrounding Ralph Staino's eviction from Bally's Park Place Casino on March 18, 1980, to further support the conclusion that his presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey and of licensed gaming; and

IT IS FURTHER ORDERED that the name of Ralph Staino, Jr. be placed on the Exclusion List 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 Ralph Staino, Jr. be and hereby is declared to be an excluded person and is prohibited from entering the premises of all currently operating casino hotels pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.; and

IT IS FURTHER ORDERED that a copy of this Order shall be served upon Ralph Staino, Jr., the Division of Gaming Enforcement and all currently operating casinos in New Jersey within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 30, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3616-82

AGENCY DKT. NO. 80-EL-6

(CCC 3107-80 REMANDED)

DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

RALPH STAINO, JR.,

Respondent.

APPEARANCES:

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

Sal B. Daidone, Esq. for respondent

Record Closed November 3, 1982 Decided January 3, 1983

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

STATEMENT OF THE CASE

This matter concerns the amended petition of the New Jersey Division of Gaming Enforcement accepted for filing with the Casino Control Commission on March 30, 1982, requesting that the name of Ralph Staino, Jr., be placed upon the Commission's list of persons who are to be excluded or ejected from any licensed casino establishment, pursuant to Section 71 of the New Jersey Casino Control Act, N.J.S.A. 5:12-1.1 et seq. The following issue to be resolved at the hearing as been identified:

New Jersey Is An Equal Opportunity Employer

Whether the name of the respondent, Ralph Staino, Jr., should be placed on the list of persons who are to be excluded or ejected from any licensed casino establishment, within the meaning of N.J.S.A. 5:12-71a(2) and (3) and N.J.A.C. 19:48-1.1 et seq., on the basis of the respondent's alleged conduct and convictions set forth in the Division of Gaming Enforcement's amended petition for placement on the exclusion list, accepted for filing on March 30, 1982.

PROCEDURAL HISTORY

The Division of Gaming Enforcement filed its original petition for placement on the exclusion list with the Casino Control Commission on March 6, 1980. By letter, dated April 21, 1980, the Casino Control Commission notified the respondent that he had a right to a hearing concerning the petition for placement on the exclusion list. The respondent requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

In an Initial Decision, dated December 18, 1981, it was found by the undersigned that the respondent had unreasonably failed to comply with a discovery order entered on June 20, 1981, and an order compelling discovery and imposing sanctions entered on October 27, 1981. It was further found that the respondent's unreasonable failure to comply with these orders severely prejudiced the petitioner's ability to proceed in the matter. The Intial Decision ordered that the respondent's answer to the complaint of the Division of Gaming Enforcement be dismissed, and it was further ordered that the matter be returned to the Casino Control Commission, based upon the conclusion that the respondent had constructively abandoned his request for a hearing.

After the entry of several extensions of the time limit for the Commission to render a Final Decision, the Commission was scheduled to review the Initial Decision at its public meeting on March 23, 1982. At that meeting, the Division of Gaming Enforcement moved for leave to amend its petition for placement on the exclusion list in this matter. The Commission voted to grant permission to file an amended petition , and the petition was filed with the Commission on March 29, 1982. At its public meeting of March 30, 1982, the Commission voted to accept for filing the amended petition and to remand the matter to the Office of Administrative Law for the conduct of a hearing.

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The remanded matter was received by the Office of Administrative Law on April 13, 1982. A prehearing conference was held on July 1, 1982, and the matter was heard on September 7 and 8, 1982. The record in this matter closed upon the receipt of the final post hearing submission on November 3, 1982.

FINDINGS OF FACT

The respondent is a 50 year old patron of licensed casino facilities in Atlantic City, New Jersey (Exhibit P-177). The relevant conviction record of the respondent is undisputed. On April 25, 1975, the respondent pled nolo contendere to the crime of grand larceny by unlawful use of a credit card, in Broward County, Florida (Exhibit P-168). On May 6, 1975, the Circuit Court for Broward County sentenced the respondent to pay a fine of $2,000.

On April 26, 1976, the respondent pled guilty in the United States District Court for the Eastern District of Pennsylvania to charges of mail fraud and conspiracy, in violation of Title 18 U.S.C. 1341 and 1342 (Exhibit P171). For these offenses, which involved obtaining money by the fraudulent use of credit cards, the respondent was sentenced to one year and one day in prison, five years probation and restitution in the amount of $11,862.97 (Exhibit P-171).

On July 28, 1976, the respondent pled guilty in Superior Court of New Jersey, Camden County, to charges of possession of a controlled dangerous substance, conspiracy to possess a controlled dangerous substance and possession of a controlled dagerous substance with intent to distribute, contrary to N.J.S.A. 24:21-20(a)1, N.J.S.A. 24:21-24 and N.J.S.A. 24:21-19(a)1 (Exhibits P-170 and 172). On November 5, 1976, the respondent was sentenced on the controlled dangerous substance convictions to serve a term of imprisonment of not less than two years nor more than three years in the New Jersey State Prison, with his sentence to run concurrently with his federal sentence for mail fraud and conspiracy (Exhibit P-169).

In addition to the respondent's conviction record, it is undisputed that the respondent has been involved in two incidents within a licensed casino facility in Atlantic City, New Jersey, which resulted in contact with law enforcement personnel. Detective Sergeant Ronald Taylor of the New Jersey State Police testified on behalf of the Division of Gaming Enforcement concerning an incident involving the respondent which took place at Bally's Park Place Casino on March 18, 1980. According to Taylor, who has been with

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the New Jersey State Police for 19 years, he was supervising a team of undercover investigators within the casino when he heard a loud and abusive argument occurring between the respondent and Lester Bullock, a casino floor person. While barraging Bullock with threats and obscenities, the respondent got up from his chair and moved into the pit area, as if to attack Bullock. At that time, the respondent observed Detective Sergeant Taylor and stopped his movement into the pit area. However, he continued to argue with the floor person. It was the detective sergeant's testimony that the respondent had apparently remembered him from a similar encounter at Resorts International Casino.

According to Detective Sergeant Taylor, Floor Person Gordon Miler restrained Floor Person Bullock from fighting with the respondent while Pit Boss Russ Hood argued with the respondent concerning the adequacy of a complimentary dinner pass given to the respondent's gambling companion. The respondent argued in a verbally abusive manner that the complimentary pass was not adequate. When the situation calmed down, Taylor advised Pit Boss Hood and Floor Person Miler that the respondent should be ejected from the casino because of his behavior. Both casino employees said that they did not intend to take any action against the respondent because they were aware of his reputation and they were afraid to take action against him. Detective Sergeant Taylor then discussed the matter with Steve Bolson, Corporate Counsel for Bally's Park Place Casino, at which time Taylor informed Bolson concerning the respondent's criminal background. Bolson then agreed to have the respondent ejected from the casino by the casino's security staff, on the condition that backup personnel from the New Jersey State Police were present. Two State Police detectives were provided and the respondent was then ejected from the casino.

Detective Sergeant Taylor testified that he had been assigned to the Organized Crime Task Force of the New Jersey State Police for a period of ten years. During that time, he became familiar with the respondent and the reputation of the respondent within the law enforcement community. When asked his opinion concerning the respondent's reputation within the New Jersey law enforcement community, Taylor stated, "he's a criminal, racketeer, and he's violent." Taylor also testified that he has on occasion discussed the respondent's reputation with employees of licensed casinos in Atlantic City. According to Taylor, these people are aware of the respondent's reputation and they are afraid of him. These casino employees feel the respondent would retaliate if action were taken against him. Taylor's report concerning the incident involving the respondent at Bally's Park Place Casino on March 18, 1980, was admitted into evidence as Exhibit P-174.

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Detective John A. Stolar of the New Jersey State Police testified concerning an incident involving the respondent at Bally's Park Place Casino on April 26, 1981. On that date, Detective Stolar observed the respondent in the baccarat pit at the casino. Recalling that the respondent had previously been ejected from this casino, the detective confirmed that the respondent was on the casino's exclusion list and then approached the respondent and identified himself. When asked if he were Ralph Staino, the respondent stated that he was not. The respondent was then asked to go to the Division of Gaming Enforcement's office at the casino and the respondent proceeded there peaceably.

Detective Stolar testified that the respondent was discovered to be in possession of a credit card issued by Sunmark Industries, in the name of one Thomas J. Solineo. According to the detective, investigation revealed that this credit card had been reported as having been stolen. The respondent was placed under arrest and charged with defiant trespass, contrary to N.J.S.A. 2C:18-3b. The respondent was also subsequently charged with possession of a stolen credit card, contrary to N.J.S.A. 2C:20-7. Both the defiant trespass charge and the possession of a stolen credit card charge are currently pending before the Atlantic City Municipal Court (Exhibit P-177).

Also testifying on the behalf of the Division of Gaming Enforcement was Detective Sergeant Joseph Calabrese of the New Jersey State Police. For the past four and one-half years, Calabrese has been assigned to the Division of Gaming Enforcement. For the six and one-half years preceding his current assignment, Calabrese was assigned to the New Jersey State Police Organized Crime Task Force. According to Detective Sergeant Calabrese, during the course of his employment with the State Police, he has become familiar with the respondent. A wire tap to which Calabrese was assigned in 1973 led to the respondent's arrest and conviction on controlled dangerous substance charges (Exhibits P-170 and 172).

Detective Sergeant Calabrese testified that he has discussed the respondent's reputation with other members of the law enforcement community. In the opinion of Detective Sergeant Calabrese, the respondent has a reputation in the law enforcement community as a known criminal, involved in racketeering. Calabrese testified that he has observed the respondent in licensed casino facilities on many occasions. According to Calabrese, he has frequently discussed the respondent's reputation with casino industry personnel. In his opinion, some people in the casino industry feel that the respondent is a loan shark and others feel that the respondent is a "strong arm" or one who would "enforce

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collection of funds for somebody or if someone did something and he would just go out and straighten people out by physical violence."

Admitted into evidence on the behalf of the Division of Gaming Enforcement were numerous newspaper articles (see the attached inventory of exhibits) which describe the alleged criminal activities and associations of the respondent from the 1950's until the present. These articles were not admitted into evidence for the truth of their contents. Rather, they were admitted for what they might reveal concerning the public's perception of the respondent, which is relevant to the material question of whether the respondent's presence 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. For the same reason, the 1980 report of the Pennsylvania Crime Commission, entitled "A Decade of Organized Crime," was admitted into evidence as Exhibit P-167. At page 177 of this report, there appears a recitation of the respondent's alleged activities involving the fraudulent use of credit cards.

The testimony offered on the behalf of the Division of Gaming Enforcement by the New Jersey State Police personnel was straightforward, sincere and credible. The respondent did not testify in this matter, nor was any evidence offered on the respondent's behalf.

All of the preceding evidence is uncontroverted and believable, and is thus FOUND AS FACT.

CONCLUSION 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 charged with the responsibility of providing by regulation for the establishment of a list of persons who are to be excluded or ejected from any licensed casino establishment. Pursuant to the guidelines set forth in Section 71, the Casino Control Commission has by regulation adopted criteria for the exclusion of persons from licensed casino establishment. These criteria for exclusion are set forth pursuant to N.J.A.C. 19:48-1.3, which provides as follows:

(a) The exclusion list may include any person:

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1. who is a career or professional offender and whose presence in a licensed casino establishment would, in the opinion in the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

2. who is an associate of a career or professional offender and whose association is such that his 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; or

3. 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; or

4. whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the State of New Jersey or licensed gaming therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked.

(b) Race, color, creed, national origin or ancestory, or sex shall not be a reason for placing a name of any person upon such list.

The Division of Gaming Enforcement contended that it has established the criteria for the respondent's exclusion from licensed casino establishments, within the meaning of N.J.A.C. 19:48-1.3. In essence, the respondent contends that the Division of Gaming Enforcement has not established the his presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or of licensed gaming. It must be noted that the Division of Gaming Enforcement has briefed extensively the various constitutional arguments which might arise concerning the exclusion provision of Section 71 of Casino Control Act, and the regulations adopted pursuant to that Section. However, none of these arguments have been raised by the respondent and thus they are deemed to have been waived for the purposes of this proceeding. Therefore, it remains to be determined whether the Division of Gaming Enforcement has met its burden of establishing that the name of the respondent shall be placed on the Commission's list of persons who are to be excluded or ejected from any licensed casino establishment.

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The relevant conviction record of the respondent is undisputed. It is clear from this record that the respondent has been convicted of criminal offenses under the laws of New Jersey and the United States which are punishable by more than six months in prison. It is also clear from his conviction on charges of mail fraud and conspiracy that the respondent has been convicted of a crime involving moral turpitude. Thus, I **CONCLUDE** that these criteria for the exclusion of the respondent have been established by the Division of Gaming Enforcement. However, before the respondent's name could be placed upon the list of persons who are to be excluded or ejected, the Division of Gaming Enforcement must establish that the respondent's presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or of licensed gaming therein. At N.J.A.C. 19:48-1.1, the term "inimical to the interest of the State of New Jersey or of licensed gaming" is defined to mean "adverse to the public confidence and trust in the credibility, integrity and stability of casino gaming operations and in the strict regulatory process created by the Casino Control Act."

The candid and credible testimony of the State Police personnel who testified on behalf of the Division of Gaming Enforcement has established the respondent's reputation in law enforcement and in legalized gaming for participation in criminal activity. In addition, the respondent has been the subject of numerous newspaper articles which have reported his alleged criminal activities and associations. I **CONCLUDE** from this evidence that the respondent's presence 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. Therefore, on the basis of the facts adduced at the hearing and the applicable statutory provisions, I further **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing 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, within the meaning of N.J.S.A. 5:12-71a(2) and (3) and N.J.A.C. 19:48-1.1 et seq.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the name of the respondent, Ralph Staino, Jr., be placed on the Casino Control Commission's list of persons who are to be excluded or ejected from any licensed casino establishment.

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

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

January 3, 1983
DATE

Joseph J Fidler
JOSEPH T. FIDLER, ALJ

Receipt Acknowledged:

January 4, 1983
DATE

Bernadette T. Finn
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 6, 1983
DATE

Ronald L. Parker/ss.
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the Petitioner:

P-1 to P-18	Newspaper articles
P-19	Not in evidence
P-20 to P-58	Newspaper articles
P-59	Not in evidence
P-60 to P-74	Newspaper articles
P-75	Not in evidence
P-76 to P-145	Newspaper articles
P-146 to P-149	Not in evidence
P-150 & P-151	Newspaper articles
P-152	Not in evidence
P-153	Newspaper article
P-154 to P-166	Not in evidence
P-167	1980 Report of the Pennsylvania Crime Commission, "A Decade of Organized Crime"
P-168	Order of Sentence, dated May 6, 1975
P-169	Judgment of Conviction, dated November 5, 1976
P-170	Statement by Defendant, dated July 28, 1976
P-171	Indictment, Change of Plea and Judgment, dated June 15, 1976
P-172	Transcript of Guilty Plea, dated July 28, 1976
P-173	Transcript of Guilty Plea, dated April 26, 1976
P-174	Report of Detective Sergeant Taylor, dated March 18, 1980
P-175	Newspaper article
P-176	Not in evidence
P-177	Investigation and Arrest Report

For the Respondent:

None

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WITNESSES

For the Petitioner:

Ronald Taylor
John Stolar
Joseph Calabrese

For the Respondent:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EL-6
OAL DOCKET NO. CCC 3107-80

IN THE MATTER OF THE EXCLUSION :
OF RALPH STAINO FROM CASINO : ORDER
HOTEL FACILITIES :

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 22, 1981, striking the Respondent's Answer and finding that the Respondent has constructively abandoned his request for a hearing; and the Division of Gaming Enforcement, on March 23, 1982, having moved for leave to amend its Petition for Placement on the Exclusion List; and the Commission having granted that permission to amend at its public meeting of March 23, 1982 following extensive legal arguments of both the Division of Gaming Enforcement and the Respondent; and the Division having filed with the Commission on March 29, 1982 its proposed Amended Petition; and the Commission having carefully considered the entire record of the proceedings; and the Commission having found that the Amended Petition raised new issues; and the Commission having resolved at its public meeting of March 30, 1982 to accept the Amended Petition and to remand this matter to the Office of Administrative Law for the conduct of a hearing,

IT IS on this 30th day of March, 1982 ORDERED that Amended Petition for Placement on the Exclusion List be and

hereby is accepted for filing; and

IT IS FURTHER ORDERED that this matter be remanded to the Office of Administrative Law for the conduct of a hearing on an expedited basis; and

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

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

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 30, 1982

FILED
NEW JERSEY
DEC 22 1981
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
PROCEDURAL ORDER
CONCLUDING CASE
OAL DKT. NO. CCC 3107-80
AGENCY DKT. NO. 80-EL-6

DIVISION OF GAMING ENFORCEMENT,
Petitioner
v.
RALPH STAINO, JR.,
Respondent.

APPEARANCES:

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

Sal B. Daidone, Esq. for respondent

Record Closed November 23, 1981 Decided December 18, 1981

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

This matter concerns the petition of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on March 6, 1980, requesting that the respondent's name be placed upon the Commission's list of persons who are to be excluded or ejected from any licensed casino establishment, pursuant to section 71 of the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq. Specifically, the petitioner seeks the exclusion or ejection of the respondent from any licensed casino establishment,

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pursuant to N.J.S.A. 5:12-71a(2) and (3) and N.J.A.C. 19:48-1.1 et seq., on the basis of the respondent's alleged conduct and convictions set forth in the petition for placement on the exclusion list.

By letter, dated April 21, 1980, the Casino Control Commission notified the respondent that he had a right to a hearing concerning the petition for placement on the exclusion list. The respondent requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 22, 1980, at the Office of Administrative Law, Trenton, New Jersey. At the prehearing conference, the petitioner's motion for summary decision was denied after oral argument.

For good cause shown, the hearing in this matter was adjourned from its originally scheduled date of November 12, 1980. Adjournments from two subsequently scheduled hearing dates were also granted upon a showing of good cause.

The hearing was opened as rescheduled on June 29, 1981. At that time, oral argument was accepted from counsel on the Division of Gaming Enforcement's Motion to Compel Discovery, pursuant to N.J.A.C. 1:1-11.2, and to impose sanctions, pursuant to N.J.A.C. 1:1-3.5. After considering the arguments of counsel, it was determined that neither party had properly utilized the Uniform Administrative Procedure Rules, and that neither party was prepared to proceed with the hearing in any meaningful way. Therefore, the parties were ordered either to comply with all requests for discovery or to seek relief from those requests by motion, on or before August 3, 1981. The parties were further advised that failure to comply with this order might result in the imposition of appropriate sanctions under N.J.A.C. 1:1-3.5.

By August 3, 1981, the respondent had neither answered the interrogatories propounded by the Division of Gaming Enforcement nor sought relief from the Division's discovery request. On August 20, 1981, the Division of Gaming Enforcement served upon the respondent a Notice of Motion to Compel Discovery, pursuant to N.J.A.C. 1:1-11.2, and to impose sanctions, pursuant to N.J.A.C. 1:1-3.5, as a result of the respondent's failure to comply with the order of June 29, 1981.

On September 10, 1981, the respondent served its answers to interrogatories upon the Division of Gaming Enforcement. By Notice of Motion returnable September 21, 1981, the Division made application for an order to compel the respondent to answer interrogatories numbers 47 and 48, to which the respondent had not provided an answer; interrogatories numbers 6, 11, 12, 20, 21, 23, 26, 28, 29, 30, 31, 32, 33, 37, 38, 39, 58, 60, 62, 63, 66, 75, 81, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115 which respondent had refused to answer; and interrogatories numbers 4, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 22, 24, 25, 27, 34, 35, 36, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 61, 64, 65, 67, 68, 69, 70, 71, 72, 74, 76, 77, 78, 82 and 83, which respondent did not answer fully and responsively.

After reviewing each of the propounded interrogatories and considering the arguments of counsel, the undersigned found that the respondent had unreasonably failed to comply with the discovery order entered on June 29, 1981. With the exception of questions pertaining to equitable distribution, or matters arising prior to January 1, 1976, the respondent was ordered to supply answers to each of the interrogatories identified in the petitioner's moving papers. In addition, it was concluded that the imposition of sanctions was appropriate as a result of the respondent's unreasonable failure to comply with the earlier discovery order. Therefore, pursuant to N.J.A.C. 1:1-3.5(a) and (b), the respondent was ordered to pay costs in this matter to the State of New Jersey in the amount of $100. The respondent was further ordered to pay the reasonable expenses of the Division of Gaming Enforcement, including attorneys' fees, incurred seeking the entry of the order. The respondent was to answer fully all interrogatories and to make all necessary payments by October 21, 1981. By orders entered October 27, 1981, the deadline for providing the answers to interrogatories and for making the payments was extended until November 2, 1981.

By notice of motion returnable November 23, 1981, the Division of Gaming Enforcement made application for an order imposing sanctions, pursuant to N.J.A.C. 1:1-3.5, as a consequence of the respondent's unreasonable failure to comply with the order entered on October 27, 1981. After hearing and considering the arguments of counsel on the Division's motion to impose sanctions, it was determined that the respondent had unreasonably failed to comply in any way with the order of October 27, 1981. It was also determined that the respondent's failure to comply with the earlier

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order severely prejudiced the Division of Gaming Enforcement's ability to proceed in the matter.

Based upon the foregoing, I **FIND:**

1. The respondent has unreasonably failed to comply with a discovery order entered on June 29, 1981, and an order compelling discovery and imposing sanctions entered on October 27, 1981.

2. Because of the respondent's unreasonable failure to comply with the aforementioned orders, the petitioner's ability to proceed in the matter has been severely prejudiced.

Based upon the foregoing discussion and the specific findings of fact, it is apparent that the further imposition of sanctions against the respondent is warranted. Because the respondent's unreasonable failure to comply with earlier orders is a continuous one, I **CONCLUDE** that the appropriate sanction to be imposed is dismissal of the respondent's answer to the complaint of the Division of Gaming Enforcement. Because the respondent's continuing unreasonable failure to comply with the earlier orders has prevented the Division of Gaming Enforcement from proceeding with its proofs, I further **CONCLUDE** that the respondent has constructively abandoned its request for a hearing.

The disposition of this matter relates solely to the conduct or management of a contested case before the Office of Administrative Law. Therefore, I further CONCLUDE that the following order is procedural, as defined by N.J.A.C. 1:1-9.7(e).

For the foregoing reasons, it is **ORDERED** that the respondent's answer to the complaint of the Division of Gaming Enforcement, and the proceedings in this matter before the Office of Administrative Law, be **DISMISSED**; and it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and regulations adopted thereunder.

Within forty-five (45) days the **CASINO CONTROL COMMISSION** may: affirm, modify, or reject the conclusion that this order is procedural as defined by N.J.A.C. 1:1-9.7(e); and, in the event that the agency head determines that this order is

substantive, affirm, modify or reject the terms of the order. If the CASINO CONTROL COMMISSION does not so act within forty-five (45) days and unless such time limit is otherwise extended, this Initial Decision shall become a final decision in accordance with N.J.S.A. 52:14B-10 and the procedural order shall become effective and appealable in accordance with the rules of court.

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

December 18, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

December 22, 1981
DATE

Nancy O. Linkel
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Dec. 24, 1981
DATE

Ronald L. Parker/ps
OFFICE OF ADMINISTRATIVE LAW

ms

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-2
OAL DOCKET NO. CCC 5555-82
REGISTRATION NO. 15557-40

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

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 27, 1982, recommending that the casino hotel employee registration held by Nicholas Surace be revoked and further recommending that he shall be permitted to reapply for registration as a casino hotel employee after January 12, 1984; and Nicholas Surace having filed exceptions to the Initial Decision on February 10, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 9, 1983, to modify the said Initial Decision and to revoke the casino hotel employee registration held by Nicholas Surace,

IT IS on this 15th day of March 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. The portion of the Initial Decision ordering that Nicholas Surace shall be permitted to reapply for registration as a casino hotel employee after January 12, 1984, be and hereby is rejected as inconsistent with Commission regulations, viz, N.J.A.C. 19:41-8.8.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Nicholas Surace be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that pursuant to N.J.A.C. 19:41-8.8(a), Nicholas Surace is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that Nicholas Surace shall deliver his casino hotel employee registration card to the Casino Control Commission's Atlantic City office within twenty-four (24) hours of his receipt of this Order; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Nicholas Surace, the Division of Gaming Enforcement and all currently operating casino hotels within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

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DATED: March 15, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5555-82

AGENCY DKT. NO. 82-2

DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

NICHOLAS SURACE,

Respondent.

APPEARANCES:

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

Morton Feldman, Esq. for respondent

Record Closed November 10, 1982 Decided December 27, 1982

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

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on January 12, 1982, seeking judgment revoking the respondent's casino hotel employee registration, or some other sanction, pursuant to section 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the convictions of respondent for unlawful possession of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20(a)(1), and unlawful possession of a controlled

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dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19(b)(1). The issues to be determined in this matter are as follows:

1. Whether the respondent, notwithstanding his conviction of an offense which constitutes a per se disqualifier under section 86c(3) of the Casino Control Act, has demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or some other sanction, pursuant to section 129 of the act.

2. Whether the per se disqualification criterion arising from the respondent's conviction may be waived, within the meaning of section 91e, thereby preventing revocation of registration, or some other sanction, pursuant to section 129 of the Casino Control Act.

PROCEDURAL HISTORY

By letter, dated May 19, 1982, the respondent requested a hearing concerning the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on January 12, 1982. The matter was thereafter transmitted by the Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There exists no genuine dispute concerning the material facts in this matter. The respondent is a 22-year-old resident of Ventnor, New Jersey. He is a high school graduate and he has been employed as a bus person at the Front Porch Restaurant in Atlantic City, New Jersey, since August 1982.

In June 1980, the respondent began employment at the Palm Court Restaurant in Caesar's Casino Hotel in Atlantic City. According to the respondent, "Everyone was doing drugs," and he too became involved. It was the respondent's testimony that he personally used both cocaine and methaqualone. He would take a few methaqualone pills per day, and he used approximately five grams of cocaine per week. The respondent admitted that he would sell some methaqualone to help support his drug habit.

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An undercover investigation conducted by the Vineland Police Department resulted in the respondent's arrest on December 1, 1980, on charges of possession of cocaine and methaqualone, possession of a controlled dangerous substance with intent to distribute, conspiracy, auto theft and resisting arrest (Exhibits P-4, 5 and 6). The respondent explained that he and another individual had pooled their resources and purchased 2,500 methaqualone pills in Philadelphia for $3,750. It had been the respondent's intention to keep 1,000 of the pills. The father of his girlfriend discovered the plan and reported the matter to the police. The respondent ran from a police roadblock and was not immediately apprehended. A police search of his home revealed his possession of cocaine.

The respondent was again arrested for possession of methaqualone in January 1981. On April 7, 1981, the Cumberland County Grand Jury entered two indictments against the respondent. The first was a six-count indictment concerning the events which led to his arrest in December 1980. The second was a single-count indictment concerning his arrest in January 1981 (Exhibits P-1 and P-2).

On June 4, 1981, the respondent retracted his plea of not guilty to the indictments and entered a plea of guilty to the single-count indictment which alleged his possession of methaqualone and to counts four and five of the six-count indictment, which alleged his unlawful possession of a controlled dangerous substance and his unlawful possession of a controlled dangerous, with intent to distribute, contrary to the provisions of N.J.S.A. 24:21-20(a)(1) and N.J.S.A. 24:21-19(b)(1). On June 26, 1981, the respondent was sentenced to an indeterminate term, not to exceed five years, at the Youth Reception and Corrections Center. He was also ordered to pay a fine of $1,000. The sentencing judge explained the sentence imposed as follows:

> This sentence was imposed pursuant to a plea agreement. This is the defendant's fourth conviction for drug offenses, although the first two convictions were under the disorderly persons code. Due to the extent of the defendant's involvement with drugs, incarceration was deemed necessary, but due to the defendant's age, he was granted youthful offender status. The court considered the need to deter others and the risk that the defendant would commit another offense, if aggravating circumstances. [Exhibit P-3]

When the respondent was arrested in December 1980, he was terminated from his employment at Caesar's Casino Hotel. While he was awaiting sentencing, the

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respondent was employed as a bus person at the Golden Nugget Casino Hotel in Atlantic City. During this time, the respondent discontinued his use of methaqualone, but he was not able to totally discontinue his use of cocaine and marijuana.

When the respondent was sentenced, he spent 30 days in the county jail and was then sent to the Youth Reception and Corrections Center at Yardville for classification. The respondent was then incarcerated at Annandale from August 12, 1981, until July 27, 1982. While at Annandale, the respondent completed residential treatment in the facility's Treatment and Rehabilitation of Addicted Prisoners Program (Exhibit R-2). While in this program, the respondent participated in drug rehabilitation therapy groups and he also counseled some of the newer residents of the facility. While incarcerated, the sentencing judge eliminated the $1,000 fine which had been imposed upon the respondent, because of the length of the sentence which he had imposed. The respondent also successfully completed a college-level business course while he was at Annandale.

The respondent is presently on parole. It has been stipulated by the parties that the respondent's parole officer, R. Allan Jenni, has stated that the respondent's parole will end in 1986, and that there is a procedure for shortening this parole which is not generally done, but which is possible. The respondent sees his parole officer at least once a month and he is subject to a urine monitoring program to detect any present drug use. According to the respondent, he completely stopped his use of drugs while he was at Annandale, and he emphatically denied that he presently uses any drugs.

It was the respondent's testimony that he expects to be promoted shortly to the position of waiter at the restaurant where he has worked since August 1982. He presently earns between $200 and $300 per week as a bus person. He resides with his girlfriend, Lisa Reves, and their eight-month-old son, and both he and Ms. Reves contribute to the support of their household. Testifying on the respondent's behalf, Ms. Reves stated that she has been with the respondent every day since his release from incarceration and that he has had no drug involvement during that time.

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

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CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the act authorizes the revocation of registration of any person for the commission of any offense or violation under the act which would disqualify such person from holding his registration. Pursuant to sections 91b and 86c of the Casino Control Act, the Commission shall revoke the registration of any registrant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for unlawful possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19(b)(1), is such an automatic disqualifier under section 86c(3) of the act. Therefore, since the respondent's conviction upon a plea of guilty to the charge of possession of a controlled dangerous substance with intent to distribute would permit revocation of his registration pursuant to sections 91 and 86c, his registration is subject to revocation or some other appropriate sanction, pursuant to section 129 of the act.

Pursuant to section 130 of the act, determination of an appropriate sanction should be based upon consideration of a number of factors, including the risk to the public and to the integrity of gaming operations created by the conduct of the registrant, and the corrective action taken by the registrant to prevent future misconduct of a like nature from occurring. In this regard, it must be noted that the respondent had two disorderly persons convictions concerning drug use prior to his indictment, sentencing and incarceration for possession of a controlled dangerous substance and possession of a controlled dangerous substance with intent to distribute. However, it must also be noted that the respondent satisfactorily completed a drug rehabilitation program while incarcerated and he has remained free of drug use since his release. To a substantial degree, his involvement in drugs may be attributed to his immaturity and his association with fellow employees who were involved with drugs. Significantly, and unfortunately, the respondent's drug use began while he was employed in a casino hotel. To the respondent's credit, he has been successfully employed outside the legalized gaming industry since his release from incarceration. However, less than six months have passed since his release.

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The respondent's conviction of an offense which is listed as an enumerated grounds for revocation of his registration under section 86(c) of the act obviously reflects adversely upon his good character, honesty and integrity. His present employment and the cessation of his criminal activity are significant indicators of his potential for rehabilitation. However, it must be noted that his involvement with drug use ceased only upon his incarceration, and he was released less than six months ago. The seriousness of his illegal conduct while holding a casino hotel employee license requires the imposition of an appropriate sanction. To do otherwise would be to ignore the Legislature's express declaration of public policy set forth in the Casino Control Act. N.J.S.A. 5:12-1b(6) provides in part:

> An integral and essential element of the regulation and control of such casino facilities by the state rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such confidence and trust, the regulatory provisions of this act are designed to extend strict state regulation to all persons, locations, practices and associations related to the operations of licensed casino enterprises. . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing grounds for revocation of the respondent's casino hotel registration, by a preponderance of the relevant and credible evidence, pursuant to section 129 of the Casino Control Act. However, the respondent has taken significant steps toward his complete rehabilitation. Therefore, I further **CONCLUDE** that it would be excessively harsh to bar the respondent from an opportunity to reapply for registration as a casino hotel employee for a period longer than two years from the filing of the complaint of the Division of Gaming Enforcement with the Casino Control Commission on January 12, 1982.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of the respondent be **REVOKED.** It is further **ORDERED** that the respondent shall be permitted to reapply for registration as a casino hotel employee after January 12, 1984.

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

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

December 27, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

December 27 1982
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 30 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Grand Jury Indictment

P-2 Grand Jury Indictment

P-3 Judgement of Conviction and Order for Commitment

P-4 Police Report

P-5 Supplementary Police Report

P-6 Arrest Report

FOR THE RESPONDENT:

R-1 Letter of Parole Officer Jenni, dated October 7, 1982

R-2 Certificate of Residential Treatment, dated July 27, 1982

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Nicholas Surace

Lisa Reves

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-EA-392
OAL DOCKET NO. CCC 4209-82
APP. NO. 15771-21

IN THE MATTER OF THE APPLICATION
OF CATHERINE TEEMER FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission December 30, 1982, recommending that the application of Catherine Teemer for a casino employee license be granted; and neither party having filed exceptions or objections to the Initial Decision; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 1, 1983, to affirm and adopt the said Initial Decision and to grant the application of Catherine Teemer for a casino employee license,

IT IS on this 2nd day of February 1983, 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 Catherine Teemer 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 Catherine Teemer and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: February 2, 1983

RECEIVED
JAN - 7 1983

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4209-82
AGENCY DKT. NO. 81-EA-392

IN THE MATTER OF THE APPLICATION OF CATHERINE TEEMER FOR LICENSURE AS A CASINO EMPLOYEE (CASINO TELLER)

APPEARANCES:

Catherine Teemer, Pro Se

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

Record Closed November 15, 1982 Decided December 29, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Catherine Teemer, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (casino teller), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had been convicted of an offense which is equivalent to a statutory disqualifier and lacked the requisite good character, honesty and integrity. At the hearing, the Division withdrew its objection, pursuant to section 86b of the Casino Control Act (Act).

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PROCEDURAL HISTORY

On February 29, 1980, the applicant filed her Personal History Disclosure Form - 2 (PHDF-2) with the Commission. By letter, dated September 22, 1981, the applicant was advised by the Commission that, based upon information received in a report from the Division, dated August 13, 1981, there was a "substantial possibility" that it would deny her application and that she had a right to a hearing. By letter filed on October 2, 1981, Ms. Teemer 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. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

Because of Ms. Teemer's failure to appear at a scheduled prehearing conference and her failure to respond to an inquiry regarding her nonappearance, an Initial Decision was issued on March 16, 1982, which concluded that the applicant had abandoned her request for a hearing (OAL Dkt. No. CCC 7052-81). However, the applicant submitted a letter of explanation to the Commission on March 31, 1982. On April 26, 1982, the Commission retransmitted the matter to the Office of Administrative Law for determination as a contested case. A prehearing conference was held on August 30, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Teemer is 32 years of age (J-1). She was born in Albany, Georgia, where she resided until her relocation to Atlantic County in August 1976. The applicant relocated in order to care for her sister, who was ill at the time. The applicant has resided in Pleasantville with her two children since that time. The applicant is sole support for her children.

The applicant is a 1968 graduate of Monroe Senior High School, Albany, Georgia. She also attended the Albany Vocational Technical School and studied nursing. In August 1978, she satisfactorily completed studies at Lyons Institute in Newark, New Jersey, and received a certificate to be a nurse's aide.

From September 1970 to June 1972, the applicant was employed as a cashier by a Pantry Pride store in Albany, Georgia.

From July 1972 to August 1974, the applicant was employed as a spray painter by MacGregor Brunswick Corp.

Thereafter, the applicant returned to her position as a cashier at the Pantry Pride, where she remained until October 6, 1974.

From October 1974 to September 1976, the applicant was a nursing student at the Albany Vocational Technical School.

From September 1976 to April 1977, the applicant was employed as a Nurse's Aide by the Shore Manor Senator in Atlantic City.

From September 1977 to August 1978, the applicant was a student at Lyons Institute. During this period and for approximately one month, the applicant was employed as a cashier on a part-time basis by a Shop Rite store.

From April 1978 until the present, the applicant has been employed as a Nurse's Aide by Our Lady's Residence in Pleasantville. Her duties and responsibilities include feeding patients, changing patients, making beds, etc.

On May 30, 1967, when Ms. Teemer was 16 years of age, she committed a shoplifting offense (R-1). The applicant shoplifted an eyebrow pencil worth $1 and a pair of shoes worth $2. She was placed on probation for one year, which terminated on May 29, 1968.

On March 19, 1970, when the applicant was 19 years of age, she was arrested and was charged with theft and with resisting arrest, concerning an incident which occurred in Gibson's Department Store in Albany, Georgia (R-2). On July 27, 1970, the matter was nolle prossed.

On October 6, 1974, when the applicant was 23 years of age, she was arrested and charged with theft by taking, in regard to her conduct as a cashier at the Pantry Pride

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store (R-3). On April 18, 1975, the applicant pled guilty to the charges, and was sentenced to one month suspended and was fined $200.

The applicant described her conduct underlying the charges. At the request of persons she thought to be friends, the applicant knowingly undercharged them as customers. The applicant stated that she did this for two or three people and in a total amount of $40-$60. With respect to her employment at Pantry Pride, the applicant stated that she did not return to work because she was ashamed and did not know if she had been dismissed.

Since 1974, the applicant has not been involved in any unlawful activities.

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

(B) DISPUTED FACTS

In dispute was the applicant's present character in relationship to her conduct which led to her arrests.

Ms. Teemer testified that she does not now permit friends or others to influence her. She chooses to do what is right. The applicant now places herself and her children above all else. The applicant described her understanding of rehabilitation as whether someone would "fall back" to prior problems. The applicant stated that she was rehabilitated.

The outcome of this proceeding depends largely upon Ms. Teemer's credibility. Initially, her position in this matter must be recognized. She is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was evident both during the hearing and during the review of the record, and from my observations of the applicant's demeanor, the plausibility of her testimony and my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was candid. Also, there was no witness offered by the Division to refute any fact to which the applicant testified. In the final analysis, I am persuaded to accept her testimony in all respects.

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

DISCUSSION OF LAW AND CONCLUSION

(A) N.J.S.A. 5:12-86c and N.J.S.A. 5:12-90h

Section 86c of the Act mandates that a person who has been convicted of any offense "which would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C and Title 2A of the New Jersey statutes be disqualified from licensure. The Division raised such a contention regarding the applicant's conduct which led to the initiation of criminal proceedings against her in 1974. However, no Georgia or New Jersey statutes were cited. Therefore, it is not possible to make the necessary evaluation of the elements of the various offenses.

I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the applicant's conviction in 1975 would have been at the time of application a violation of any enumerated disqualifying offense, pursuant to section 86c.

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. However, in the absence of a finding of any section 86 disqualifier, there is no need for the applicant to establish her rehabilitation. Nevertheless, the eight factors listed in section 90h will be considered in the determination of whether the applicant has established her good character, honesty and integrity, under section 89b(2).

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

Under section 89b(2) of the Act, Ms. Teemer was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an

applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89(b)2 of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 109 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conduct which led to criminal charges being made against her in 1970 and again in 1974.

The applicant's involvement in an incident in 1967, while she was a juvenile, was an insignificant matter.

With regard to the 1970 incident, there was no evidence of the applicant's conduct which led to her arrest and the filing of charges. The applicant testified, and credibly so, that she had no recollection of the incident other than that she had been charged. Clearly, no adverse inference can be drawn from this incident.

The applicant's arrest in 1974 and her subsequent guilty plea to a charge of theft by taking, which occurred as a result of misconduct in her employment capacity, is the most serious obstacle to licensure. The applicant conceded that the theft was a knowing and intentional act. Nevertheless, the incident is relatively minor in nature. It involved an amount of approximately $40-$60 and occurred eight years ago. Even when viewed with the 1967 and 1970 incidents, there is no identifiable pattern of misconduct established. The applicant offered no exculpatory explanation and accepted fully her responsibility for her actions. By way of rehabilitation, the applicant established that she is no longer easily influenced by friends or others.

The most significant evidence was the applicant's conduct during the past eight years. She commenced nursing studies in Georgia, which were completed subsequent to her relocation to New Jersey. The applicant has also worked on a regular and

continuing basis and is the sole support for her two children. Also, there was no evidence of any further misconduct on her behalf.

The applicant's conduct over the past eight years more than overcomes the negative inferences to be drawn from her prior misconduct. She has been a responsible mother, employee and citizen during this period. This evidence demonstrates that the applicant possesses the requisite degree of good character, honesty and integrity for licensure to conduct gaming activities in this State.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, her good character, honesty and integrity under section 89b(2) of the Act.

ORDER OF DISPOSITION

It is **ORDERED** that the application of Catherine Teemer for licensure for a casino employee (casino 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.

666.

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

December 29, 1982
DATE

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

Receipt Acknowledged:

December 30, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

JAN 4 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS

J-1 Personal History Disclosure Form-2, Catherine Teemer, filed February 29, 1980 (29 pages)

R-1 History of Subject-Catherine Teemer submitted by Marilyn Frierson, Clerk of Juvenile Court, Dougherty County, Georgia, December 10, 1980

R-2 Albany, Georgia, Police Report, Catherine Teemer, March 22, 1970

R-3 Albany, Georgia, Police Report, Catherine Teemer, October 6, 1974

R-4 United States Department of Justice, Federal Bureau of Investigation, Identification Division-Criminal Report, Catherine Teemer

WITNESS LIST

For the Applicant:

Catherine Teemer

For the Respondent:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-EA-393
OAL DOCKET NO. CCC 4059-82
APP. NO. 15993-21

IN THE MATTER OF THE APPLICATION
OF CHARLES T. TOTORO FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission December 13, 1982, recommending that the application of Charles T. Totoro for a casino employee license be denied; and neither party having excepted or objected to the Initial Decision; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 16, 1983, to affirm and adopt the said Initial Decision and to deny the application of Charles T. Totoro for a casino employee license,

IT IS on this 18th day of February 1983, 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 Charles T. Totoro be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Charles T. Totoro is not eligible to apply for or obtain any license, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the denial of this casino employee license application shall not prevent Mr. Totoro from retaining his casino hotel employee registration pursuant to N.J.S.A. 5:12-91; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Charles T. Totoro, the Division of Gaming Enforcement and all currently operating casino hotels within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: 2/18/83

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4059-82

AGENCY DKT. NO. 81-EA-393

CHARLES T. TOTORO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Charles T. Totoro, petitioner, Pro Se

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

Record Closed October 29, 1982 Decided December 13, 1982

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

The Division of Gaming Enforcement objected to the application of Charles T. Totoro to the Casino Control Commission for licensure as a casino employee (Teller). Mr. Totoro requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The Division's objection is based on the respondent's arrest and conviction record. The Division contends that those arrests and convictions prevent the respondent from establishing by clear and convincing evidence his good character, honesty and

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integrity, a license requirement under N.J.S.A. 5:12-89(b)2 and N.J.S.A. 5:12-90B. The Division further contends that the respondent failed to disclose some of those arrests and convictions, in violation of N.J.S.A. 5:12-86B.

Mr. Totoro is a 22-year-old man who completed eleven and one-half years of schooling. During his senior year in high school, he was suspended for his involvement in a fight that he himself termed "racial." He chose not to return to school after his suspension expired.

In June 1975, while Mr. Totoro was still a juvenile, he was questioned with three other juveniles concerning the alleged rape of a 15-year-old retarded girl. However, as far as I could determine, no charges were brought. The Division charges that negative inferences should be drawn about Mr. Totoro's character because of this incident. However, he denies any involvement in the incident and the mere questioning by police does not give rise to any inference of guilt. The Division further charges that Mr. Totoro failed to disclose his "arrest" concerning this incident on his Personal History Disclosure Form. However, it isn't clear to me that he was arrested. He was asked to come to police headquarters with his father, which he did. He was questioned and sent home. He states that he did not understand this to be an arrest, and I believe him. Therefore, his failure to disclose this incident as an arrest does not constitute an intentional failure to disclose any material information.

On October 2, 1978, Mr. Totoro was again arrested for partaking in a brawl and for possessing marijuana. There is no disposition for the charge of fighting, and the marijuana possession resulted in a conditional discharge. This arrest was disclosed on Mr. Totoro's Personal History Disclosure Form.

On October 26, 1978, Mr. Totoro was arrested for attempted burglary. He was subsequently admitted into the Atlantic County Pretrial Intervention Program. He did disclose this arrest on his Personal History Disclosure Form. In discussing this arrest at the hearing before me, Mr. Totoro admitted that he was trying to break into a liquor store at 1:28 a.m., for the purpose of stealing a moped that he knew to be in the store. This event took place only four years ago.

On May 29, 1979, Mr. Totoro was involved in a strange sequence of events. A Ventnor City patrolman observed Mr. Totoro and his brother roving in and out of

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alleyways at 3:30 a.m. in a residential area that had been plagued by burglaries. The officer observed them for some period of time as they mysteriously walked in and out of alleyways, separated, disappeared and reemerged together on other streets. The officer approached them on foot and recognized them as the Totoro brothers. When he asked them to stop, they responded with a string of Anglo-Saxon curse words which need not be repeated here, and refused to stop. The officer placed himself in their path and asked for identification, which they refused to produce. They continued to bombard the officer with obscene suggestions concerning his anatomy and with random curses, in a loud and abusive manner. They were asked to walk toward the patrol car and they refused. The officer told them that he wanted to pat them down; if they had no weapons, they would be released. They refused to cooperate. Eventually, they were ordered to get into the patrol car, which they did. On the way to headquarters, Mr. Totoro told the officer that he was going to "jam that [expletive deleted] nightstick down your throat." At headquarters, both Charles and his older brother were loud, abusive and uncooperative. When the patrolman handed Mr. Totoro a summons charging him with the disorderly persons offenses of molesting and interfering with a police officer and disturbing the peace, Mr. Totoro ripped the summons up in the officer's face, told the officer to insert it into a portion of his anatomy, and left. These events took place on May 29, 1979, only two months to the day, before Mr. Totoro signed his present application for licensure. Yet, he failed to reveal the arrest on that application.

The events are substantially admitted by Mr. Totoro. He claims that he did not understand that he was arrested or charged with any offense; hence, he did not disclose this incident on his Personal History Disclosure Form. This is a difficult proposition for me to believe. I think Mr. Totoro's explanation of these events is best said in his own words:

> MR. TOTORO: We were walking down the street, my brother and I, and the police officer stopped us and we knew the police officer. We've known him for years. And he wanted identification from us and everything. And my brother started getting, you know, rambunctious with him. It was, I believe, 2:30 in the morning. We were walking home from Atlantic City — to — home, you know, and the next thing we knew they wanted identification. He wouldn't do it. He got loud. We got loud and it wasn't a fight or nothing.
>
> THE COURT: Did you give identification to the police?

MR. TOTORO: No. Well, what happened — no, I didn't, no. We felt he had stopped us for no reason and he went by us about five times and he was a detective in an unmarked car and I know the guy. In his report he states he knew who we were. He still asked for identification.

THE COURT: What did he do to arrest you?

MR. TOTORO: He stopped us and asked us where we were going, then asked us for identification and told us to put our hands on the vehicle. He said we wouldn't be arrested if we could apologize and calm down. We wouldn't apologize so he arrested us.

THE COURT: How did he arrest you?

MR. TOTORO: He told us to get in the car and we were under arrest and we went down to the P.D.

THE COURT: You hands were to be placed against the car?

MR. TOTOTO: No, we were never patted down. We refused to be patted down unless we were arrested.

THE COURT: Did he tell you to get in the police car?

MR. TOTORO: Yes.

THE COURT: And he said you were arrested?

MR. TOTORO: Uh, huh.

THE COURT: Did you understand at the time that you were arrested?

MR. TOTORO: No, I didn't, because when we went to the thing, when we went to the police station, you know, we were there and they asked us questions and they told us repeatedly if we calmed down we'd be let go and we wouldn't be arrested. When we left the police station, we were given a summons, and after I received the summons I just left without bail. Nobody read me, you know — nobody — I don't think I ever went to court for it. That's what I couldn't recall going to court for it, you know. I'd asked my —

THE COURT: Were you found guilty of interfering with a police officer and disturbing the peace?

MR. TOTORO: Yes, in Ventnor Court. My lawyer told me later. After Ventnor Court he appealed it and went to Atlantic County Court and it was thrown out.

THE COURT: You never went to court?

MR. TOTORO: But I never went to court. That's why I did not recall it. But he told me later that he had went to court for it and

the charge for destroying city property was dropped but I was guilty on the other two, and that he had went to Atlantic County Court and there was — they threw it out of court.

THE COURT: He went to court without you?

MR. TOTORO: That's why I never put it down, you know. I never went to court for the thing.

THE COURT: Did you read question 46 on the refusal form — on the Personal History Disclosure Form?

MR. TOTORO: I'm sure I did.

THE COURT: And it said, "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?" Did you read that?

MR. TOTORO: I believe so.

THE COURT: And when you filled this out in July, 1979, weren't you aware that you were arrested just two months earlier?

MR. TOTORO: For this charge?

THE COURT: Yes.

MR. TOTORO: Like I said, I did not know — I figured that this was an arrest. I never went to court and it was over.

So it appears that Mr. Totoro asks me to believe that he was told he was arrested, that he was placed in a patrol car and transported to police headquarters, that he was given a summons, that he retained an attorney who appeared in court for him, that he was convicted in Ventnor Municipal Court of the charge on the summons, that his attorney appealed that charge to the Atlantic County Court, and yet, he did not consider himself to have been arrested or charged with an offense. I paid close attention to Mr. Totoro's appearance and demeanor as he testified, as well as the contents of his testimony. I **FIND** his testimony to lack credibility. I **FIND** as a fact that he knowingly and intentionally failed to disclose his arrest of only two months prior to his application for licensure, in order to conceal the event from the Casino Control Commission.

On January 3, 1981, Mr. Totoro was handed a summons charging him with receiving stolen property, an incident that involved license plates on his car. Although this took place subsequent to his filing of the application for licensure, he nevertheless failed to disclose this event when he was interviewed by an investigator from the Division

of Gaming Enforcement. His explanation at the hearing for his failure to make this disclosure was his belief that he was not charged with any offense. He was under the impression that he was just a witness in this case. However, this explanation is also incredible, since he was served with a summons, not a subpoena. The summons bore the title State v. Charles Totoro.

An impressive character witness testified for Mr. Totoro. Herbert Pailey, Assistant Director of Facilities Planning for Resorts International, has been Mr. Totoro's direct supervisor since Mr. Totoro started working as a mechanical draftsman, approximately three years ago. Mr. Pailey is an architect. Apparently, under Mr. Pailey's guidance, Mr. Totoro has finally learned the meaning of responsibility and maturity. He has confessed his past misadventures to Mr. Pailey, who has been gracious enough to guide Mr. Totoro, both professionally and personally. For three years, Mr. Totoro has shown initiative, ability and responsibility as a draftsman under Mr. Pailey's supervision. Nevertheless, I must address the question of good character, honesty and integrity by viewing Mr. Totoro's entire life. I must regretfully conclude that three years is simply not enough time to erase the effect of the extreme anti-social behavior he previously demonstrated. Mr. Totoro himself said he was a bad kid during his teenage years. It may be that he has changed, but his less than truthful testimony at the hearing prevents me from concluding that he has established his newly found good character by clear and convincing evidence.

With regard to the allegation that he failed to disclose material information, I **FIND** the allegation to be completely established. He failed to disclose his arrest in May 1979, and his arrest in January 1980. He failed knowingly, although he attempted to explain those failures at the hearing by giving totally incredible and impossible testimony. N.J.S.A. 5:12-86b is mandatory in its language:

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

Thus, the legislature has left me no alternative but to deny Mr. Totoro's application on this ground alone.

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For the foregoing reasons the application of Charles T. Totoro for licensure is hereby **DENIED.**

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

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

12/13/82
DATE

Norman D. Smith
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

12/13/82
DATE

Bernadette T. Fuchs
CASINO CONTROL COMMISSION

Mailed to Parties:

Dec. 15, 1982
DATE

Richard Lazzara Cg
OFFICE OF ADMINISTRATIVE LAW

ml

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WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-EA-167
OAL DOCKET NO. CCC 0646-82
APP. NO. 10431-21

IN THE MATTER OF THE APPLICATION
OF RONALD F. VITI FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission February 14, 1983, recommending that the application of Ronald F. Viti for a casino employee license be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 30, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Ronald F. Viti,

IT IS on this 4th day of April 1983, 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 Ronald F. Viti 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 Ronald F. Viti and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 4, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 0646-82
AGENCY DKT. NO. 81-EA-167

IN THE MATTER OF THE APPLICATION OF RONALD F. VITI AS A CASINO EMPLOYEE (Blackjack Dealer)

APPEARANCES:

Ronald F. Viti, Pro Se

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

Record Closed: January 21, 1983 Decided: February 10, 1983

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

This matter concerns the application of Ronald F. Viti to the Casino Control Commission for licensure as a casino employee (blackjack dealer). The Division of Gaming Enforcement by letter dated March 13, 1981 objected to the applicant's licensure. The applicant was advised by letter from the Casino Control Commission dated

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March 7, 1981 that there was "a substantial possibility" that the Commission would deny his application. The applicant by letter dated May 20, 1981 requested a hearing, and the matter was transmitted by the Commission to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The issues in the prehearing order have been amended by the Division as follows:

1. Whether the applicant is precluded from licensure by operation of N.J.S.A. 5:12-86b because of his failure to disclose a conviction and arrests on his Personal History Disclosure (PHD) form; and

2. Whether the applicant has the requisite good character, honesty and integrity under N.J.S.A. 5:12-89(b)2 in the light of his arrest and conviction record and his failure to disclose that record on his PHD.

FINDINGS OF FACT

The undisputed facts are these: the applicant gave negative answers to questions 45 and 46 on his PHD which inquire whether the applicant has ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction.

In 1965, the applicant was arrested as a minor for illegal possession of liquor in Philadelphia, Pennsylvania. That charge was dismissed. In September 1972, the applicant was arrested for possession of a controlled dangerous substance (marijuana), possession of marijuana with intent to distribute and conspiracy, in Philadelphia, Pennsylvania. The applicant pleaded not guilty to the charges, and he was acquitted of the charges. In November 1973, the applicant was arrested for possession of a controlled dangerous substance (marijuana), possession of marijuana with intent to distribute and conspiracy in Philadelphia, Pennsylvania. The applicant pleaded nolo contendere and was placed on one-year probation under Section 17 of the Pennsylvania Controlled Dangerous Substances Act. The corresponding New Jersey statutes for these offenses are N.J.S.A. 24:21-20(a)4, 24:21-19(a) and N.J.S.A. 2C:5-2. In 1976, the applicant was arrested for possession of

marijuana (over 25 grams) and possession of a controlled dangerous substance (Valium), a violation of N.J.S.A. 24:21-20, by the New Jersey State Police in Hammonton, New Jersey. The applicant entered a plea of not guilty, and a subsequent retraxit plea on February 14, 1977, and he pleaded guilty to the first count of the indictment. The remaining counts were dismissed. The Honorable Robert Neustadter sentenced the applicant to the county jail for a period of 60 days, sentence suspended, and the applicant was placed on probation for a period of one year and fined the sum of $250. The judge gave his reasons for the sentence as follows: "Prior possession of marijuana disqualifies this defendant for conditional discharge as recommended in plea bargain. His record is otherwise clear of criminal activity. Therefore, probation and a fine without incarceration for this offense will serve the ends of justice also considering his favorable background and work record."

DISPUTED FACTS

The applicant testified that he did not intentionally withhold information from the Division on his PHD. He forgot about the arrest for illegal possession of liquor as a minor and thought the other conviction and arrests on drug-related matters had been expunged. The applicant also called a character witness to testify that he has the requisite good character, honesty and integrity for licensure.

NONDISCLOSURE

Section 86b of the Casino Control Act provides the Commission shall deny a casino license to any applicant disqualified on the basis of any of the following criteria:

> (b) Failure of the applicant to provide information, documentation, and assurances required by the Act or requested by the Commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria. N.J.S.A. 5:12-86(b).

An inadvertent or ignorant failure to make a disclosure on the PHD does not warrant disqualification; however, an intentional nondisclosure about an applicant's criminal record hinders the ability of the Commission to examine an applicant's qualifications for licensure and warrants mandatory disqualification.

The applicant was arrested and convicted as a minor for illegal possession of liquor in Philadelphia in 1965. The arrest appears both remote and trivial and **I FIND** that the applicant forgot about that offense.

The applicant was arrested on two drug-related charges in Philadelphia in 1972 and 1973. The background information on the criminal transcripts of the Philadelphia Municipal Court is sparse. However, it is clear that Robert Mozenter, Esq., told the Division investigative staff in a telephonic interview that he represented the applicant in the 1973 drug charge and that that arrest should have been automatically expunged from the applicant's record. There is no attorney listed for the applicant on the 1972 criminal transcript of the Philadelphia Municipal Court; however, I surmise that Robert Mozenter, Esq. represented the applicant on both drug-related charges. **I FIND** that the applicant was left with the impression by his attorney that both arrests would be expunged.

In 1976 the applicant was arrested for possession of marijuana (over 25 grams) and possession of a controlled dangerous substance (Valium) by the New Jersey State Police in Hammonton, New Jersey. The police arrest report states that a trooper observed a plastic bag containing marijuana on the front seat and that the applicant's pockets contained a plastic bag containing 37 yellow Valium tablets. **I FIND** that the applicant also discussed expungement with his New Jersey attorney and felt that this matter had been expunged when he filled out his PHD.

Accordingly, **I FIND** that the applicant did not intentionally, wilfully or in bad faith, fail to disclose his conviction and arrest record in order to circumvent the regulatory process.

I **CONCLUDE** that the applicant's nondisclosures do not disqualify him for licensure pursuant to N.J.S.A. 5:12-86(b).

HONESTY, INTEGRITY and GOOD CHARACTER

Section 89(b)2 provides in pertinent part:

> Each applicant . . . shall provide such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. N.J.S.A. 5:12-89(b)2.

Having concluded that the applicant's nondisclosures were the result of ignorance or mistake and given the circumstances of the applicant's lack of exposure to the criminal justice system since 1976; his steady employment history and the unrebutted testimony of a character witness, Dr. Ralph Nigro, a dentist residing in Atlantic City who has known the applicant for about 30 years, I **FIND** that the applicant currently enjoys a reputation for honesty, integrity and good character.

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

DISPOSITION

Accordingly, it is **ORDERED** that the applicant, Ronald F. Viti, be granted a casino employee license to work as a blackjack dealer.

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

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

Feb 10, 1983 — R. Jackson Dwyer
DATE — R. JACKSON DWYER, ALJ

Receipt Acknowledged:

February 14, 1983 — Bernadette T. Fricger
DATE — CASINO CONTROL COMMISSION

Mailed To Parties:

Feb. 15, 1983 — [signature]
DATE — FOR OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-89
OAL DOCKET NO. CCC 5557-82
APP. NO. 19926-21

IN THE MATTER OF THE APPLICATION
OF ROMONA WOOLFORD FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission December 6, 1982, recommending that the application of Romona Woolford for a casino employee license be granted to which neither party excepted or objected; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on January 18, 1983, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 20th day of January 1983 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 Romona Woolford 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 Romona Woolford and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 20, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5557-82

AGENCY DKT. NO. 82-EA-89

ROMONA WOOLFORD,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

John H. Fitzgerald, Esq. for petitioner (Cape-Atlantic Legal Services, attorneys)

William J. Walsh, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed October 22, 1982 Decided December 6, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Romona Woolford to the Casino Control Commission for licensure permitting her to work in a casino as a blackjack dealer. The Division of Gaming Enforcement has objected to licensure of the petitioner. At issue is whether the petitioner has demonstrated her rehabilitation, within the meaning of section 90h of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), thereby overcoming the disqualification from licensure, pursuant to section 86c of the act, which otherwise would result from her conviction in 1977 of the offense of conspiracy to commit robbery, contrary to N.J.S.A. 2A:98-1. Also at issue is whether the petitioner has sustained her

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affirmative burden of establishing by clear and convincing evidence her reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act. The final issue is whether the petitioner has established that she has sufficient business ability and casino experience for licensure, within the meaning of section 89b(3) of the act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated April 25, 1982. The petitioner requested a hearing on her license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 24-year-old, lifelong resident of Atlantic City, New Jersey. On March 28, 1980, the petitioner successfully completed a blackjack dealers' course given by the Atlantic Casino Training Academy (Exhibit P-3). Since July 29, 1982, the petitioner has been employed by the Tropicana Casino Hotel as a food line server. An appraisal summary of the petitioner's performance, prepared by her supervisor on September 25, 1982, evaluates the petitioner's overall performance as "fully satisfactory" (Exhibit P-2).

Pursuant to her request, the petitioner was afforded an opportunity to submit a letter of recommendation from Leroy Browne, President of the Mainland N.A.A.C.P. In his letter, dated October 14, 1982, President Browne indicates that, to his knowledge, the petitioner has been an honest, reliable and productive citizen in her community (Exhibit P-4).

On November 30, 1976, the petitioner was indicted for conspiracy to commit robbery, assault with intent to rob, robbery, armed robbery, possession of a dangerous instrument, assault with a dangerous instrument, unlawful use of a dangerous weapon and threats to kill. According to the petitioner's testimony, this indictment arose from an incident occurring on November 1976, when she and a 14-year-old boy, with whom she had been drinking and smoking marijuana, attempted to intimidate a store cashier by telling

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him that they were going to take some merchandise. When the cashier called the police, the petitioner, who was 18 years old at the time, and the juvenile ran from the store without taking anything. The petitioner denied that any weapon had been used during the incident in the store. According to the petitioner, she was arrested approximately 20 minutes later, while she was walking up the street. She spent approximately 12 days in the Atlantic City jail and 40 days in the Atlantic County jail, prior to obtaining her pretrial release by posting bail.

On May 19, 1977, the petitioner retracted a plea of not guilty to the indictment against her, and entered a plea of guilty to the first count, which charged her with conspiracy to commit the crime of robbery, contrary to N.J.S.A. 2A:98-1. The remaining seven counts of the indictment were dismissed.

On June 6, 1977, the petitioner was sentenced to the Atlantic County jail for a term of six months, with credit given to her for the 45 days she had already been confined, and with the balance of her incarceration suspended. The petitioner was also placed on probation for a period of three years. The sentencing judge explained the reasons for the sentence imposed as follows:

> In view of defendant's youth and this being her first known indictable offense the Court feels the time served is adequate punishment and deterrent. She should be amenable to probation in view of her recent efforts to rehabilitate herself and train herself for gainful employment. Further infractions will be dealt with more severely [Exhibit R-1].

According to the terms of her probation, the petitioner was required to report to her probation officer every two weeks. Because the petitioner abided by the rules and regulations of her probation, and because her probation officer felt that the petitioner had made a good adjustment while under probationary supervision, the petitioner's probation was terminated after approximately one and one-half years (Exhibit P-1).

The petitioner's first employment was during the summer of 1974, when she worked as a taffy puller at a candy company. At that time, she was also attending night school. For approximately three months in 1976, the petitioner was employed as a shirt presser at Hour Glass Cleaners in Atlantic City, New Jersey. The petitioner explained that she lost interest in this job and was terminated for being late and failing to punch out properly. From May to September 1977, the petitioner was employed as a button sewer at the B.A.E. Island Company. The petitioner was laid off from this position.

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From May 1978 until October 1979, the petitioner was employed as a dishwasher at the Golden Crest Convalescent Center. The petitioner lost interest in this job because she had no chance of advancing from the dish room, and she was ultimately fired for absenteeism and lateness. From August 1980 until April 1981, the petitioner was employed as a bus person at the Brighton Hotel and Casino. The petitioner was terminated from this position when she was observed by the hotel security personnel in the presence of two other employees who had been smoking marijuana. Although the petitioner had not smoked the marijuana, she was terminated along with the other two employees. The petitioner was then unemployed for a little over a year.

As indicated earlier, the petitioner began her present employment as a food line server at the Tropicana Casino Hotel on July 29, 1982. The petitioner has received no complaints concerning her performance at the Tropicana. In fact, her performance appraisal summary (Exhibit P-2) indicates that the petitioner's performance in the "dependability" category, which includes absences and lateness, is superior. The petitioner was also rated superior in the categories of "cooperation" and "attitude" and she received no evaluation rating lower than "fully satisfactory."

The petitioner testified with sincerity and candor that she believes herself to be a person of honesty and integrity. She explained that she had been involved with an undesirable group of friends when she was young, but that she no longer associates with that group. The petitioner would like to have the opportunity to work in a casino in order to advance herself.

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

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. By the same burden, an applicant must demonstrate that he has sufficient business ability and casino experience for licensure. Section 90 also incorporates the disqualification criteria set forth in section 86 of the act. Section 86a provides that licensure shall be denied to any applicant disqualified on the basis of his failure to prove by clear and convincing evidence his affirmative licensure criteria.

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Pursuant to section 86c of the Casino Control Act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. The petitioner's 1977 conviction upon a plea of guilty to the charge of conspiracy to commit robbery, in violation of N.J.S.A. 2A:98-1, is such an automatic disqualifier from licensure under section 86c(2) of the act. Pursuant to section 90h of the act, however, the petitioner shall not be denied a casino employee license on the basis of her conviction of a disqualifying offense, provided that she has affirmatively demonstrated her rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

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

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

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

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

The petitioner has no record of criminal involvement aside from her conviction for conspiracy to commit robbery in 1977. The actual offense for which she was convicted was a single, isolated incident occurring in November 1976. The petitioner was only 18 years old at the time of her offense, and 6 years have passed since the occurrence of her illegal activity. The incident itself involved the harassment of a shop cashier, while the petitioner and a juvenile were under the influence of drugs and alcohol.

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The petitioner adjusted well while under probationary supervision, and, upon the recommendation of her probation officer, the petitioner's probation was terminated early. The petitioner satisfactorily completed a blackjack dealers course, and she has been employed without difficulty as a food line server at the Tropicana Casino Hotel since July 1982. Problems with absenteeism and lateness which the petitioner experienced when she was younger appear to have been eliminated during her employment at the Tropicana, and the petitioner has achieved an evaluation of "superior" in the category of "dependability."

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has been convicted of an offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c(2) of the Casino Control Act. However, I further conclude that the petitioner has overcome her disqualification from licensure on the basis of her conviction of an offense enumerated under section 86c(2) of the act, by demonstrating her rehabilitation, within the meaning of section 90h of the Casino Control Act, by clear and convincing evidence.

I further **CONCLUDE** that the petitioner has sustained her affirmative burden of establishing, by clear and convincing evidence, her good character, honesty and integrity, and her business ability and casino experience, within the meaning of sections 89 and 90 of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Romona Woolford for a casino employee license, permitting her to work in a casino as a blackjack dealer, be **GRANTED.**

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

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

December 6, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

December 6, 1982
DATE

Nancy L. Linke
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Dec. 8, 1982
DATE

Ronald L. Rakestraw
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

JOINT EXHIBIT:

J-1 Partial Personal History Disclosure Form

FOR THE PETITIONER:

P-1 Application for Order Granting Termination of Probation

P-2 Performance Appraisal Summary

P-3 Certification of Completion of Blackjack Dealer Course

P-4 Letter from Leroy Browne, dated October 14, 1982

FOR THE RESPONDENT:

R-1 Certified Indictment and Judgment of Conviction

WITNESSES

FOR THE PETITIONER:

Romona Woolford

FOR THE RESPONDENT:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-138
OAL DOCKET NO. CCC 8097-82
APP. NO. 30150-21

IN THE MATTER OF THE APPLICATION
OF JOSEPH L. ZAPPIA FOR
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission (Commission) upon the Initial Decision of the Office of Administrative Law filed with the Commission on January 27, 1983, recommending that the casino employee license application of Joseph L. Zappia be granted conditioned upon his presentation of satisfactory proof of completion of the course requirements for a craps dealer; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on February 10, 1983; and it appearing that Joseph L. Zappia submitted a letter dated March 7, 1983, in which he has requested that his application be amended to one for a gaming related position which has no experiential or educational requirements; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on March 9, 1983, to grant the applicant's request to amend his application, to modify the Initial Decision accordingly and to grant the casino employee license application of Joseph L. Zappia for a gaming related position,

IT IS on this 12th day of April 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified to reflect that, pursuant to Mr. Zappia's request, the application at issue is for a casino employee license, gaming related; and

IT IS FURTHER ORDERED that the casino employee license application of Joseph L. Zappia for a gaming related position be and hereby is granted based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 12, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8097-82

AGENCY DKT. NO. 82-EA-138

JOSEPH L. ZAPPIA, JR.,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Joseph L. Zappia, Jr., Pro Se

Edward P. Busichio, Deputy Attorney General, for respondent (Irwin I. Kimmelan, Attorney General of New Jersey, attorney)

Record Closed: January 4, 1983 Decided: January 26, 1983

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

The Division of Gaming Enforcement objects to the application of Joseph L. Zappia, Jr., who seeks licensure from the Casino Control Commission as a casino employee (craps dealer). Mr. Zappia, Jr. requested a hearing on the proposed denial and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 13, 1982, and a prehearing order issued on December 29. A hearing was held at the Office of Administrative Law in Trenton on January 4, 1983.

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Mr. Zappia's problems arise because of convictions on two counts of armed robbery. The incidents occurred in August of 1977, and Mr. Zappia was sentenced on September 15, 1978 to an indeterminate term at the Connecticut Correctional Institution. The sentence was suspended and he was placed on three years probation. This sentence was for the August 6, 1977 robbery. In connection with a robbery of August 12, Zappia, Jr. was sentenced to one year at the Community Correctional Center in Hartford, four months to be served and the balance suspended followed by three years probation. The sentences were to run concurrent with each other.

Mr. Zappia testified that he is now 25 years old. He was almost 20 when the robberies occurred. He is divorced and has one child who was adopted by his parents, with whom he lives. He is employed by Hoffman Dodge, Inc. of Avon, Connecticut and has been so employed for the past year.

Mr. Zappia testified that at the time of the robberies he was undergoing substantial family stress and a number of family problems built up to the point where he engaged in the criminal activity. He used a knife in the robberies and did get money from the two Cumberland Farms stores that he robbed.

Since his conviction, Mr. Zappia has had no further problems with the law. During the year prior to his sentencing, he remained out of trouble and worked. His employer knew about his problems, which he put down on his job application. After he got out of jail on Thanksgiving, he went back to work within one month. He had been looking for work while he was in jail. Since the time of the incident, he believes that he has matured and that he no longer would react to stress in the way in which he did when he was a younger man. On cross-examination, when asked if the pressures in the casino industry might cause him to again engage in criminal activity, he said that these pressures were different than those which had affected him before when he was unemployed, young, immature and having significant problems with his family.

Sharon L. Zappia, the sister-in-law of the applicant, testified in his behalf. She is married to Mr. Zappia's brother. She has known the applicant since he was 16 years old, a period of some 10 years. She noted that she had known him during better and worse times in his life. She stated that he had come to the casino industry in an attempt to improve himself financially. She believes that he has paid his debt to society resulting

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from the criminal actions in which he had engaged. Ms. Zappia is a dealer in the casinos and holds a casino employee license. She is familiar with the pressures which affect dealers and does not believe that they would cause Mr. Zappia to act in an improper manner. She stated that he is now much too smart to go in and do anything wrong and that he has matured since the earlier criminal incident.

DISCUSSION

The actions committed by Mr. Zappia in 1977 in the state of Connecticut constitute offenses which would be equivalent to violations of N.J.S.A. 2C:15-1. They were extremely serious crimes and must be viewed as such. No matter what family pressures Mr. Zappia may have been undergoing, and no matter what his circumstances may have been, even if he was unemployed and had a child, there was no excuse for having engaged in acts of armed robbery. Mr. Zappia was appropriately convicted of those crimes and sentenced to a term which the court obviously felt was appropriate.

The impression which Mr. Zappia presents today is of a mature young man who has learned his lesson. Both at the prehearing conference and at the hearing he impressed me as sincere, honest and anxious to perform well in his chosen profession.

I am satisfied that the passage of time, the maturation of Mr. Zappia's personality, and the different circumstances in which he finds himself at this time are sufficient to overcome the detrimental affects of the convictions for offenses which occurred in 1977. I believe that sufficient time has passed and that there has been a sufficient change in Mr. Zappia's personality to permit a finding that he has demonstrated, by clear and convincing evidence, his rehabilitation from the adverse affects of those convictions, as permitted by N.J.S.A. 5:12-90(h). I **CONCLUDE** that the offenses were isolated incidents which are not likely to be repeated in the future.

At the hearing it was determined that Mr. Zappia needs to complete a few hours of his training course in order to satisfy the requirements for the license as a craps dealer. Until he has completed the course, and presented proper certification to the Commission, he cannot receive his license. Therefore, this decision will not order the issuance of the license. However, it does **ORDER** that, if by the time this decision is

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reviewed by the Casino Control Commission, Mr. Zappia has presented to the Commission satisfactory proof that he has completed the appropriate course, that the license be issued. If such proof has not been presented, the license shall be denied, subject however, to being issued upon presentation of appropriate proof of completion of the appropriate course within the time limits and other qualification standards contained in the Casino Control Act and the regulations issued pursuant thereto.

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

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

January 26, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

1/27/83
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 31, 1983
DATE

Ronald L. Lakerfor
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

Joint Exhibits:

J-1 Superior Court Judgement of Conviction, Dkt. NO. 4 22 07, State v. Joseph J. Zappia

On behalf of Petitioner:

P-1 Letter of December 27, 1982 from Brent E. Capshaw, Sr., Probation Officer

P-2 Letter of December 29, 1982 from Norman W. Kosker, Jr.

P-3 Letter from Robert A. Platt, Esq.

P-4 Letter of December 31, 1982 from Lynn B. Suchy, Office Manager, Hoffman Dodge, Inc.

P-5 Letter from Joseph C. Braun, PhD.

P-6 Letter from James and Linda Brackeen

CASINO CONTROL COMMISSION DECISIONS

JULY - DECEMBER 1983

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17.	In the Matter of the Applications of Happy Day Tours, Inc., Lucky Tours, Inc., and VIP Executive Tours, Inc., for Licensure as Casino Service Industries and Junket Enterprises and In the Matter of the Application of Allan Meltzer for Licensure as a Casino Employee (Junket Representative)	OAL Docket No. CCC 11034-82 (consolidated) Agency 82-CSI-19 through 82-CSI-22	11/17/83	218

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39.	In the Matter of the Application of Gail A. Snyder for Licensure as a Casino Employee	OAL Docket No. CCC-1748-83 Agency 83-EA-24	09/30/83	591
40.	In the Matter of the Application of Stewart M. Sobel for Licensure as a Casino Key Employee	OAL Docket No. CCC-04762-82 Agency 82-EA-42	10/08/83	598

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-67
OAL DOCKET NO. 1357-83
REG. NO. 16440-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT	
Complainant,	FINAL ORDER
v.	
DOUGLAS ADKINS.	
Respondent.	

This matter having been opened to the Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on July 28, 1983, recommending that the casino hotel employee registration held by Respondent be revoked; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 21, 1983, to affirm and adopt the said Initial Decision and to revoke the casino hotel employee registration held by the Respondent,

IT IS on this 28th day of September 1983, ORDERED that the Initial Decision of the Office of Adminsitrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the casino hotel employee registration held by the Respondent be and hereby is revoked

based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Respondent is not eligible to apply for or obtain any license (except a casino key employee license), registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this order, pursuant to N.J.A.C. 19:41-8.8(a), unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g), and the Respondent is ineligible to apply for a casino key employee license until ten (10) years from the date of his conviction for a disqualifying offense absent early reapplication under N.J.A.C. 19:41-8.8(g); and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 28, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1357-83

AGENCY DKT. NO. 82-67

STATE OF NEW JERSEY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner

v.

DOUGLAS ADKINS,
Respondent.

APPEARANCES:

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

Douglas Adkins, Pro Se

Record Closed: June 13, 1983 Decided: July 27, 1983

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

Petitioner seeks an order from the Casino Control Commision revoking the casino hotel registration of the respondent. The basis for the requested revocation is the respondent's admitted conviction for distribution of a controlled dangerous substance, to wit: methamphetamine, a violation of N.J.S.A. 24:21-19a(1) and b(3). In addition, the Division also relies upon a conviction for possession of stolen property of over $500 which occurred on February 1, 1980.

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The matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 15, 1983 and a Prehearing Order issued on April 19, 1983. Thereafter, a hearing was held before Administrative Law Judge Jeff S. Masin at the Ventnor Municipal Court on June 13, 1983.

As noted, Mr. Adkins does not deny the conviction for distribution of methamphetamine. According to the indictment, the offense occurred on or about April 1, 1980 in Atlantic City. Mr. Adkins was sentenced to the New Jersey State Prison for a term of 14 months to run concurrently with the sentence he was then serving. He was given credit for one day in the County Jail and ordered to pay $25 to the Violent Crimes Compensation Board. In connection with the possession of stolen property indictment, the offense occurred on or about April 9, 1979. Mr. Adkins was sentenced on February 1, 1980 to the County Jail for 364 days with the sentence suspended and credit given for 22 days confined in the County Jail. Mr. Adkins was placed on probation for three years. Thereafter, he was resentenced following a plea of guilty of a violation of probation which resulted in his initial sentence being vacated and set aside. The new sentence of February 27, 1981 was that the respondent serve 90 days in the County Jail, to run consecutive with his sentence then being served.

Mr. Adkins testified that he is 22 years old and lives in Atlantic City. He is married and has one child, who is three months old. He supports his wife and child. Since serving time in prison, he believes he has been rehabilitated. He has no desire to engage in any further criminal actions or to spend any more time in jail. He is presently employed at the Deauville Motel. He is attempting to better himself and looking for better jobs and opportunities. With respect to the drug charge, Mr. Adkins claimed that he had been entrapped and that he was not a big time drug dealer. He stated that he sold epsom salts to the state police undercover agent, although the lab tests came back saying methamphetamines.

Mr. Adkins served nine months in Annandale and was then paroled. He completed his parole without any problem. He was released from Annandale as of November 1981, and in January, of 1982 he began his employment at the Deauville, where he works as a cook and has a good record.

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On cross-examination, Mr. Adkins indicated that he was 18 years old at the time of the incident involving the stolen property, which consisted of copper piping or perhaps brass. He claimed that he and a friend were involved and that the friend had asked him if he wanted to make any money by helping him carry some items to a junk yard. The friend fled the scene when the police arrived.

Mr. Adkins was questioned concerning an investigation report that indicated that on October 30, 1979 he was arrested by police at 426 Maine Avenue in Atlantic City where, according to an investigation report filed by Officers Brown and Gasbarro, he was found inside a crawl space under the house. The Division presented no evidence in connection with this incident other than the investigation report itself. Mr. Adkins recalled having been arrested on that occasion outside his house, which was at 110 Adriatic Avenue. He stated that there were many police officers in the area and he was arrested by one officer, not two. According to Mr. Adkins, the charges were ultimately dismissed.

Mr. Adkins was also questioned concerning a weapons charge. The allegation was that he had distributed the weapon illegally. According to Mr. Adkins, it was a .32 Western Cycle Caliber. He claimed that the charges were dismissed and were originally based on entrapment by the same police officer involved in the methamphetamine matter.

It is worthy to note that Mr. Adkins insisted that he went to trial on the distribution of a controlled dangerous substance matter and did not enter a retraxit plea of guilty as indicated by the official court records.

In this matter the question is whether Mr. Adkins has successfully rehabilitated himself from the adverse affects of the enumerated disqualifying conviction of distribution of a controlled dangerous substance. Such rehabilitation is permitted for a casino hotel registrant under N.J.S.A. 5:12-91h. The evidence indicates that Mr. Adkin's last brush with the law ended with his release from Annandale in November of 1981, approximately a year and seven months ago. He has been working steadily since January of 1982 and claims he is doing a good job. He presented no evidence in support of his statements concerning his employment and no character evidence was presented.

5.

It is troubling that Mr. Adkins insists that he did not distribute methamphetamine, but actually distributed epsom salts. He implies that somehow or another the epsom salts became methamphetamine when the state lab analyzed them. Presumably, he implies that someone, either the police officer or the labortory technician, or both, were lying. It is disturbing that he does not admit his wrongdoing, even though he was found guilty of the charge. He insists that he went to trial although the official court records say otherwise.

Under the circumstances in this matter, having considered the credibility of the witness, as well as his demeanor and his attitude, and having considered the nature of the serious charge of which he was convicted, as well as the lesser charge involving the stolen property, I am unable to conclude that Mr. Adkins has established that he has rehabilitated himself sufficiently to overcome the adverse affects of his enumerated conviction. It seems that he is unwilling to admit the wrongs of his past and that this does not indicate that licensure would be appropriate. Given all the circumstances, I am compelled to find that his casino hotel registration should be **REVOKED.** It is so **ORDERED.**

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

6.

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

July 27, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

July 28, 1983
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

August 1, 1983
DATE

Ronald L. Lakewood
OFFICE OF ADMINISTRATIVE LAW

ks

7.

EVIDENCE LIST

On behalf of petitioner:

P-1 Package containing indictment 823-78-M; Judgment of Conviction on same indictment; Statement of Reasons for sentence; Judgment of Conviction and Order for Commitment on violation of probation on indictment 823-78; Atlantic County Superior Court Criminal Record, dated November 6, 1980; indictment 261-80-S-3; Judgment of Conviction and Order for Commitment on indictment 261-80-S; Statement of Reasons for sentence; certification of Clerk of Atlantic County

P-2 Atlantic City Police Investigation Report, case no. 79-13286, dated October 30, 1979, two pages

8.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-174
OAL DOCKET NO. CCC 10818-82
REG. NO. 25414-40

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

Complainant,

v.

LEVON W. ARMSTRONG,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on June 17, 1983, recommending that the Complaint of the Division of Gaming Enforcement be dismissed; and the Respondent having filed exceptions to the Initial Decision on July 5, 1983, to which the Complainant filed a reply on July 8, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on July 20, 1983, to modify the said Initial Decision and to dismiss the Complaint of the Division of Gaming Enforcement,

IT IS on this 9th day of August 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) That portion of the Initial Decision which finds that Levon W. Armstrong has failed to demonstrate his good character, honesty and integrity be and hereby is rejected as unnecessary pursuant to N.J.S.A. 5:12-91(b), as amended, L. 1981, c. 503, §12, effective February 15, 1982.

(2) That portion of the Initial Decision which Orders that Respondent "...be prohibited from seeking licensure as a casino employee, pursuant to N.J.S.A. 5:12-90, until one year after he completes satisfactorily the remainder of his parole" be and hereby is rejected as inappropriate and unnecessary in light of the fact that Mr. Armstrong has not yet filed an application for a casino employee license.

IT IS FURTHER ORDERED that the Complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: August 9, 1983

State of New Jersey
OFFICE OF ADMINISTRATIVE

INITIAL DECISION
OAL DKT. NO. CCC 10818-82
AGENCY DKT. NO. 82-174

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Petitioner
v.
LEVON W. ARMSTRONG,
Respondent.

APPEARANCES:

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

Janet Parrish, Esq., appearing Pro Hac Vice, for the respondent (John F. Fitzgerald, Esq., attorney)

Record Closed: May 3, 1983 Decided: June 16, 1983

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

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Levon W. Armstrong, respondent. The Division alleged that Mr. Armstrong had committed various criminal

violations, for which the Division seeks revocation of his hotel employee registration, pursuant to section 129 of the Casino Control Act (Act). The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on November 15, 1982. By Notice of Defense filed with the Commission on December 6, 1982, the respondent requested a hearing. On December 7, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 1, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Armstrong is 22 years of age and has lived in the Atlantic City area for his entire life. He currently resides with his mother, three sisters (ages 14, 15 and 16) and a brother (age 18).

The respondent dropped out of high school at age 16. Between ages 16 and 18 he "hung around" the streets. During early 1979, he was employed by the Garden State Parkway under the Comprehensive Employment and Training Act (CETA).

During 1977, the respondent was arrested and was charged with being in possession of stolen property. The respondent admitted that he had stolen jewelry from people on the Atlantic City beach. The respondent was sentenced to the Jamesburg Home for Boys, and served eight months. He was released in September 1978.

On February 12, 1979, the respondent committed an attack on an individual. As as result, the respondent was indicted by an Atlantic County Grand Jury, for violations of N.J.S.A. 2A:90-3, assault with a dangerous weapon, a pistol; N.J.S.A. 2A:151-56,

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unlawful use of a dangerous weapon, a pistol; and N.J.S.A. 2A:151-41(a), possession of a weapon without a permit (P-1).

The respondent was also a participant, with two other persons, in an incident on March 25, 1979, which involved an attack upon a couple and which led to his arrest. The respondent and the two other persons were indicted by an Atlantic County Grand Jury for violations of N.J.S.A. 2A:98-1, conspiracy to commit robbery; N.J.S.A. 2A:94-1, entering without breaking with intent to rob; N.J.S.A. 2A:90-3, assault with a dangerous weapon, a screwdriver; N.J.S.A. 2A:90-2, assault with intent to rob; N.J.S.A. 2A:141-1, robbery; N.J.S.A. 2A:113-8, threats to kill; N.J.S.A. 2A:141-1 and N.J.S.A. 2A:151-5, armed robbery; and N.J.S.A. 2A:151-41(c), possession of a dangerous instrument, a screwdriver (P-2).

On October 22, 1979, the respondent entered his final pleas to the charges. With regard to the first indictment, the respondent retracted his not guilty plea and pled guilty to a violation of N.J.S.A. 2A:90-3, assault with a dangerous weapon. The remaining charges were dismissed. With regard to the second indictment, the respondent pled guilty to a violation of N.J.S.A. 2A:141-1, robbery. The remaining charges were dismissed.

On December 7, 1979, the respondent was sentenced to two indeterminate custodial terms at the Youth Reception and Correction Center, Yardville, for a term not to exceed seven years, the sentences to run concurrently (P-1 and P-2).

The respondent admitted his criminal misconduct. He accepted full responsibility for his actions and conceded that he was not forced to participate in the commission of the crimes. During this period of time he maintained a close relationship with the McClary brothers, who were also indicted in regard to the incident of March 25, 1979.

The respondent was incarcerated from March 1979 to January 1981. During his incarceration he was selected to participate in a rehabilitation program conducted at an honor camp at the Wharton Tract. The Wharton Tract is the only honor camp for Yardville. The respondent was at Wharton from September 1980 to January 1981. The respondent was selected for participation by unit Supervisor Harry P.A. DePew. Mr. DePew has headed the unit for the past five years. He was formerly a Correction Officer and Correction Sergeant, and holds an associate degree and a bachelor's degree in

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criminal justice and a master's degree in education. Mr. DePew selects participants in the program based upon an initial screening of their records, a personal interview, their behavior record during incarceration and the nature of their criminal conduct. Approximately 68 individuals out of the 800 to 900 inmates at Yardville are selected for participation in the program. Approximately 10% of the participants are returned to Yardville because of unsatisfactory participation.

The program at Wharton requires that each participant attend school and adhere to a rigid schedule. Nevertheless, the atmosphere is relaxed, i.e., the television room is not closed, there are no wakeup calls and each individual is responsible for his own actions. The program is therapeutic in nature and its primary purpose is to teach individual responsibility for one's own conduct.

During his participation in the program, the respondent earned a GED degree. The supervisor of this program reported that the respondent was motivated. At his request, the respondent also participated in the culinary arts program. This program teaches basic cooking skills through classroom and practical studies. The respondent satisfactorily completed this course of study. The supervisor of this program was also satisfied with the respondent's level of performance. Mr. DePew stated that Mr. Armstrong's overall performance at Wharton was above average. The respondent's participation in the culinary arts program was relied upon by Mr. DePew as a basic qualification to secure employment for the respondent. Mr. DePew further testified that employment opportunities for a young, black, male ex-offender are almost nonexistent.

From March 1981 to the present, the applicant has been employed as a busboy by the Sands Hotel and Casino (Sands).

Since his release on parole in January 1981, Mr. Armstrong has been under the supervision of Senior Parole Officer Donald H. McGee. The respondent's parole terminates in July 1986. Mr. McGee is currently the team leader for the Atlantic City Team and is responsible for the supervision of hard-core offenders in the Atlantic City area. Mr. McGee holds a bachelor's degree in psychology and a master's degree in psychology and statistics.

The Atlantic City Parole Team conducted an evaluation of the respondent prior to his release on parole. This evaluation was based upon a score assessed after a

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review of the respondent's criminal history and his social-psychological history. The process did not include an interview of the respondent. The respondent was originally classified as a hard-to-manage case. Although the respondent's score was borderline, it was determined that he had a need for supervision.

Mr. Armstrong was first classified as intense status. Accordingly, he was required to report twice monthly to his parole officer and the parole officer conducted two community contacts monthly. The community contacts might include a contact with the parolee, but more often include a communication with a family member or neighbor to determine the success of the parolee's reentry into society. On or about August 12, 1981, the respondent was upgraded to regular status. This requires that he report once per month to his parole officer and that two community contacts be made. On March 1, 1982, the respondent was upgraded to quarterly status, which requires that he report to his parole officer and that a community contact be made once every three months. On November 3, 1982, the respondent was upgraded to semi-annual status, which requires that he report to his parole officer and that a community contact be made once every six months. This is the highest possible status.

The conditions of parole imposed upon the respondent include that he obey all laws, stay employed, report in a timely manner to his parole officer, notify his parole officer if arrested and notify his parole officer before he secures bail. The respondent has not committed any violations of his parole.

Mr. McGee was of the opinion that the respondent is one of the three best parolees he has supervised in the hard-to-manage category. Further, the respondent is above average for parolees in all categories. Mr. McGee also stated that there was a 60% recidivism rate in the hard-to-manage category. The witness has received good family and neighborhood reports regarding the respondent.

Mr. McGee was also of the opinion that employment is crucial for rehabilitation, especially for young offenders. There is a high degree of correlation between employment and a lack of recidivism. The witness stated that the employment situation for a young, black, male, ex-offender in Atlantic City is very difficult.

Ira Melamed, currently the manager of the Poolside Carvery and manager of the employee cafeterias at the Sands, testified on behalf of the respondent. During the

summer of 1982, Mr. Melamed was directed to set up and operate the Poolside Carvery. He staffed the operation from other in-house operations on overtime. The then manager of the employee cafeterias recommended only the respondent out of 16 busboys to work at the Carvery. The respondent has been in this position continuously ever since. The respondent works at the Carvery on an overtime basis on weekends, which averages eight to sixteen hours. The respondent is the only employee to have worked at the Carvery every weekend that it has been open. The respondent's attendance has been excellent, which is out of the ordinary for Carvery employees. The respondent helps train new bus persons at the Carvery.

In April 1983, Mr. Armstrong was promoted to the position of busboy at the Park Garden Restaurant. This is a tipped position and offers the respondent an opportunity to become a food server. Mr. Melamed was of the opinion that the respondent's potential for promotion is good.

Mr. Melamed was also of the opinion that the respondent has demonstrated that he is a hard worker, he does all that is requested of him, he is polite and neat and he is a good worker. The respondent has not had any disciplinary problems at the Sands.

The respondent currently assists his mother with the running of the household. He pays rent and performs chores, including painting the house. The respondent also purchases items for the home and purchases necessities for his siblings.

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

(B) DISPUTED FACTS

In dispute were the respondent's character, honesty and integrity.

The respondent testified that he began to reflect upon his situation immediately upon his incarceration. He knew without question that he did not want to return to jail following his release. Also, he wanted and earned his GED, and he wanted and earned his culinary arts certificate. The respondent further testified that his job is very important to him. His employment provides a means of self-support, the means

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whereby he can assist his family and enables him to be a role model for his siblings. The respondent has plans to enroll in electronics school, to have his own residence and to develop a career.

The respondent also testified that he would not repeat his misconduct. In part, he attributed his actions to his young age at the time. He believes that he is far more mature at the present. Also, employment has given him the opportunity to achieve something with his life. In addition to his desire to avoid a return to jail, the respondent has disassociated himself from his prior acquaintances as a means of avoiding trouble.

The respondent called three witnesses to testify on his behalf. The first was Mr. DePew. The witness was of the opinion that the applicant had achieved, as far as the prison system was concerned, rehabilitation, otherwise he would not have felt confident in the respondent's release. Mr. DePew believes that his program as well as any therapeutic program is useless unless it can demonstrate to its participants that their work efforts will result in opportunities in society. Further, if rehabilitation is to be at all feasible and participants, such as the respondent, are not to repeat their prior misconduct, they must be given a full opportunity to work in order to become a contributing citizen. The witness observed the respondent to be a quiet person who had little difficulty adapting to the requirements of the Wharton program and who was motivated to learn what most of us take for granted. The witness was of the opinion that the respondent had established his rehabilitation because he was now responsible for his own behavior.

Mr. McGee, the applicant's second witness, has known the applicant for approximately two years. The witness stated his standard for rehabilitation, which was the absence of criminal behavior including arrests, employment and being a contributing citizen. Mr. McGee held the opinion that the respondent was an atypical parolee because he had maintained employment, avoided conflicts with the law and avoided domestic difficulties. The respondent's performance as a parolee was exemplary. Mr. McGee was also of the opinion that the respondent's conduct over the past two years has established that his rehabilitation is not merely a temporary transition.

The applicant's third witness, Mr. Melamed, has known the respondent for approximately two years. His supervision and evaluation of the respondent's work performance has led him to the conclusion that the respondent is a very responsible person.

17.

The respondent also offered a letter from Brock Henning, Assistant Director for Food and Beverages at the Sands. Mr. Henning stated that the respondent has been "a very hard working, diligent employee since his first day. His work record shows no acute loss of time, friendly attitude with fellow employees, respectful to all management and always follows orders. I would highly recommend that he remain in our employ." (R-1).

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

1. The respondent fully acknowledges his misconduct.

2. The respondent has accepted full responsibility for his misconduct.

3. The respondent recognizes fully that his prior misconduct was the cause of his incarceration, and he has no present intention of repeating such misconduct.

4. The respondent has a sincere desire to pursue his employment opportunities and to develop a career.

5. The respondent has rehabilitated himself to the extent that there is little, if any, likelihood that he would again commit a wrongful act.

6. A former associate, his parole officer and current supervisors of the respondent are of the opinion that he has successfully undergone rehabilitation.

7. A former associate, his parole officer and current supervisors of the respondent are of the opinion that he is a person of good character, honesty and integrity.

8. The applicant's conduct since his incarceration exhibits a substantial change in his behavioral pattern with regard to his maturity and responsibility for his own conduct.

18.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that Mr. Armstrong's convictions constitute a violation of section 86c(1) of the Act, and, accordingly, establish that he no longer possesses the requisite degree of good character, honesty and integrity required for registration, under section 89b(2) of the Act. Although the respondent acknowledged his misconduct, he contended that he maintained the requisite degree of good character, honesty and integrity by means of his rehabilitation, pursuant to section 91d of the Act.

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's convictions constitute violations of statutory disqualifiers listed under section 86c(1) of the Act.

There is no doubt that the respondent's convictions for violations of N.J.S.A. 2A:90-3, assault with a dangerous weapon, and of N.J.S.A. 2A:141-1, robbery, are statutory disqualifying offenses under section 86c(1) of the Act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conviction for violations of N.J.S.A. 2A:90-3 and N.J.S.A. 2A:141-1 disqualify him from being a registrant, pursuant to section 86c(1) of the Act.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her

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rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

First, Mr. Armstrong is registered as a hotel employee and is employed as a busboy at the Sands. As such, he has no responsibilities for actual gaming activities and has limited contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial contact with patrons of the casino. Second, the applicant was convicted of violations of N.J.S.A. 2A:90-3, assault with a dangerous weapon, a screwdriver, and N.J.S.A. 2A:141-1, robbery. Under section 86c(1) of the Act, these are statutory disqualifiers. Further, but for having avoided prosecution of other charged offenses by means of a plea bargain agreement, it was evident that the respondent's conduct constituted violations of several other sections of the criminal laws. The respondent's actions constituted knowing and purposeful acts of violence, including threats on the life of innocent persons. These offenses were extremely serious.

Third, the respondent knew that his conduct was criminal, but he did not withdraw therefrom. There were no pressures which contributed to his misconduct. The respondent has accepted full responsibility for his actions.

Fourth, the respondent committed his crimes on February 12 and March 25, 1979, four years ago.

Fifth, at the time of the offenses, the respondent was 19 years of age. Given the change in the respondent's behavior and his current attitudes and intention to abide by the laws of society, it is apparent that his conduct was, in part, the result of immaturity.

20.

Sixth, the respondent's misconduct occurred over a period of two years following his leaving school at age 16. His criminal conduct was not isolated. Further, it is apparent that his incarceration as a juvenile did not have the desired rehabilitative effect. Nevertheless, the respondent has not committed any violations of the law subsequent to his release in January 1981.

Seventh, there were no social conditions which contributed to the offenses. However, it is apparent that the respondent associated himself with persons who were likely to commit criminal misconduct. Also, the respondent had quit school, was unemployed and was merely wandering about the streets. Whether these circumstances contributed to his misconduct is a point of speculation; nevertheless, his environment and eventual misconduct are examples of an all too common pattern in our society.

Eighth, it is evident that the respondent has made substantial rehabilitative efforts. He pled guilty to the charges and accepted fully his responsibility for his misconduct. He served his time in prison. During his incarceration, the respondent was selected for participation in a therapeutic and rehabilitative program conducted at the Wharton Tract, a minimum security facility. Although the respondent was required to participate in programs, he did so with substantial success, i.e., he earned his GED degree and earned a certificate in culinary arts. It was the respondent's stated intention to develop qualifications and a skill for employment upon his release from prison. The respondent has satisfactorily met all of the requirements of his parole. Within less than two years, he has improved his parole status to the highest level possible. There is every expectation that the respondent will complete his parole without any difficulty. The respondent has also established a very positive employment record in the casino industry and has sought to improve his position. It was well-established that the respondent is a responsible, reliable, hardworking and trustworthy person. He has earned the respect of his past and present supervisors. The respondent successfully reentered his community. He contributes to the support and general welfare of his family. In the final analysis, the respondent has seized the opportunities available to him during his incarceration and subsequent thereto and has distinguished himself in every regard. Although the respondent cannot eliminate his past record, there is nothing more he could have done to establish his rehabilitation, but for the completion of parole and the passage of additional time. However, sufficient time has passed since the incident during which the respondent's good character, honesty and integrity have been, against substantial odds, demonstrated.

21.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

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

Under section 89b(2) of the Act, Mr. Armstrong was required to maintain, by clear and convincing evidence, good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by a license holder, is not the determinative criterion for continued 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 continued licensure under section 89b(2) of the Act, it is incumbent upon the holder to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of the license holder be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

The burden carried by Mr. Armstrong was substantial in light of his young age and the seriousness of his offenses. Were this hearing conducted immediately upon the filing of his application and prior to his employment in the casino industry, there is no question that the respondent could not have established his rehabilitation or obtained his registration. However, it is apparent that beginning with his incarceration at Yardville in January 1979, and continuing throughout his transfer to Wharton and in particular his employment at the Sands, the respondent has undergone a dramatic and complete alteration of his behavior. The respondent has taken full advantage of every opportunity available to him and has made remarkable progress. Although it is only two years since his release and he is still on parole, the respondent has affirmatively demonstrated his rehabilitation. There is little likelihood that the respondent will commit any unlawful acts in the future. The respondent presents no risk to the public or to the integrity of

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casino gaming in this State. The respondent has earned the privilege of continued registration. An examination of the "whole man" clearly and convincingly establishes that Mr. Armstrong is a person of good character, honesty and integrity and is entirely suitable for continued registration in this State. Boardwalk Regency Corporation, supra, at 51, 52.

Nevertheless, the circumstances underlying the respondent's incarceration and the brief period which has passed since his release are cause for concern. Therefore, the respondent should be prohibited from making application for licensure as a casino employee until one year after he completes satisfactorily the remainder of his parole.

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

DISPOSITION

It is **ORDERED** that the petition of the Division to revoke the Casino employee registration of Levon W. Armstrong be **DENIED** and **DISMISSED WITH PREJUDICE**; it is further **ORDERED** that Mr. Armstrong be prohibited from seeking licensure as a casino employee, pursuant to N.J.S.A. 5:12-90, until one year after he completes satisfactorily the remainder of his parole.

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.

23.

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

June 16, 1983
DATE

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

Receipt Acknowledged:

June 17, 1983
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

June 22, 1983
DATE

Ronald L. Rickenbach
OFFICE OF ADMINISTRATIVE LAW

fms/ee

24.

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 The State of New Jersey v. Levon Wilbur Armstrong, Superior Court of New Jersey, Law Division Criminal, Atlantic County, Indictment No. 614-78-J, Indictment, April 5, 1979, Judgment of Conviction and Order for Committment, December 10, 1979, and Statement of Reasons, December 12, 1979 (7 pages)

P-2 The State of New Jersey v. Wilbert McClary, Carl McClary and Levon Armstrong, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment No. 714-78-M, Indictment, May 15, 1979; Judgment of Conviction and Order for Committment, December 10, 1979 and Statement of Reasons, December 12, 1979 (13 pages)

R-1 Letter to Dennis Daly, Senior Assistant Council, from Brock Henning, Assistant Director, Food and Beverage, February 4, 1983

R-2 Letter to Judy Faulkner from Levon Armstrong, September 6, 1980 (3 pages)

R-3 Department of Corrections, Bureau of Parole - "Scoring Form - Characteristic - BE61A - Modified," for Levon Armstrong

25.

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Levon W. Armstrong

Harry P.A. DePew

Donald H. McGee

Ira Melamed

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE PETITIONS OF BALLY MANUFACTURING CORP. AND BALLY'S PARK PLACE, INC. FOR A DECLARATORY RULING ON COMPLIANCE WITH LICENSE CONDITION NO. 10 AND FOR THE REMOVAL OF LICENSE CONDITION NO. 10	OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

WALTER N. READ, CHAIRMAN
CARL ZEITZ, VICE-CHAIRMAN
JOEL R. JACOBSON, COMMISSIONER
E. KENNETH BURDGE, COMMISSIONER
DON M. THOMAS, COMMISSIONER

APPEARANCES:

For Bally Manufacturing Corp. and Bally's Park Place Inc. (Bally):

Clive Cummis, Esquire
Kenneth Oettle, Esquire

For the Division of Gaming Enforcement:

Mary Jo Flaherty, Deputy Attorney General

For the Casino Control Commission:

David Arrajj, Director, License Division
Patricia M. Kerins, Senior Assistant Counsel
E. Dennis Kell, Senior Assistant Counsel

I. INTRODUCTION

Park Place, Inc. ("Park Place") and Bally Manufacturing Corporation ("Bally") have filed two petitions concerning a condition ("Condition No. 10") which has been imposed upon their respective casino and gaming related casino service industry licenses. Condition No. 10 requires that Bally cause at least 50% of its board of directors to be "independent, outside members" by no later than July 1, 1981, and to maintain such a minimum proportion thereafter.

The petitions which have been filed seek a Declaratory Ruling that Bally is in compliance with Condition No. 10 and also seek the removal of Condition No. 10 itself. The petition for a Declaratory Ruling requests that the Commission adopt a definition of "independent, outside director" and then apply that definition to Bally's present and past (since July 1, 1981) directors to determine which directors have satisfied the mandate of the condition. In the second petition, Bally requests the Commission to make a determination that good cause exists to remove the condition.

II. PROCEDURAL HISTORY

Effective December 29, 1980, Park Place was issued a casino license and Bally was issued a gaming related casino service industry license. Bally is also a holding company of Park

Place through intermediary company, Bally's Park Place, Inc., a Delaware Corporation.

Both licenses were issued subject to the imposition of twelve conditions to insure that neither William T. O'Donnell, Sr., who was found to be unqualified, nor any disreputable individuals previously affiliated with Bally would be in position to "dominate, manage, or meaningfully influence" Bally's business or operations. See 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, OPINION DATED March 16, 1981, (Docket Nos. 80-CL-2, 10-CSI-13) p. 80 (hereinafter, the "Bally Opinion"). The Opinion specifically stated that "(s)trict compliance with these conditions...is an essential premise for both the issuance and continuance of these licenses." See the Bally Opinion at p. 80.

The within petitions concern one of the above mentioned twelve conditions imposed upon the licenses issued to Park Place and Bally:

> 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 [Bally Opinion at 82].

The licenses of both Park Place and Bally were renewed effective December 29, 1981, subject, again, to the imposition of the same twelve conditions, including Condition No. 10. On April 15, 1982, a petition was filed by Bally requesting a declaratory ruling that Park Place and Bally are in compliance with Condition No. 10. and on June 22, 1982, a second petition was filed requesting that Condition No. 10 be removed.

At the December 28, 1982, license renewal hearing of Park Place and Bally these petitions were deferred for consideration at a later hearing date by the Commission. On March 8, 1983, a Prehearing Conference was held in this matter and the hearing itself was held on June 7, 1983. Extensive legal memoranda on the issues have been filed by both the Petitioners and the Division of Gaming Enforcement. In addition, they have submitted a Stipulation of Facts and numerous exhibits.

III. COMPLIANCE

The initial issue to be determined in this matter is Bally's compliance with Condition No. 10. The Commission has been asked to set forth a standard by which a judgment may be made as to whether a director fits within the category of "outside and independent." Clearly, an outside director is a director who is not also an officer or employee of the company on whose board he sits as a director. The parties have acknowledged this concept by

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stipulating that present directors Robert Mullane, John Britz and James Rochford, who are all Bally officers, are not independent, outside directors. The disagreement between the parties centers around the meaning to be given to the word "independent."

The Petitioners initially advance the argument that "independent" merely refers to independence from William O'Donnell, Sr., who was found to be unqualified. This position is not supported by the Bally Opinion. As noted earlier, the licenses issued to Park Place and Bally were specifically made subject to 12 conditions, of which Condition No. 10 was the tenth. The first five conditions specifically related to William T. O'Donnell, Sr. The next three conditions related to Gerardo Catena, Abe Green, Sam Klein, Louis Boasberg and Jack Rooklyn. The ninth condition related to the 2640 West Belmont Partnership. The final three conditions related to Bally in general and concerned its board of directors, its internal reporting system and its security department.

These final three conditions, of which No. 10 is one, do not merely serve the purpose of removing O'Donnell from the company. Rather, they also stand as safeguards against Bally entering into another series of unsavory relationships. If the Commission had intended Condition No. 10 to relate only to independence from William T. O'Donnell, Sr., it could have so

stated and listed the condition in the series of conditions which pertained specifically to O'Donnell. A reading of the Bally Opinion makes clear that "independence" does not merely refer to independence from Mr. O'Donnell, but rather to independence from management as well.

The essential purposes of the condition are to attempt to insure independent oversight of Bally management as a further safeguard against management allowing itself to be influenced by Mr. O'Donnell, and also to prevent the continuation of a history of board passivity and subordination to management control. The Commission therefore rejects the contention advanced by petitioners that Condition No. 10 existed only in relation to William O'Donnell. Its intent is obviously to separate board judgments from management domination and it is within that context that independence will be judged. Given our decision with regard to William O'Donnell as expressed in the Bally Opinion and the attendant conditions directed at divorcing O'Donnell from the company, it goes without saying that independence must pertain to O'Donnell as well. So clear is that mandate that we see no need

to dwell upon it.[1] It is the concept of independence from management and the company itself upon which we will focus.

The concerns in distinguishing between independent and non-independent outside directors are discussed in Corporate Director's Guidebook prepared by the Committee on Corporate Laws, Section of Corporation, Bank and Business Law, American Bar Association:

> Even though a director has not been active in the management of the corporation, he may have some relationship with the corporation or its management which could be viewed as interfering with the exercise of independent judgment...Accordingly, for the purpose of suggesting a board structure, non-management directors are further classified as "affiliated non-management directors" and "unaffiliated non-management directors".
>
> Examples of individuals who may be affiliated directors would be commercial bankers, investment bankers, attorneys, and others who supply services or goods to the corporation. One who has close familial ties to a member of key management may also be viewed as an affiliated director. Factors relevant in determining whether a director is to be regarded as an affiliated director would include the extent to which disclosure of any interest in transactions with the corporation has been required by the proxy rules under the

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1. We do note that this severance of Mr. O'Donnell from the petitioners has not been completed, despite the assertion of counsel for Bally that the petitioners wish to put the O'Donnell matter behind them (Transcript 64-65). Additionally, Bally still seeks by way of federal litigation to renew and continue its relationships with O'Donnell. These facts bear not only on the concept of "independence" but on the continuing need for the condition. See infra.

> Federal securities laws, the period of time during which the relationship has existed, the existence of any cross-affiliations through corporate directorships or otherwise, and the materiality of the relationship to the corporation or to the director or others with whom he is associated. Reprinted in 33 Business Lawyer 1620. (April 1978).

Also relevant to this matter is one of the guidelines contained in the Supplementary Material to the New York Stock Exchange's Audit Committee Policy:

> A director who, in addition to fulfilling the customary director's role, also provides additional services directly for the Board of Directors and is separately compensated therefore, would nonetheless qualify for membership on the Audit Committee. However, a director who, in addition to his director's role, also acts on a regular basis as an individual or representative of an organization serving as a professional advisor, legal counsel or consultant to management, would not qualify if, in the opinion of the Board of Directors, such relationship is material to the company, the organization represented or the director.[2]

The concerns expressed by the corporate and legal community regarding outside independent directors and the appropriate composition of a board of directors were sharpened by the fact that effective June 30, 1978, each domestic company with common stock listed on the New York Stock Exchange was required to establish and maintain an Audit Committee comprised solely of directors independent of management and free from any relationship

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2. These guidelines have been proposed but not adopted.

that, in the opinion of the board of directors, would interfere with the exercise of independent judgment as a committee member.

Petitioners have proposed the adoption of this New York Stock Exchange standard as an alternative to their proposed "independence from William O'Donnell, Sr." definition. It is significant that in their proposal the determination as to "independent" judgment rests with the board of directors itself, rather than with the Commission. At the hearing in this matter counsel for Bally amplified their proposal by suggesting the following definition:

> A person serving as a director and receiving professional fees, exclusive of director's fees, would not be considered an independent outside director within the context of Condition No. 10 in any year in which the amount of the professional fees actually received by such person in such capacity exceeded 20 percent of his or her total income; subject, however, to the right of such person to apply to the Commission for a ruling that such person should be considered as an independent outside director, notwithstanding their receipt of such professional fees from the corporation. (Transcript at 15)

It is also noteworthy that Bally would not take into consideration director's fees or bonuses, nor would they foreclose former officers or employees from being outside, independent directors.

The Division on the other hand initially recommended the adoption of the following standard:

> Persons who are not officers, or relatives thereof, employees, former officers, consultants, or general counsel of an entity,

> its parent, any intermediary entities or controlled subsidiaries or persons who are not otherwise compensated on a regular basis by an entity, its holding companies, intermediary companies or controlled subsidiaries other than by director fees and stock option benefits. (Transcript at 37-38).

The Division subsequently modified its definition by suggesting that consultants and general counsel may qualify as independent, outside directors if Petitioners show, by clear and convincing evidence, that their relationship with Bally does not affect their independence. The Division has proposed that the Commission use a series of factors by which an individual director's relationship to Bally and its management would be judged. They are as follows:

> (1) the amount of money involved, (2) the percentage of income derived from the relationship with the company and its related entities, other than as a director, (3) the duration of the relationship, (4) the nature of the relationship, (5) the extent of the relationship and (6) other affilitations with the company, its related persons and its directors, officers and employees. (Transcript at 38-39).

The Commission has carefully reviewed the lengthy memoranda submitted by the parties on this subject as well as the record which the parties have created. We now hold that for the purposes of Condition No. 10, the standard by which a director is to be deemed outside and independent includes the following components. Initially, the director must be neither a present nor a former employee of Bally or any of its affiliated companies.

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Second, the compensation received by the director for serving as director must not be so great as to affect his or her exercise of independent judgment. Finally, the director must have no other relationship with the company which would affect his or her exercise of independent judgment.

With regard to this final component the Commission will consider all pertinent factors in any determination as to whether a given relationship would adversely affect the independence of a director. These factors would include among others: the length of time the relationship with Bally or any of its affiliated companies has existed; the nature of the relationship and its materiality to Bally, the director or the director's firm; the existence of cross affiliations through corporate directorships; and the existence of close familial ties to a member of key management of the company or its affiliates. Additionally, with regard to the second and third component of the standard we would review the percentage of the director's income received from Bally or its affiliates, not only by way of fees received for professional services, but also from director's fees and bonuses received. For these purposes, we believe it reasonable to presume that, unless otherwise rebutted, any director whose income from Bally or its affiliates amounts to 10% or more of his total income is not independent. Simply stated, the possible loss of

more than 1/10th of an individual's income must be considered as a significant influence on the judgment of such individuals. We would also deem relevant any stock option plans of the company which benefit the director.

We would note that the above standard is not so much a departure from the New York Stock Exchange standard as an amplification of its rather sketchy framework for the purposes of Condition No. 10. We do depart, however, from the proposed Stock Exchange guidelines quoted earlier since we include a review of director's fees, bonuses and stock options. This position is based upon our opinion that the amount of compensation which a director receives for serving as a director may, in and of itself, be so great as to affect independence. This possibility has been noted recently by Professor Brudney of Harvard Law School:

> Indeed, if the monetary compensation is enough to be significant to the outside director, it is counterproductive; its receipt may be jeopardized by too great an insistence on restricting managerial returns. Brudney, The Independent Director - Heavenly City or Potemkin Village? 95 HARV. L. REV. 597. 613 (1982).

The monetary compensation received by Bally's non-employee directors is presently $25,000 per year plus $1,000 for each meeting attended. In addition, such directors receive $500 per year for serving on committees and $2,500 for serving as committee chairman. Such compensation exceeds that paid to non-employee

directors by other publicly traded holding companies of Atlantic City casino licensees, particularly when two other factors are considered. First, three Bally directors (James Cowan, Alfred Linkletter and Walter Wechsler) are also directors of Bally's Park Place, Inc. (Delaware), and are similarly compensated by that company. Second, Bally is apparently the only such holding company to pay bonuses to its directors and one of the few to grant them stock options.[3]

Using the standard which we have now enunciated, we will now examine the composition of Bally's Board from July 1, 1981, until the present in order to grant Bally's request for a declaratory ruling as to its compliance.

From July 1, 1981, to the present, thirteen different individuals have served on Bally's board of directors. Of these, it is uncontroverted that five are or were Bally officers while they served as directors and they therefore cannot qualify as independent, outside directors. The parties have stipulated and the Commission finds that Robert Mullane, John Britz and James Rochford, who are presently Bally officiers, are not independent,

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3. Bally was requested at the June 7, 1983, hearing in this matter to provide us with specific information relating to bonuses and stock options granted their directors. Despite assurances given at the hearing by counsel for Bally we have not received the information sought. (Transcript at 115-118)

outside directors. Although they have not so stipulated as t former directors and officers Irving Rom and George Crowley, there is agreement between the parties, in which the Commission concurs, that Messrs. Rom and Crowley were not independent, outside directors.

The parties have also stipulated that two individuals, Patrick O'Malley and Walter Wechsler are independent, outside directors. The Commission would concur in this evaluation. There is also agreement between the parties, in which the Commission joins, that James R. Cowan is and George Moran was an independent, outside director. At issue, therefore, is which of the remaining four directors are or were independent, outside directors. Once this determination is made, the question of Bally's complianc with Condition No. 10 becomes a matter of merely examining the composition of Bally's Board of Directors at any given time and calculating a percentage.

The four individuals with regard to whom an issue exists, therefore, are George N. Aronoff; S.J. Begun; Lawrence B. Brody; and Alfred C. Linkletter. They will each be examined in turn.[4]

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4. We would note that Bally has requested that certain personal income information of its directors be sealed as confidential. The Division of Gaming Enforcement has not objected to this request. We will honor this request with the understanding that the information was used in the process of reaching our decision in this matter.

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George Aronoff

Mr. Aronoff is a partner in the law firm of Benesch, Friedlander, Coplan and Aronoff, which serves as General Counsel to Bally and has done so for at least ten years.[5] He is a member of the Nominating, Compensation and Stock Option Committees and has served on Bally's Board since 1979. From 1979 through 1982 in particular, Bally and its subsidiaries paid Mr. Aronoff's law firm substantial sums in legal fees. Information submitted under seal concerning the percentage of his personal income derived from Bally and its subsidiaries over the past ten years shows that such percentage is high enough to warrant close scrutiny. Mr. Aronoff has been granted options to purchase 10,000 shares of Bally stock, the exercise price of which is unknown to the Commission. In addition, Mr. Aronoff received directors' fees from Bally totalling $35,010 in 1980 and 1981 and approximately $30,500 in 1982.

Although Petitioners now submit that Mr. Aronoff is an independent, outside director it should be noted that at the 1981 license renewal hearing, counsel for Bally stated that, as to

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5. The Prehearing Conference Order in this matter memorialized the agreement of the parties that an individual director's relationship with Bally or any of its subsidiaries would be judged over a ten year period.

Aronoff, "The amount of remuneration that his firm received was s significant that we agreed that...for purposes of the Commission Mr. Aronoff wouldn't be viewed as an independent director."

Given the totality of all these factors, in particular the percentage of his personal income derived from Bally and its affiliated companies, the Commission finds that the relationship between Bally and its related companies and Mr. Aronoff and his law firm is both regular and material, and, therefore, Mr. Aronoff does not qualify as an independent, outside director. We would note that the Division concurs in this conclusion.

S. J. Begun

Mr. Begun is the president and sole shareholder of Auctor Associates, Inc., which provides high technology consultin services and has provided such services to Bally since 1975. He became a Board member in 1981 and is a member of the Compensation and Audit Committees. From 1979 through 1982 Auctor Associates, Inc. was paid substanital sums in consulting fees by Bally and its subsidiaries. In addition, Mr. Begun personally received consulting fees in both 1979 and 1980 from Bally. He also has options to purchase 10,000 shares of Bally stock at an exercise price that is unknown to the Commission. Mr. Begun received directors' fees totalling $23,833 from Bally in 1981 and approximately $32,000 in 1982.

According to information submitted to the Commision, an analysis of Mr. Begun's total income, the total income of Auctor Associates, Inc. and the consulting fees paid to Auctor Associates, Inc. by Bally for the years 1976-1982 were substantial enough to warrant close scrutiny under the standard of "independence."

It should be noted that Mr. Begun serves on Bally's Audit Committee. Therefore, according to the New York Stock Exchange's Audit Committee Policy, it can be inferred that, in the opinion of Bally's board of directors, Mr. Begun's business relationship with Bally is not material to either Bally or Mr. Begun.

Nevertheless, it is the opinion of the Commission that Mr. Begun's compensation (through his wholly-owned corporation) as a consultant is both material and regular and that given the duration, nature and extent of the consulting relationship between Begun and Bally, Mr. Begun does not qualify as an independent, outside director. The Division concurs in this conclusion.

Lawrence B. Brody

Mr. Brody was, until recently, a partner in the London office of the international law firm of Coudert Brothers which has provided legal services to Bally since 1977. He commenced service on the Board in 1981 and serves on the Nominating, Compensation and Stock Option Committees. Mr. Brody has no options to purchase

Bally stock and he received approximately $30,500 in director's fees in 1982.

Mr. Brody left Coudert Brothers on January 31, 1983, and has entered into a full-time consulting relationship with Bally. It has been submitted to the Commission that the precise terms of the agreement are still being negotiated. However, Petitioners concede that by virtue of his assumption of full-time consulting duties for Bally, Mr. Brody does now not qualify as an independent, outside director.

It is the Division's position that, prior to his employment as a full-time consultant, Mr. Brody qualified as an independent, outside director. Given the specifics of the average annual compensation paid Coudert Brothers by Bally the Commission finds that the compensation involved was not so material as to affect Mr. Brody's independence. Therefore, Mr. Brody may be found to have qualified as an independent, outside director up to the date that he assumed full-time consulting duties for Bally.

As to the date on which Mr. Brody assumed his duties, the minutes of Bally's March 8, 1981, board of directors' meeting state that Mr. Brody "has been retained as a consultant" and indicate that the board authorized and directed Bally's Chairman of the Board and Chief Executive Officer to negotiate and enter into a consulting agreement with Mr. Brody. Given these

circumstances we find that Mr. Brody ceased to be an independent, outside director as of March 8, 1983.

Alfred C. Linkletter

Mr. Linkletter is a self-employed real estate and construction consultant. He joined the Board in 1981 and serves as the Chairman of Bally's Stock Option Committee and is a member of the Audit Committee. In 1980, 1981 and 1982 he received consulting fees from Park Place. Furthermore, from 1979 through 1981 Mr. Linkletter received directors' fees (including $35,000 in bonuses) totalling $115,276 from Bally and Park Place. In 1982 his directors fees from both Park Place and Bally totaled $62,425. He has been granted options to purchase 10,000 shares of Bally stock and 15,000 shares of Park Place stock. The present market value of Park Place stock exceeds the total exercise price of the options by approximately $225,000.

The Commission notes that for 1980, 1981 and 1982 Mr. Linkletter's total compensation from Bally and Park Place, including director's and consultant's fees and bonuses, but excluding stock options, totaled a percentage of his total income which would prevent him from being deemed independent under our standard. Regardless of whether Mr. Linkletter's consulting fees alone would disqualify him from being an outside independent director, the Commission finds that his total renumeration from

Bally is so material as to preclude a finding that he is a independent, outside director.

The Commission therefore finds that Messrs. Aronoff, Begun, and Linkletter have not met the definition of outside independent directors and that although Mr. Brody qualified as such previously, he no longer did so upon the assumption of his consultant duties with Bally early in 1983. Applying these findings, as well as those discussed earlier with regard to Messrs. Mullane, Britz, Rochford, Rom, Crowley, Cowan, Moran, O'Malley and Wechsler, we find that at no period of time from July 1, 1981, until the present has Bally been in compliance with Condition No. 10.

REQUEST TO REMOVE CONDITION NO. 10

The Commission will now address the request embodied in the second petition filed by Bally in this matter by which they seek removal of Condition No. 10. Petitioners have argued that Condition No. 10 should be removed simply because it is "unnecessary and, therefore, unjustifiably intrusive." In essence, Petitioners argue that Condition No. 10 is merely a carry-over from the December 5, 1979, agreement designed to separate the operations of Park Place and Bally for the duration of Park Place's temporary casino permit. They further posit that in view of the Commission's decision to license Bally and Park

Place, and in view of other license conditions and regulatory safeguards, Condition No. 10 in unnecessary. The Commission must disagree with such an analysis.

Clearly, Condition No. 10 did not have its genesis in the December 15, 1979, agreement which was intended to separate Park Place from Bally during the period of the temporary casino permit. As noted earlier, the Bally Opinion specifically stated that the purpose of Condition No. 10 (and eleven other conditions) was to insure that William T. O'Donnell, Sr. and any disreputable individuals previously affiliated with Bally would not be in a position to "dominate, manage, or meaningfully influence Bally's business or operations." Moreover, the Opinion specifically stated that "(s)trict compliance with these conditions...is an essential premise for both the issuance and continuance of these licenses" (emphasis supplied). In addition, the language of Condition No. 10 states that Bally "shall maintain such minimum proportion thereafter."

The Commission intended Condition No. 10 to be a continuing one and the need for the condition has not diminished. In granting licenses to the Bally companies, the Commission demanded assurances that the untoward events and unsavory associations in Bally's past were attributable solely to Mr. O'Donnell. Absent such a determination, the Commission could not

have approved the remaining directors and key management personnel. See, Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super 99 (App. Div. 1975), aff'd, 69 N.J. 599 (1976). Thus, the performance of the Board of directors during the O'Donnell tenure became significant. Although the Commission ultimately found that the remaining Board members had not participated in any of the suspect activities, the Commission recognized that the Board had been overly passive and reliant on O'Donnell during the critical period. See Bally Opinion at 79. In large part due to this evaluation, the Commission imposed the condition in order to reconstitute the Board and to establish it as an effective check on management discretion. Since the condition has never been fulfilled and since the benefits of a vigorous, independent Board are still legitimate and proper licensing goals, the condition retains it viability and purpose. The history of non-compliance which has been determined here further buttresses our view that there exists a continuing need for Condition No. 10.

We therefore deny Petitioner's request to remove Condition No. 10. Bally and Park Place have shown neither the good cause nor the changed circumstances necessary for us to remove the condition. Given our prior finding of non-compliance, Petitioners are directed to cause the composition of the board of directors to

meet the requirements of the condition within 90 days from the date of this Opinion.

NEW JERSEY CASINO CONTROL COMMISSION

WALTER N. READ, CHAIRMAN

CARL ZEITZ, VICE-CHAIRMAN

JOEL R. JACOBSON, COMMISSIONER

E. KENNETH BURDGE, COMMISSIONER

DATED: July 13, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-379

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	
v.	ORDER
BOARDWALK REGENCY CORPORATION,	
Respondent.	

This matter having been opened to the New Jersey Casino Control Commission upon the request of the Division of Gaming Enforcement, supported by a certification of counsel and an affidavit, for a cease and desist order terminating the Evening Slot/Charter Bus Program promotion presently being conducted by respondent, Boardwalk Regency Corporation, which was filed with the Commission on October 31, 1983; and the respondent, having filed a brief and affidavit in opposition thereto on November 7, 1983; and the Commission having found, after considering the entire record in this matter, including the arguments of counsel for the parties, that it has jurisdiction to hear such a request; and the Commission having further found that the DGE has not established sufficient grounds for the issuance of a cease and desist order pursuant to N.J.S.A. 5:12-109 and -129, and the Commission having resolved at its public meeting of November 9, 1983, to deny the request of the DGE for a cease and desist order,

IT IS on this 14th day of November 1983, ORDERED that the request of the DGE for a cease and desist order to terminate the Evening Slot/Charter Bus Program promotion presently being conducted by Boardwalk Regency Corporation be and hereby is denied without prejudice to the right of the DGE to file a complaint in this matter; and

IT IS FURTHER ORDERED that copies of this order be served upon the respondent and the Division of Gaming Enforcement forthwith.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 14, 1983

P-00-83-[redacted]02

Rubin

State of New Jersey

IRWIN I. KIMMELMAN
ATTORNEY GENERAL

THOMAS W. GREELISH
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625

THOMAS R. O'BRIEN
DIRECTOR

ANTHONY J. PARRILLO
DEPUTY DIRECTOR
OPERATIONS

JAMES E. FLANAGAN III
DEPUTY DIRECTOR
INVESTIGATIONS

September 26, 1983

Honorable Walter N. Read
Chairman
Casino Control Commission
3131 Princeton Pike
Trenton, NJ 08625

RE: Boardwalk Regency Corp. Evening Slot/Charter Bus Program Package #2

Dear Chairman Read:

By letter and materials received August 31, 1983 from the Commission legal staff, the Division of Gaming Enforcement has been informed of the above-noted promotion being conducted by the Boardwalk Regency Corporation (Caesars). The Division submits that this promotion is in violation of the State's lottery laws, N.J.S.A. 2C:37-1 et seq.

I. FACTUAL BACKGROUND

As originally implemented by BRC in December 1982, the evening slot/charter bus program promotion entailed a drawing for the prize of a 19 inch color television. Commencing on September 6, 1983, the prize now to be awarded in this ongoing promotion is $300 in cash. Those eligible for the drawing are members of certain organizations who travel to Caesars by way of charter bus. Under Caesar's reimbursement schedule, those who travel less than 270 miles to the casino are not charged for transportation. For those travelling in excess of 270 miles, the bus operator may charge a fee representing the difference between the actual cost of transportation and the subsidy provided by Caesars. Regardless of the distance travelled, the organization chartering the bus may use the excursion as a fundraiser and charge an appropriate fee.

The drawing itself is conducted as follows. Upon arrival at Caesars, a prenumbered coupon is distributed, with the ten dollar coupon given by Caesars, to each patron over the age of 21. The coupon is comprised of two portions, both of which bear the same number. One portion of the ticket is deposited by the patron into a locked container and the other

Exhibit 5

New Jersey Is An Equal Opportunity Employer

portion is retained by the patron. At approximately 9:30 p.m. from Sunday through Thursday, an impartial patron draws a ticket-half from the theretofore locked container and the number on the ticket stub drawn is announced as the winning number. Upon presentation and verification of the winning ticket stub, the patron receives a cash prize of $300.

Based upon a review of Formal Opinion of the Attorney General, No. 6-1983 and N.J.S.A. 2C:37-1 et seq, the Division submits that this promotion as originally implemented and as currently being conducted constitutes an unlawful lottery. All of the elements of a lottery are present in the instant promotion and the Commission should take action to terminate the promotion.

II. THE PROMOTION IS IN VIOLATION OF N.J.S.A. 2C:37-1, et seq

Pursuant to N.J.S.A. 2C:37-1(h), a lottery is defined as:

> an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value.

Under N.J.S.A. 2C:37-1(d), "something of value" is defined as:

> any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

Underlying each category of something of value, i.e. money, property, token, credit or promise, the person involved is required to bear far more of a burden than that minimal inconvenience which would bind him to a contract, e.g. the mailing in of a boxtop for participation in a contest. See Formal Opinion of the Attorney General No. 6-1983 at 3.

Application of these definitions to the instant matter demonstrates that this bus program promotion is an unlawful gambling scheme. Specifically, the players, i.e. the individuals whose organizations charter a bus to Caesars, purchase a ticket to travel to the casino. These tickets are numbered and are used for the drawing conducted at Caesars. The holder of the ticket drawn by chance receives a cash prize of $300. The initial purchase of the ticket is the "something of value" that is risked and the Division submits that that risk involves more than mere personal inconvenience.

Admittedly, as was pointed out in the aforecited Formal Opinion, the element of risking something of value for the gain of something of value is not always self-evident. F.O. at 4. The nexus between payment and the opportunity to win a prize is somewhat ambiguous when the payment constitutes consideration for both a gaming and a non-gaming

activity. See State v. Berger, 126 NJL 39 (Sup. Ct. 1941). Accordingly, in order to resolve this ambiguity, the courts have developed standards by which such an operation may be evaluated, with a distinction being made between "closed participation" and "flexible participation" operations. See Commonwealth v. Lund, 142 PA Super 208, 15 A 2d 839, 842 (Super. Ct. 1940).

In a "closed participation" operation, a ticket is purchased by a patron entitling him, for example, to both a show and a chance to win a prize if the number on his ticket is drawn. The price paid for the ticket includes the price paid for the chance and the operation constitutes a lottery. Thus, it was held that ". . .(i)n such a scheme the purchase of the ticket and the fact that one cannot contend for the prize unless he has purchased such a ticket, establishes the fact of consideration. . ." Commonwealth v. Lund, supra 15 A 2d at 842. On the other hand, in a "flexible participation" operation, some persons receive chances to win the prize without purchasing the ticket. Even in those circumstances, the trier of fact will look to the underlying character and practical operation of the scheme as a whole in determining whether or not something of value is being risked. Id. at 845.

The Division submits that the instant promotion constitutes a closed participation gambling operation. Specifically, the promotion is offered only to certain select organizations who charter buses to the casino and not to all bus patrons. Only those patrons buying tickets for those bus excursions are eligible to participate in the prize drawing. As was noted by the Attorney General in his discussion of a similar scheme:

> . . . Not only is the element of chance present, but the chance element functions within the kind of closed participation scheme discussed earlier. The inevitable inference must be that those who bought bus tour tickets did so at least partially because of the drawing and that some part of the purchase price was staked upon the game. Under these circumstances, the promotion is unlawful. (F.O. at 6; emphasis added)

So, too, the inference herein must be that those who buy tickets for the charter excursions conducted under this promotion do so to participate in the prize drawing.

Furthermore, it must be pointed out that the non-association of the bus operator, or the organization, with Caesars does not remove this proposed promotion beyond the parameters of N.J.S.A. 2C:37-1, et seq. Even though the monetary payments made by the bus patrons do not themselves constitute the "pot" from which the cash prizes are drawn, the lack of identity between something of value staked and something of value won does not alter the characteristics of this event as gambling. Gambling, i.e., the risking of something of value upon the outcome of a contest of chance, with the understanding of possibly receiving something of value, is a contract. Lucky Calendar Co. v. Cohen, 19 NJ 399, 414-416 (1955); Formal Opinion, Supra at 6. Accordingly, a principle of general contract law directly applies, namely, "(i)t matters not from whom the consideration moves or to whom it goes so long as it is bargained for as the exchange for the promise." Coast Nat'l Bank v. Bloom 113 NJL 597, 602 (E & A 1934); Guaclides v. Kruse, 67 NJ Super 348, 354 (App. Div. 1962); F.O. supra at 6. Nothing in the statutory definition of a lottery requires an identity of wagers and winnings. Nor is there a requirement for identity of the person taking bets and the person distributing the winnings. F.O. at 7.

Based on the foregoing analysis, it is the Division's position that the instant promotion is in violation of the State lottery laws. That the promotion was conducted previously with a drawing for the prize of color television in no way imbues the promotion with some form of laches or collateral estoppel for its continuation, particularly in view of the fact that neither the Commission nor the Division had the benefit of the Attorney General's formal opinion on the matter until April 1983.

In conclusion, therefore, the Division urges that the Commission acts to terminate the promotion forthwith.

Sincerely,

THOMAS R. O'BRIEN
DIRECTOR

By Katherine A. Smith
Katherine A. Smith
Deputy Attorney General

mk
c: Members of the Commission
Michael Santaniello, Deputy Director
Robert Reilert, Esq.

bc: Chief William McElroy
DAG Fredric Gushin
DSFC Stefano Gelardi
DSG Jay Wolf
Steven Ocksrider
Joan Rubin
File # None

IRWIN I. KIMMELMAN
Attorney General ff New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN-047
Trenton, NJ 08625

By: Katherine A. Smith
Deputy Attorney General

FILED
NEW JERSEY
OCT 31 1983
CASINO CONTROL COMMISSION

RECEIVED
OCT 31 1983
NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE DIVISION OF GAMING ENFORCEMENT	:	CERTIFICATION IN SUPPORT OF THE DIVISION'S REQUEST FOR A CEASE AND DESIST ORDER PURSUANT TO N.J.S.A. 5:12-109 AND 129
v.	:	
BOARDWALK REGENCY CORPORATION	:	

1. I, KATHERINE A. SMITH, am a Deputy Attorney General assigned to the Division of Gaming Enforcement and am responsible for the handling of the above captioned matter.

2. On or about December 7, 1982, Boardwalk Regency Corporation (BRC) commenced an Evening Slot/Charter Bus Program promotion.

3. As described in BRC's Profit Alert Newsletter and Interoffice Memorandum dated March 18, 1983, this bus program promotion entailed a drawing for the prize of a nineteen (19) inch color television. True copies of said Profit Alert newsletter and memorandum are attached hereto and made part hereof and marked as Exhibits 1 and 2, respectively.

4. The bus program promotion which entailed a drawing for the nineteen (19) color television was never formally approved by the Commission and was in operation prior to the formulation and publication of the Formal Opinion of the Attorney General No. 6-1983. A true copy of a letter to the Division from Patricia Kerins, Senior Assistant Counsel to the Commission, indicates the

Commission's non-approval of this promotion and is attached hereto, made a part hereof and marked as Exhibit 3.

5. On or about September 6, 1983, BRC revised the Evening Slot/Charter Bus Program promotion such that the drawing was for the prize of $300 cash instead of the prize of a nineteen (19) in color television.

6. By letter dated August 22, 1983, from Jonathan D. Johnson, BRC Assistant Casino Controller, to Maureen Williamson of the Casino Control Commission staff, BRC stated its intentions to conduct the revised bus program promotion utilizing the same procedures followed in the original bus program promotion and to conduct the revised promotion from September 6, 1983, through November 30, 1983. A true copy of said letter is attached hereto and made part hereof and marked as Exhibit 4.

7. As described in the aforementioned Exhibits 1 and 2, the instant bus program promotion is available only to thirty-two (32) categories of groups or organizations who travel to and arrive at BRC by charter bus on Sunday through Thursday after 6:00 p.m. and until 10:00 p.m.

8. As further described in the aforementioned Exhibits 1 and 2, each eligible group or organization member/bus patron over the age of 21, upon arrival at BRC, receives a cash coupon for $10 (ten dollars) and a two portion coupon which bears the same number on both portions of the coupon.

9. As further described in the aforementioned Exhibit 2, the patron retains the stub, deposits the other portion of the numbered coupon into a locked container located in the Arkansas Avenue foyer of the BRC facility. At approximately 9:30 p.m. on Sundays through Thursdays, the container holding the deposited coupon portion is unlocked and a patron is selected by BRC to draw a coupon from the container. The number on this drawn coupon portion is announced as the winning number and is posted in BRC's Cabaret Theater window. The holder

of the winning coupon stub presents the stub at the Bus Information Center for verification. The holder of the winning coupon stub must present the same within no more than one half hour.

10. As set forth in the aforementioned Exhibit 4, upon verification, the winning patron receives the cash prize of $300 (three hundred dollars) at the Coin Cage.

11. As set forth in the aforementioned Exhibit 1, BRC reimburses participating bus companies whose buses travel less than 270 miles to the casino for full transportation costs.

12. According to Assistant Casino Controller Jonathan D. Johnson, BRC permits participating bus operators travelling in excess of 270 miles to the casino to charge a fee representing the difference between the actual cost of transportation and the reimbursement provided by BRC.

13. By letter dated October 12, 1983, Robert E. Reilert, Counsel for BRC, has informed the Division that BRC has increased the subsidy such that no participating bus operators may any longer charge any fee of the eligible group or organization for transportation to BRC.

14. Regardless, however, of whether or not the bus operator charges a transportation fee of the eligible group or organization participating in the Evening Slot/Charter Bus Program promotion, the group or organization remains free to use the trip to BRC as a fundraiser and, accordingly, may charge a fee of each group or organization member who takes part in the fundraiser.

15. Investigation by the Division has revealed that since September 6, 1983 to date, at least three groups which have patricipated in the instant bus program promotional drawing for a cash prize have charged their members a fee for a ticket to travel to BRC in conjunction with the promotion. These three groups are the New Lawnside Republican Club, Development Enterprise and Uries Reef and Beef Club.

16. Pursuant to N.J.S.A. 2C:37-1(h), a lottery is defined as:

> an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value.

17. Pursuant to N.J.S.A. 2C:37-1(d), something of value is defined as:

> Any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

18. Pursuant to the Attorney General's analysis and review of the aforementioned provisions of law, as such analysis is expressed in the Formal Opinion of the Attorney General, No. 6-1983, the instant bus program promotion constitutes an illegal lottery operating under a closed participation scheme.

19. The Division has previously submitted its review and objection to the instant promotion by letter to the Commission in light of the aforementioned Formal Opinion. A true copy of said letter is attached hereto and marked as Exhibit 5.

20. The Division represents that a formal complaint on the BRC Evening Slot/Charter Bus Program promotion will be filed on or about November 16, 1983.

21. This Certification is submitted in support of the Division's request for the issuance of a Cease and Desist Order for the termination of the instant bus program promotion being conducted by BRC.

22. I certify that the statements herein made by me are true to the best of my knowledge and belief. I realize that if any statements are false I am subject to punishment.

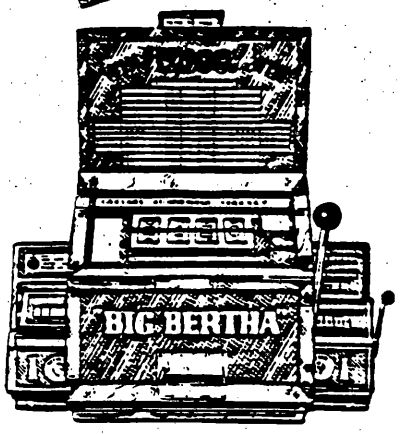
Respectfully submitted,

IRWIN I. KIMMELMAN
Attorney General of New Jersey

By Katherine A. Smith
Katherine A. Smith
Deputy Attorney General

DATED: October 31, 1983
3K2

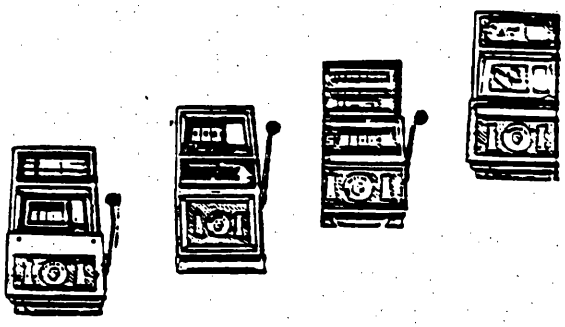
December 7, 1982



CAESARS ONLY CAESARS

HAS AN OFFER YOU

CAN NOT REFUSE!!!!



Dear Operator:

CAESARS BOARDWALK REGENCY HOTEL/CASINO is pleased to announce our all NEW EVENING SLOT/CHARTER BUS PROGRAM PACKAGE (#2)!!!!

EFFECTIVE:	December 7, 1982 through February 28, 1983
AVAILABLE:	Sunday through Thursday (to organizations stated on page #2)
ARRIVAL TIMES:	After 6:00p.m. until 10:00p.m.
PACKAGE #2 INCLUDES:	1.) FREE Bus Transportation for your organization reimbursed by CAESARS BOARDWALK REGENCY HOTEL/CASINO (under conditions stated on page #2)
****P L U S*****	2.) $10 in CASH and a COUPON for a chance to W I N a 19" COLOR TELEVISION to be given away EACH EVENING at 9:30p.m. The W I N N E R must present his/her coupon within TEN MINUTES after the drawing.

BB/bjr

Exhibit I

CAESARS BOARDWALK REGENCY
HOTEL·CASINO·ATLANTIC CITY
On the Boardwalk at Arkansas Avenue, Atlantic City, New Jersey 08401

New Evening Bus Program for Slot Players, available to the following (see term (g) below);

PROFESSIONAL WOMENS GROUPS
EASTERN STARS
SISTERHOODS
WOMENS P.T.A. GROUPS
B'NAI B'RITH/WOMEN
ROSARY GROUPS
WOMENS CHAMBER OF COMMERCE
WOMEN IN CONSTRUCTION
JR LEAGUE WOMEN
GARDEN CLUBS
WOMENS ATHLETIC CLUBS
HADASSAH GROUPS
BOWLING LEAGUES
SOCIAL GROUPS OF LARGE COMPANIES
BUSINESS CLUBS
SPORTS CLUBS
LADY OF FATIMA GROUPS

WOMENS AUXILIARY GROUPS OF:
MASONIC LODGES
KNIGHTS OF COLUMBUS
LIONS CLUBS
KIWANIS
POLICE ASSOCIATIONS
FIRE DEPARTMENTS
VETERANS CLUBS
ELKS CLUBS
MOOSE LODGE
POLITICAL ORGANIZATIONS
KNIGHTS OF PYTHIAS
ITALIAN AMERICAN CLUBS
AMERICAN LEGIONS
COUNTRY CLUBS
OTHER FRATERNAL/
SOCIAL ORGANIZATIONS

The following terms must be adhered to in order to receive any bus reimbursement from our hotel/casino.

a.) When your company places the first reservation Caesars Boardwalk Regency will send you a standard purchase order for the special evening bus package.

b.) The conditions on the purchase order must be followed to assure your company of receiving full payment.

c.) Each bus driver will receive a copy of the Load Count and Verification Form upon arrival. Please attach a copy of this form along with your company invoice when billing our hotel/ casino for reimbursement.

d.) Buses must arrive as scheduled and they are required to stay a minimum of four (4) hours.

e.) Each bus must have forty (40) or more passengers. Buses that have under forty (40) people will be reimbursed as follows; 36-39 passengers - less 20 percent, 25-35 passengers - less 40 percent and under 25 passengers - no reimbursement.

f.) Caesars Boardwalk Regency reserves the right to cancel this package at anytime. All previously booked groups will be honored

10. All the winning tickets are kept under lock and key in the office of the Director of Slot Operations.

11. Tickets that are used in the drawing are discarded after a winner has been verified.

12. Tickets that are to be issued for future dates are locked in the office of the Bus Program Manager. These tickets are distributed to the Bus Program Supervisor. The Bus Program Supervisors distribute the tickets to the Bus Greeters. Specific numbered tickets are used for each drawing, and those numbered tickets are only valid on the night they are distributed.

Attached is a copy of the Tour & Travel Profit Alert with all the rules and the amount of money to be paid for buses from specific areas.

HMO/pn

CAESARS BOARDWALK REGENCY HOTEL CASINO

MEMORANDUM

DATE: March 18, 1983

TO: Jonathan Johnson, Assistant Casino Controller

FROM: Harry M. Okin, Director of Slot Operations HMO

SUBJECT: Evening Slot/Charter Bus Program Package #2

The evening slot/charter bus program package #2 is described in the attached Profit Alert statement.

The program has been extended from February 28, 1983 through March 31, 1983 and recently has been extended again through April 28, 1983.

The drawing for the 19 inch colored television set is done in the following manner:

1. The T.V. coupon is distributed on the bus with the ten dollar coupon, one to each patron over the age of ~~18~~ 21 by the bus greeter.

2. The T.V. coupon is a two part ticket with the same number on the stub and the main portion of the ticket.

3. The stub is deposited in a locked container located in the Arkansas Ave. foyer. This container is under constant observation by a security guard posted in that area.

4. At approximately 9:30 p.m., the container with the coupons is unlocked by a Slot Department Host.

5. An impartial patron is selected to draw the winning coupon. This is observed by the security guard and the slot host.

6. The winning ticket number is announced, and the number is also posted in the Cabaret Theater window where it can be viewed in the casino.

7. The winner must present their stub at the Bus Information Center where the stub number is compared with the ticket number that was picked from the container.

8. When the winning ticket has been verified, the name and address of the winner is put on the back of the winning ticket, and the stub is attached.

9. When the winner is ready to leave on the bus, the T.V. set is put on the bus.

Exhibit 2

On the Boardwalk at Arkansas Avenue
Atlantic City, New Jersey 08401
(609) 348-4411

g.) Available only organizations listed, unless authorized by the Bus Program Manager.

h.) Origin of bus must exceed a radius of 20 miles from Caesars Boardwalk Regency Hotel/Casino.

i.) Operators can not charge their group any fee for this special evening package.

j.) All passengers must be eighteen and over in order to receive this package.

k.) All buses must be scheduled in advance and are subject to space availability.

l.) Bus operators are to inform all organizations that Caesars Boardwalk Regency Hotel/Casino is paying for their transportation cost for the special evening package.

REIMBURSEMENT RATES

Area	Amount
NEW YORK (Five Boroughs and Suburbs)	$400
NORTHERN NEW JERSEY (Union County and higher)	400
CENTRAL NEW JERSEY	400
LOWER CENTRAL NEW JERSEY (Mercer, Ocean, & Monmouth Counties)	350
PHILADELPHIA AND PENNSYLVANIA SUBURBS	350
SOUTHERN NEW JERSEY	275
MARYLAND	400
WASHINGTON, D.C.	400
DELAWARE	400

PLEASE NOTE

NO REIMBURSEMENT FEE FROM CAESARS BOARDWALK REGENCY HOTEL/CASINO WILL EXCEED $400.00

Thank you for your past cooperation, as always we look forward to be doing business with you in the future.

Sincerely yours,

CAESARS BOARDWALK REGENCY HOTEL/CASINO

Barbara Blomberg

Barbara Blomberg, Bus Program Manager

RECEIVED
AUG 31 2 55 PM '83
CASINO OPERATIONS
DIV. OF GAMING
ENFORCEMENT

State of New Jersey

CASINO CONTROL COMMISSION

PRINCETON PIKE OFFICE PARK, BUILDING NO. 5
CN-208
TRENTON, NEW JERSEY 08625
609-292-7730

ATLANTIC CITY OFFICES
TENNESSEE AVENUE AND BOARDWALK
LICENSE DIV. 609-441-3200

1300 ATLANTIC AVENUE
INSPECTION 609-441-3201
AFFIRMATIVE ACTION
AND PLANNING DIV.
609-441-3203

WALTER N. READ
CHAIRMAN

CARL ZEITZ
VICE-CHAIRMAN

JOEL R. JACOBSON
E. KENNETH BURDGE
DON M. THOMAS
COMMISSIONERS

609-292-3144

August 30, 1983

Fredric Gushin
Deputy Attorney General
Division of Gaming Enforcement
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

RE: BRC BUS PROMOTION

Dear Mr. Gushin:

Please find enclosed material received by the Commission staff relating to a promotional drawing run by Boardwalk Regency Corporation for certain bus patrons. It appears that this drawing that may be of the type dealt with in the recent formal opinion issued by the Attorney General's Office in regard to illegal lotteries.

Some of the material enclosed was received by the Commission staff earlier this year. However, I am informed by the staff of the Financial Division that no action was taken by staff concerning this matter by way of any approvals.

Very truly yours,

Patricia M. Kerins

Patricia M. Kerins
Senior Assistant Counsel

PMK/jlm
Enclosure

Exhibit 3

New Jersey Is An Equal Opportunity Employer

RECEIVED
CASINO CONTROL
COMMISSION
AUG 24 2 57 PM '83

BOARDWALK REGENCY • HOTEL • CASINO

On the Boardwalk at Arkansas Avenue
Atlantic City, New Jersey 08401
(609) 348-4411

August 22, 1983

Maureen Williamson
Supervisor
Casino Accounting & Operations Unit
Casino Control Commission
Division of Financial Evaluation & Control
3131 Princeton Pike
Princeton Pike Office Park, Building #5
CN-208
Trenton, New Jersey 08625

Dear Maureen:

Beginning September 6, 1983 through November 30, 1983, we are enhancing the promotional give away for our night bus package. Instead of a 19 inch color television, we will give a cash prize of $300.00. (Please refer to my letter to you of March 28, 1983.)

All of the same drawing rules apply, except that after the winning ticket has been verified, the patron will be accompanied by a Slot Host or, in his absence, a Slot Shift Manager to the Coin Cage. The Coin Cage Cashier will prepare a petty cash voucher reflecting date, time, description (i.e. Night Bus Prize), name and license number and attach the winning ticket stub to the petty cash voucher. After disbursing the funds to the patron, the patron will sign the petty cash voucher. The voucher will be included in the Coin Cage paperwork and filed in Accounting for future reference.

If you have any questions regarding this, please call.

Sincerely,

Jonathan D. Johnson
Assistant Casino Controller

JDJ/bb

cc: Steven Ocksrider
Harry Okin
Pete Ruchser

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-251
OAL DOCKET NO. CCC 10523-82
APP. NO. 32104-21

IN THE MATTER OF THE APPLICATION
OF LINDA M. BOWMAN FOR
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon filing of an Initial Decision by the Office of Administrative Law with the Commission on July 20, 1983, recommending that the casino employee license application of Linda M. Bowman be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on August 24, 1983, to modify the said Initial Decision and to grant the casino employee license application of Linda M. Bowman,

IT IS on this 9th day of September 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) That portion of the Initial Decision concluding that Ms. Bowman's commission of the offense of forgery, in violation of N.J.S.A. 2A:109-1, although not prosecuted, is subject to disqualification as provided in Section 86(g) of the Act, is rejected as inconsistent with the Commission's construction of Section 86 of the

Act as set forth in In the Matter of the Application of Robert A. Ferrin for Licensure as a Casino Employee, Docket No. 79-EA-207 (Commission Decision 1981). Ms. Bowman's application having been filed on or about June 25, 1981, the pertinent list of disqualifying offenses is that contained in section 86(c)(1). The Title 2C equivalent of N.J.S.A. 2A:109-1 is N.J.S.A. 2C:21-1, forgery and fraudulent practices which constitute crimes of the second and third degrees. Ms. Bowman's offense does not fall within the circumstances described by the criminal code as a third degree offense, but rather that of a crime of the fourth degree. Thus, she has not committed a statutory disqualifying offense.

(2) That portion of the Initial Decision finding that Ms. Bowman has rehabilitated herself from the disqualifying offense is rejected as unnecessary.

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Thomas N. Auriemma
THOMAS N. AURIEMMA
DEPUTY DIRECTOR

DATED: September 9, 1983

69.

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 10523-82

AGENCY DKT. NO. 82-EA-251

LINDA M. BOWMAN,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Mark Vasser, Esq., for petitioner (Vasser, Spitalnick, Bloom, Mazin & Stein, attorneys)

Edward T. Busichio, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: June 1, 1983 Decided: July 18, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Linda M. Bowman to the Casino Control Commission for licensure as a casino employee, permitting her to work in a casino as a craps dealer. The issues to be determined in this matter are as follows:

1. Whether the petitioner, with specific reference to her 1972 disorderly person's arrest, her 1973 arrest for forgery, in violation of N.J.S.A. 2A:109-1, and her conviction upon a down-graded disorderly person's charge, pursuant to N.J.S.A. 2A:170-43, her arrest in 1978 for conspiracy

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to break and enter, in violation of N.J.S.A 2A:98-1, and her arrest and conviction in 1981 for shoplifting, in violation of N.J.S.A. 2C:20-11, has established by clear and convincing evidence her reputation for good character, honesty and intergrity, within the meaning of Section 89b (2) of the Casino Control Act, as incorporated in Section 90 of the Act.

2. Whether the petitioner has established by clear and convincing evidence her financial stability, integrity and responsibility, within the meaning of Section 89b (1) of the Act, as incorporated in Section 90 of the Act.

3. Whether the petitioner, with specific reference to her arrest for the offense of forgery, in violation of N.J.S.A. 2A:109-1, and her conviction upon a plea of guilty to the down-graded charge of false information on a check, in violation of N.J.S.A. 2A:170-43, has committed or has been convicted of an offense which is an enumerated disqualifier from licensure, within the meaning of Section 86c (1) of the Act, or which indicates that licensure would be inimical to the policy of the Casino Control Act, within the meaning of Section 86c (4) of the Act, even if such conduct has not or may not be prosecuted under the criminal laws of this State, within the meaning of Section 86g of the Act.

4. Whether the petitioner, notwithstanding any possible disqualification which may exist pursuant to Section 86 of the Act, has demonstrated her rehabilitation, within the meaning of Section 90h of the Act.

PROCEDURAL HISTORY

By letter report to the Casino Control Commission, dated October 1, 1982, the Division of Gaming Enforcement recommended that the petitioner be granted a casino employee license. By letter to the petitioner, dated November 1, 1982, the Casino Control Comission advised the petitioner that there was a substantial possibility that the Commission would deny her license application and that she had a right to a hearing. The petitioner requested a hearing on her license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The petitioner is a 33-year-old resident of Scullville, New Jersey, who is married and is the mother of three children. Since August 26, 1982, the petitioner has been employed as a food server in the Greenery Restaurant at Bally's Park Place Casino Hotel, in Atlantic City, New Jersey. Letters from her supervisors, the food services coordinator and the executive chef (Exhibits P-1 through P-4) state that the petitioner is a hard-working, reliable and honest employee. In general, these letters praise the quality of petitioner's work and recommend her for advancement.

In September 1981, the petitioner successfully completed a craps dealer course at the Casino Career Institute in Atlantic City. The Division of Gaming Enforcement has raised no objection concerning the petitioner's casino ability or experience.

The petitioner was divorced from her first husband approximately ten years ago. Until recently, the petitioner received no support for her children from her former husband. On occasion, the petitioner has received public assistance and her financial situation has caused her to incur a number of debts. She presently owes approximately $2,500 to various creditors, but since obtaining her employment at Bally's Casino Hotel, the petitioner has been able to begin paying off these debts at a rate of approximately $80 per month. It is the petitioner's intention to pay off these debts at a greater rate if her income increases.

On May 20, 1972, the petitioner was charged in Galloway Township, New Jersey, with being loud and abusive, in violation of N.J.S.A. 2A:170-29, a disorderly person offense. The petitioner explained that this incident involved a neighborhood complaint, and that she was never actually arrested, nor did she appear in court. It was the petitioner's understanding that the complaint was withdrawn and the charge was dropped.

On May 1, 1973, the petitioner was arrested in Ocean City, New Jersey, and charged with forgery, in violation of N.J.S.A. 2A:109-1. Specifically, the petitioner was accused of having forged checks. She pled guilty to the down-graded charge of false information on a check in violation of N.J.S.A. 2A:170-43, and she was given a six-month suspended sentence and fined $50. The petitioner was also placed on probation for a period of six months, which she successfully completed in November 1973. During her probation period, the petitioner made restitution.

72.

Explaining how her forgery arrest occurred, the petitioner stated that she had only recently been divorced at that time, and she did not have enough money to buy Easter presents for her two young children. She then opened a checking account in the name of another person and wrote three checks on the account, to purchase Easter presents for her children. The three checks were for amounts which totaled $100. The petitioner knew that she was using a false name on the checks and that the checking account did not have sufficient funds to cover the checks.

On April 8, 1978, the petitioner was arrested in Somers Point, New Jersey, and charged with conspiracy to break and enter, in violation of N.J.S.A 2A:98-1. This charge against the petitioner was ultimately dismissed. On August 20, 1981, the petitioner was observed stealing merchandise from a supermarket in Ocean City, New Jersey. She was arrested and charged with shoplifting, in violation of N.J.S.A. 2C:20-11. The items which the petitioner took were valued at approximately $27. She was found guilty of shoplifting and was fined $100. The petitioner explained that this offense occurred when her husband had been out of work for approximately two years as a result of bypass surgery. She was also unemployed at that time, and their financial situation was desperate. The petitioner testified with candor and sincerity that she would not commit such an offense in the future, even if her financial situation again became desperate.

The petitioner testified that she is aware of the various pressures which exist for casino employees. The petitioner appreciates the casino atmosphere and she wishes to better herself and bring a better life for her children by advancing within the casino industry. To improve the quality of her family's life, the petitioner has become involved with her children in various recreational activities. She has also recently joined with her neighbors to form a neighborhood crime watch.

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

73.

CONCLUSIONS OF LAW

Pursuant to Section 90 of the Casion Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convicing evidence, his reputation for good character, honesty and integrity. By the same burden of persuasion, an applicant for a casino employee license must establish his financial stability, integrity and responsibility. Section 90 also incorporates the disqualification criteria set forth in Section 86 of the Act.

It is undisputed that the petitioner has debts which total approximately $2,500. However, even though some of her creditors have charged off these debts, it is the petitioner's intention to satisfy them. To this end, she is paying these debts off at a rate of approximately $80 per month. Such an attitude and approach is commendable, and I **CONCLUDE** that the petitioner has established by clear and convincing evidence her financial stability, integrity and responsibility, within the meaning of Section 89b(1) of the Act, as incorporated in Section 90 of the Act.

Pursuant to Section 86c of the Casino Control Act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for the offense of forgery, in violation of N.J.S.A. 2A:109-1, would be such an automatic disqualifier from licensure. There is no genuine dispute concerning the petitioner's commission of forgery as a result of her opening of a checking account in another name and the writing of checks on that account when there were not sufficient funds in the account to cover the checks. Although the petitioner was originally charged with the offense of forgery, she was convicted upon a plea of guilty to the down-graded charge of false information on a check, in violation of N.J.S.A. 2A:170-43. Thus, the petitioner has not been convicted of any automatic disqualifier from licensure. Nevertheless, Section 86g of the Casino Control Act provides that licensure shall be denied an applicant on the basis of the commission by the application of any action which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. As a result of this statutory provision, the petitioner's commission of the offense of forgery, in violation of N.J.S.A. 2A:109-1, subjects her to the possibility of disqualification from licensure.

74.

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

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

2. the nature and seriousness of the offense;

3. the circumstances under which the offense occured;

4. the date of the offense;

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

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

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

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

The petitioner's commission of a potentially disqualifying offense occurred approximately ten years ago, and eight years prior to her application to the Casino Control Commission for a casino employee license. The petitioner was only 22 years old at the time she participated in the criminal activity. Since that time, she has been arrested in 1978 for conspiracy to break and enter, and in 1981 for shoplifting. The conspiracy charge against the petitioner was dismissed. The petitioner was found guilty on the shoplifting charge and was fined $100.

The petitioner's illegal activity in 1973 and in 1981 occurred during times of serious financial stress. The dollar amounts involved were in both instances under $100. Following her conviction upon a plea of guilty to the down-graded charge of false information on a check, the petitioner successfully completed her probation, including the making of restitution.

In September 1981, the petitioner completed a 12-week course in craps dealing at the Casino Career Institute, in Atlantic City, New Jersey. Since August 26, 1982, the petitioner has been employed as a food server at Bally's Casino Hotel. Her supervisors in this position have recommended her advancement. The petitioner's sincere desire to improve herself and make a better life for her family is apparent.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has overcome her disqualification from licensure on the basis of her commission of an offense enumerated under Section 86c of the Casino Control Act, by demonstrating her rehabilitation, within the meaning of Section 90h of the Casino Control Act, by clear and convincing evidence. I further **CONCLUDE** that the petitioner has sustained her affirmative burden of establishing, by clear and convincing evidence, her good character, honesty and integrity, within the meaning of Sections 89 and 90 of the Casino Control Act.

ORDER OF DISPOSITON

It is, therefore, **ORDERED** that the application of Linda M. Bowman for a casino employee license, permitting her to work in a casino as a craps dealer, be **GRANTED.**

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

76.

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

July 18, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

July 20, 1983
DATE

Ronald L. Lukey/ekb
OFFICE OF ADMINISTRATIVE LAW

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77.

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Letter from Heico C. Bendixen, Executive Chef, dated February 26, 1983

P-2 Letter from Mark A. Neely, Food Services Coordinator, dated February 25, 1983

P-3 Letter from Craig Sims, Room Supervisor, dated May 13, 1983

P-4 Letter from Ted J. Bethas, Supervisor, dated May 23, 1983

For the respondent:

R-1 Personal History Disclosure Form

R-2 Letter of Recommendation, dated October 1, 1982

WITNESSES

For the petitioner:

Linda M. Bowman

For the respondent:

None

78.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-47
OAL DOCKET NO. CCC 4516-83
REG. NO. 34770-40

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

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on August 22, 1983, recommending that the casino hotel employee registration issued to Respondent be revoked; and the Respondent having filed exceptions to the Initial Decision; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of October 5, 1983, to affirm and adopt the said Initial Decision and to revoke the casino hotel employee registration issued to the Respondent,

IT IS on this 15th day of November 1983, ORDERED that the Initial Decision of the Office of Adminsitrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino hotel employee registration issued to the Respondent be and hereby is revoked

based upon the reasons set forth in the Initial Decision, which is incorporated herein and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 18, 1983

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form - 2, Luis A. Esquilin, filed February 6, 1982 (29 pages)

P-1 Letter to Mr. Jose Velez from Emil Neumann, April 16, 1983

R-1 City of Vineland Police Department - Arrest Report, prepared by Patrolman P. Walsh, February 15, 1971

R-2 City of Vineland Police Department - Arrest Report, January 12, 1975

R-3 Borough of Newfield Police Department - Investigation Report, prepared by Frank J. Pace, September 25, 1979 (2 pages)

R-4 Borough of Newfield Police Department - Arrest Report, September 25, 1979

R-5 The State of New Jersey v. Luis A. Esquilin, Newfield Municipal Court, Docket No. C-548, Complaint, September 25, 1979

R-6 The State of New Jersey v. Luis A. Esquilin, New Jersey Superior Court, Gloucester County Law Division — Criminal, Indictment No. 619-79, Indictment, April 3, 1980; Motion for Dismissal of Indictment, June 26, 1980; and Criminal Record of Proceedings (4 pages)

R-7 Township of Hamilton Police Department - Investigation Report, prepared by Sergeant Joseph O'Donoghue, February 15, 1982

R-8 Township of Hamilton Police Department - Arrest Report, prepared by Sergeant Joseph O'Donoghue, February 15, 1982

R-9 The State of New Jersey v. Luis A. Esquilin, Township of Hamilton Municipal Court, Docket No. C-88-82, Complaint and Judgment of Conviction

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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4516-83
AGENCY DKT. NO. 83-47

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

v.

DEBORAH A. BROWN,
Respondent.

APPEARANCES:

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

Deborah A. Brown, respondent, Pro Se

Record Closed: July 25, 1983 Decided: August 19, 1983

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

The Division of Gaming Enforcement seeks an order from the Casino Control Commission revoking the respondent's casino hotel employee registration. The Division filed a complaint with the Commission on March 4, 1983, in which it contended that Ms. Brown had been arrested and charged with forgery, a violation of N.J.S.A. 2C:21-1(a), in connection with an alleged alteration of a payroll check received by Ms. Brown from Playboy-Elsinore Associates.

New Jersey Is An Equal Opportunity Employer

In connection with its application for revocation of the casino hotel employee registration, the Division also sought an order suspending the registration pending the plenary hearing on the charges. On March 17, 1983, the Commission ordered the suspension pending the final disposition of the registration revocation proceeding or until further order of the Commission.

Ms. Brown requested a hearing on the proposed revocation and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held by telephone on July 11, 1983, and a hearing was held before Administrative Law Judge Jeff S. Masin at the Atlantic County Courthouse in Atlantic City, on July 25, 1983.

The Division's case consisted of the presentation of exhibits evidencing the arrest of Ms. Brown on December 21, 1982, in Pleasantville, the investigation report filed by the police, a photocopy of the check which had allegedly been altered, a copy of the Pleasantville Municipal Court Complaint and a letter from the Atlantic County Prosecutors Office remanding the charges for disposition in the municipal court. In addition, the parties agreed that Ms. Brown had entered a plea of guilty on April 18, 1983, to a charge of theft by deception and that the second count of the offense had been merged with the first count. As a result of her plea of guilty, Ms. Brown was fined $100 and $25 court costs, as well as $25 to be paid to the Violent Crimes Compensation Board.

The Division claims that the registration must be revoked because continued registration of Ms. Brown would be inimical to the policies of the Casino Control Act and the best interest of the operations of the casino industry.

Deborah Brown testified that she is 29 years old and lives in Pleasantville. She is separated and is the mother of two children, 14 and 5 years old. She is not employed and was last employed at Playboy, but was suspended by the Hotel when this incident occurred. That was in December 1982.

Ms. Brown presented as evidence in support of her contention that she had done nothing wrong and should not have her registration revoked a letter from William H. Bey, a friend of hers from Atlantic City. In the letter Mr. Bey, who has known Ms. Brown for the last six years, states that he has never known her to do anything illegal. He was the person who drove Ms. Brown to the bank and waited outside while she went in. He was

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approached by the police and asked if he was with Ms. Brown. He answered in the affirmative and the police directed him to drive to City Hall where they had taken Ms. Brown. He confirmed Ms. Brown's testimony that at the time she was released from police custody she had not had the opportunity to review the check. However, the police had shown the check to Mr. Bey and he agreed that it had been altered.

Mr. Bey continues to describe the circumstances which occurred when he and Ms. Brown went back to the bank the next day and concludes:

> I am positive that Ms. Brown is too intelligent to do anything as stupid as what they are trying to say.

Ms. Brown testified that she was not guilty of altering the check. She pled guilty because her attorney told her that she had no chance of winning her case. She had received the check the night before she took it to the bank and had not looked at it. She usually received a check every week and was paid on an hourly basis. Her pay varied from week to week, although it usually was approximately $200. The check in question was for less than the usual amount because she had worked less hours during that week. She received the check on December 20, and looked at the stub, but not at the check itself. The stub showed the amount of the check as $104 and change and she did not look at the check itself. She picked the check up at 7:00 at the employee's entrance. She was off that night and stuck the check in her pocketbook. She then went to a residence on Vermont Avenue in Atlantic City where she met a few friends. She was there for about two hours. The pocketbook was not with her at all times while at the Vermont Avenue address. She did not know everyone at the party. There was some drinking going on and there was some use of drugs as well, although Ms. Brown testified that she only drank and used no drugs. Ms. Brown then left and went to Rhode Island Avenue and spent just a few minutes there saying hello to some people that she knew. She then got on a bus which took her home to Pleasantville. Her children and mother were at the house. The next morning when she awoke, Mr. Bey came over to take her to the bank. She did not recall Mr. Bey being alone with the pocketbook at any time. She never looked at the check before she presented it to the teller. She became suspicious that there was a problem with the check when she saw a man in the bank going back and forth. When she asked what was wrong no one would say anything.

At the time that she pled guilty in municipal court, the judge only asked her if she was changing her plea from not guilty to guilty. She said that she was and he asked no details concerning the incident.

DISCUSSION

I have given careful consideration of the testimony of the witnesses as well as the documentary evidence produced during the hearing. Someone altered Ms. Brown's check. She insisted that she did not. Although from her testimony there may have been opportunity for others to have removed her check from her pocketbook and change the figures thereon in order to make the check appear to be a $404 check rather than a $104 check, no motive has been presented for anyone to have wanted to alter Ms. Brown's pay check. One would have to assume that somebody who altered her check either was trying to do her a "favor" or was attempting to get her into some difficulty. It seems unlikely that anyone would have gone to the trouble of changing the numbers on her paycheck. Further, there is no evidence at all that the check as issued by the Playboy-Elsinore Associates was incorrect. The pay stub, even according to Ms. Brown's testimony, read $104. The alteration of the check appears obvious and not a misprint of the number 4 instead of the number 1 by the computers.

I do not believe Ms. Brown's testimony that she did not alter the check. Given all the circumstances, I **FIND** that she is the person with the greatest opportunity and motive for having attempted to obtain more money from the bank then she had been actually paid by Playboy. The incident occurred just a few days before Christmas, and whether the attempt was motivated by a desire to have more money just before the holiday is speculative, but it does provide a further possible ground for a motive.

I **CONCLUDE** that Ms. Brown altered her pay check. Such an action is obviously a serious one and requires the imposition of a severe penalty. Since the illegal activity and the subsequent quasi-criminal conviction arose out of Ms. Brown's relationship with the casino industry, it is obvious that permitting her to continue as a registrant would be inimical to the policies of the Act and to the casino industry in that it would allow the continued registration of an individual who had violated her trust with respect to her relationship with a casino hotel employer. The Act aims at removing from contact with the industry individuals whose integrity and reliability is suspect. Ms. Brown clearly falls within that category.

84.

For the reasons set forth, I **FIND** that Ms. Brown's actions constitute activity which is inimical to the interest of the Casino Control Act and that her continued registration would be in violation of the requirements of N.J.S.A. 5:12-86(c).

As for the penalty, under the circumstances, a revocation of registration is required. Anything less than this penalty would diminish the seriousness of the offense and would not serve the best interests of the public.

The casino hotel registration of Deborah A. Brown shall be **REVOKED.** The temporary order of the Casino Control Commission revoking registration pending the outcome of proceedings shall continue in effect, pending the decision of the Casino Control Commission.

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

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

August 19, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

August 22, 1983
DATE

Bernadette T. Fiocchi
CASINO CONTROL COMMISSION

Mailed to Parties:

August 24, 1983
DATE

Ronald J. Parker /K.S.
OFFICE OF ADMINISTRATIVE LAW

sv

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EVIDENCE LIST

On behalf of petitioner:

P-1 Pleasantville Police Department Arrest Report, dated December 21, 1982

P-2 Pleasantville Police Department Investigation Report, dated December 21, 1982, with attached voluntary statement

P-3 Photocopy of Playboy-Elsinore Associates check number 316949

P-4 Pleasantville Municipal Court Complaint SL 90485

P-5 Letter of January 4, 1983, from Honorable Joseph A. Fusco, Atlantic County Prosecutor

On behalf of respondent:

R-1 Four paged letter of William H. Bey

86.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-253
OAL DOCKET NO. CCC 10672-82
APP. NO. 27879-21

IN THE MATTER OF THE APPLICATION
OF THOMAS A. CALLAHAN FOR
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on June 1, 1983, recommending that the casino employee license application of Thomas A. Callahan be granted subject upon the conditions that he (1) submit a fixed plan by which he shall make full and complete restitution [to the Meadowlands Racetrack]; and (2) submit a medical certification that he is physically able to perform the responsibilities required of a casino employee; and the Division of Gaming Enforcement having filed a response to the Initial Decision on June 30, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on July 6, 1983, to modify the said Initial Decision and to grant the casino employee license application of Thomas A. Callahan,

IT IS on this 15th day of July 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) That portion of the Initial Decision which orders that a license shall issue upon the submission by Thomas A. Callahan of a medical certificaton that he is physically able to perform the responsibilities required of a casino employee be rejected as unnecessary under the circumstances of this case.

IT IS FURTHER ORDERED that the casino employee license application of Thomas A. Callahan be and hereby is granted based upon the reasons set forth in the Initial Decision, as modified hereinbefore, which is incorporated herein by reference and made a part hereof provided, however, that no license credential shall issue until the Casino Control Commission receives a plan approved by the Division of Gaming Enforcement for restitution of the funds owed by Thomas A. Callahan to the Meadowlands Racetrack; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 15, 1983

INITIAL DECISION

OAL DKT. NO. CCC 10672-82

AGENCY DKT. NO. 82-EA-253

THOMAS A. CALLAHAN,

Applicant

v.

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

Respondent.

APPEARANCES:

Thomas A. Callahan, Pro Se

Edward P. Busichio, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: April 15, 1983 Decided: May 31, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Thomas A. Callahan, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had committed a disqualifying offense and that the applicant lacked the requisite good character, honesty and integrity.

PROCEDURAL HISTORY

Mr. Callahan filed his Personal History Disclosure Form-2 (PHDF-2) with the Commission during February 1981. By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated October 19, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter, dated November 21, 1982, the applicant requested a hearing. On November 30, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 1, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

Mr. Callahan is 38 years of age (P-15). He has been a resident of New Jersey since 1957. The applicant is married and is the father of three children, ages 18, 17 and 12. The applicant's spouse is currently licensed by the Comission and is employed as a blackjack dealer by the Golden Nugget Hotel and Casino. The applicant is a 1962 graduate of Oakcrest High School in Mays Landing, New Jersey. He has earned 28 credits at Stockton State College. During the spring of 1981, the applicant successfully completed a craps dealer course at the Atlantic Casino Training Academy.

From September 1962 to May 1964, the applicant served in the United States Army Security Agency. He earned an honorable discharge.

From May 1964 to May 1969, the applicant was employed as an office manager by Ritter Finance.

From May 1969 to September 1976, the applicant was employed as a teller by the Garden State Racetrack in Cherry Hill, the Atlantic City Race Course, and Keystone Race Track in Cornwell Heights, Pennsylvania. The applicant was licensed by the New Jersey Racing Comission and the Pennsylvania Harness Racing Commission. Also, from May 1969 to May 1975, the applicant was employed as a night dispatcher and supervisor by P. Callahan, Inc., Trucking.

From September 1976 to February 1980, the applicant was employed by the New Jersey Sports and Exposition Authority, Mutual Department, as a teller at the Meadowlands Racetrack. On or about February 14, 1980, the applicant was involved in an incident at the track which resulted in the termination of his employment.

Other than the incident at the Meadowlands Racetrack, the applicant had never been involved in any disciplinary action concerning his employment.

At the Meadowlands Racetrack, the applicant worked a $50 window. He handled approximately $80,000 to $100,000 each evening. His job commenced at 7:30 p.m. At the close of business, each teller would complete a daily worksheet. The next day the accounting department would determine the balance of the receipts. Each teller was responsible for any shortages he incurred. During 1977, the applicant had $3,000 stolen from his cash drawer. He paid back the loss at the rate of $100 per week.

In January 1980, the applicant returned to work at the start of a new season. He was assigned to a new machine which caused him some problems. These problems were an indication to the applicant that he had a physical disfunction. At this time he was also becoming progressively more fatigued, which affected his work performance.

The applicant stated that tellers frequently develop a rapport with their customers. Also, the applicant, as did other tellers, occasionally made a loan from his personal funds to a customer. The applicant stated that such practice is routine, and although it was not approved formally by the various racetracks where he had worked it was condemned.

During February 1980, the applicant was involved in an incident at the Meadowlands Racetrack regarding an advance of funds he made to a customer. A regular customer and acquaintance of the applicant, who was a large gambler (average $5,000 to $10,000 per evening), asked the applicant for a loan. The applicant did not have sufficient personal funds that evening; however, he loaned the customer approximately $1,000 from his cash drawer. The applicant anticipated that the customer would pay back the monies the next evening. However, the next evening the customer requested a further loan from the applicant. Although the applicant usually limited any loan to a customer to $1,000, he advanced this customer additional monies to a total of $3,000 from

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the cash drawer. The customer never returned to the window. The applicant then placed a personal bet of approximately $1,500 in an effort to recoup the monies he had loaned out. He stated that the tellers were not only permitted to bet, but that it was encouraged. On the third evening, the applicant was sick and tired, and became distraught at his plight. After the fifth race, the applicant recognized that he had a problem and closed his window. The applicant approached the assistant mutual manager, since the mutual manager and his supervisor were not present at the track that evening. The assistant mutual manager contacted the local police authorities who arrested the applicant. The applicant was later charged with a violation of N.J.S.A. 2C:20-3, larceny. The following day the applicant spoke with the mutual manager regarding the matter. The mutual manager purportedly informed the applicant that he would not have had him arrested and that they could have amicably resolved the matter without the applicant's being terminated from employment. However, because of the arrest and charges, the applicant was terminated from his position.

During May 1980, Mr. Callahan made arrangements with the Meadowlands Racetrack to make restitution.

The Bergen County Prosecutor's Office dropped the charges against the applicant. The applicant has never been involved in any other incident of wrongdoing.

From June to December 1980, the applicant drove a taxi. During this period he made restitution in the amount of $2,000 of the total of $4,500. The applicant stopped work because of extreme fatigue and increasing illness.

During October 1980, the applicant suffered what was later learned to be a myasthenia gravis crisis. In November 1980, the applicant was admitted to the Atlantic City Medical Center with what appeared to be respiratory problems (P-8). During he following few months, the applicant remained at home and was very weak. The applicant contacted the Meadowlands Racetrack and advised of his lack of employment and inability to make payments.

In February 1981, Mr. Callahan submitted his application for licensure to the Commission.

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Upon the completion of his course of study at the Atlantic Casino Training Academy in the spring of 1981, the applicant again became exhausted. From April to October 1981, the applicant learned that frequent rest would help him regain his strength. However, by October 1981, the applicant determined that his current medical treatment was ineffective.

On January 5, 1982, the applicant was admitted to the Garden State Community Hospital (P-9). In addition to other treatment, he underwent three exploratory operations. Upon the applicant's discharge, an accurate diagnosis of his medical condition had not been made. Thereafter, the applicant's medical condition progressively worsened.

On May 3, 1982, the applicant was admitted to the Medical College of Pennsylvania (P-10 and P-11). Ultimately his condition was diagnosed as myasthenia gravis. It was further determined that he had begun suffering fatigue symptoms four years prior thereto.

Myasthenia gravis is a neuromuscular disorder involving the transmission of nerve impulses to the voluntary muscles of the body (P-1, P-2 and P-6). The primary effect of the disease is extreme fatigue of muscle function. The disease is extremely difficult to diagnose.

During July 1982, the applicant had his thymus gland surgically removed (P-13). At this time he again contacted the Meadowlands Racetrack and advised of his then current incapacity to make restitution.

Since his surgery, Mr. Callahan's condition has improved steadily, but slowly. His prognosis is for continued slow improvement, with full recovery two years removed.

On December 29, 1982, the applicant received a favorable decision regarding his application to the Social Security Administration for disability benefits by reason of his illness (P-14).

The applicant acknowledges that he is indebted to the Meadowlands Racetrack in the amount of $2,500. He stated an intent to make full restitution upon his return to employment.

Mr. Callahan testified that there was no likelihood that he would commit such misconduct in the future. Initially, the applicant contended that there was no reasonable comparison between his employment as a teller at racetracks and his prospective employment as a dealer in a licensed casino because the Commission's regulations prohibit dealers from making loans to customers. Further, the applicant stated that he had not taken the money for his own use, that he had suffered severely for his misconduct and that he was simply not a thief. The applicant also stated that he would not seek employment until he was able to physically perform in a satisfactory manner all the functions of such a position.

Although the Division did not offer any rebuttal to the applicant's affirmative presentation, it is essential to assess the applicant's credibility. Initially, Mr. Callahan's position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during the review of the record that from my observations of the applicant's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence and my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was candid, consistent, believable, sincere and most persuasive. The applicant acknowledged fully the extent of his wrongdoing and accepted full responsibility for his misconduct. Although it was substantially evident that at the time of the incident the applicant suffered from the effects of the onset of myasthenia gravis, which may have impaired his judgment, he did not claim that his condition was the cause of his misconduct. Also, the applicant expressed a sincere intent to repay, which was supported by the fact that he has kept the Meadowlands Racetrack apprised of his condition and ability to make restitution. In the final analysis, I am persuaded to accept his testimony in all respects.

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

94.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86g of the Casino Control Act (Act) provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. The Division alleged under section 86c(1) that the applicant's conduct during February 1980 constitutes a violation of N.J.S.A. 2C:20-3, theft, and N.J.S.A. 2C:20-9, embezzlement, which are disqualifying offenses under section 86c(1) of the Act.

In pertinent part, N.J.S.A. 2C:20-3 provides as follows:

> a. Moveable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with purpose to deprive him thereof.

N.J.S.A. 2C:20-9 provides as follows:

> A person who purposely obtains or retains property upon agreement or subject to a known legal obligation to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition. An officer or employee of the government or of a financial institution is presumed: (a) to know any legal obligation relevant to his criminal liability under this section, and (b) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

Mr. Callahan's admitted conduct establishes that, although not prosecuted, he committed the requisite elements of each of the cited offenses. Further, pursuant to N.J.S.A. 2C:20-2b, the offenses are crimes of the third degree.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86g.

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

An applicant faced with the existence of a section 86 disqualifier has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

First, Mr. Callahan has applied for licensure to be employed as a dealer. He would have regular responsibilities for gaming activities and would have direct contact with patrons of the casino.

Second, the applicant's conduct in February 1980 constitutes violations of N.J.S.A. 2C:20-3, theft, and N.J.S.A. 2C:20-9, embezzlement, concerning his employment as a teller at the Meadowlands Racetrack. Under section 86c(1) of the Act, these are statutory disqualifiers. His actions were knowing and occurred while he was in a position of trust and had responsibility for substantial amounts of the racetrack's money. The offense was extremely serious.

96.

Third, Mr. Callahan's actions were not planned or premeditated. The sequence of events occurred over two evenings. On the third evening, the applicant recognized the seriousness of the situation and disclosed immediately and fully his actions to the assistant mutual manager. Further, the applicant has accepted full responsibility for his misconduct. Nevertheless, it is clear that at the time of his misconduct, the applicant was suffering the effects of the onset of myasthenia gravis, which impaired his alertness and judgment. All of these factors contributed to the applicant's conduct.

Fourth, the applicant's misconduct occurred during February 1980, three years ago.

Fifth, at the time of his offense, the applicant was 35 years of age; his misconduct was not the result of immaturity.

Sixth, the applicant's misconduct occurred only once, although over a two-day period. The applicant voluntarily ceased his misconduct and disclosed it to his supervisor. The Division's contention that the applicant committed similar misconduct on other occasions when he extended loans to customers from his own funds is without merit. Although such conduct appears to be improper, it was condoned by the various racetracks where the applicant was employed and cannot be construed to constitute a violation of the criminal laws. There was no other indication of wrongdoing of any kind.

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

Eighth, it is evident that the applicant has made substantial rehabilitative efforts. The day following his misconduct, he voluntarily disclosed his action to his employer and offered to make full restitution. The applicant acknowledges fully his wrongdoing and does not attempt to excuse it by relying upon the existence of his illness. Further, the applicant has made a sincere and substantial effort to make restitution at all times during which he has been employed. The only reason that the applicant has not made full restitution is because of his illness. The applicant possesses a sincere intent to make full restitution. Further, it was evident that at the time of the applicant's misconduct he was suffering from the effects of the onset of myasthenia gravis. The proofs establish that this illness has worsened substantially since that time. The

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applicant has undergone substantial medical treatment and appears to have a positive prognosis for a full recovery. Despite his illness, the applicant has exhibited a high degree of responsibility for all of his obligations. The applicant is pursuing all rehabilitative efforts in order to be an employable person again.

I am persuaded that the applicant has met his statutory burden to establish his rehabilitation. The applicant has established that his misconduct was an aberration in his life and that it is unlikely that it will ever recur.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under the section 89b(2) of the Act, Mr. Callahan was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of the Resorts International Hotel, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conduct during February 1980.

98.

There is no question that the applicant's misappropriation of monies belonging to his employer was serious; however, the applicant has acknowledged full responsibility for his action. Also, the applicant's misconduct is mitigated by the fact that his employer condoned the practice of tellers extending loans to customers (although not from track funds) and by reason of his illness. Further, the applicant has affirmatively demonstrated his complete rehabilitation. He has made a sincere and substantial effort to make restitution and he has a sincere intent to satisfy the remaining balance. Also, the applicant is ardently pursuing medical rehabilitation. The applicant presents no risk to the public or to the integrity of casino gaming in this State. An examination of the "whole man" clearly and convincingly establishes that Mr. Callahan is a person of good character, honesty and integrity and is entirely suitable for licensure in this State. Boardwalk Regency Corporation, supra, at 51, 52.

Nevertheless, the applicant should be required to have committed himself to a fixed plan for making restitution and should be required to submit a medical certification of his ability to perform in his licensed capacity prior to commencing same.

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

DISPOSITION

It is **ORDERED** that the application of Thomas A. Callahan for licensure as a casino employee be **GRANTED,** upon the conditions that the applicant submit a fixed plan by which he shall make full and complete restitution and submit a medical certification that he is physically able to perform the responsibilities required of a casino employee.

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

99.

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

May 31, 1983
DATE

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

Receipt Acknowledged:

June 1, 1983
DATE

Bernadette T. Frigo
CASINO CONTROL COMMISSION

Mailed to Parties:

June 3, 1983
DATE

Ronald L. Rubenfeld
OFFICE OF ADMINISTRATIVE LAW

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100.

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Letter from William A. Merlino, M.D., April 13, 1983

P-2 A brochure entitled "Help is on the Way," published by the Myasthenia Gravis Foundation (11 pages)

P-3 Letter to Edward P. Busichio, Deputy Attorney General, from Thomas A. Callahan, March 3, 1983

P-4 Letter to Thomas F. Lowe, from Thomas A. Callahan, January 11, 1983 (2 pages)

P-5 Thomas A. Callahan - Medical History Summary

P-6 A Brochure entitled "What is Myasthenia Gravis?" published by the Myasthenia Gravis Foundation, Inc. (4 pages)

P-7 Bill for Medical Services Rendered by Medical Associates, P.A., to Thomas Callahan, March 22, 1977

P-8 Atlantic City Medical Center-Discharge Summary, Thomas A. Callahan, November 27, 1980 (2 pages)

P-9 Garden State Community Hospital - Discharge Summary, Thomas A. Callahan, January 29, 1982 (2 pages)

P-10 The Medical College of Pennsylvania and Hospital - Discharge Summary, Thomas Callahan, May 13, 1982 (3 pages)

P-11 Letter to William Merlino, M.D., from Warran Katz, M.D., June 16, 1982 (2 pages)

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P-12 Letter to Warren A. Katz, M.D., from Paul L. Schraeder, M.D., August 17, 1982

P-13 Letter to Honorable Samuel J. Dentoni from Sally Purrazzella, September 29, 1982 (2 pages)

P-14 Department of Health and Human Services, Social Security Administration, In the Case of Thomas A. Callahan, Decision, December 29, 1982 (7 pages)

P-15 Personal History Disclosure Form - 2, Thomas Anthony Callahan (40 pages)

WITNESS LIST

For the Petitioner:

Thomas A. Callahan

For the respondent:

None

102.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-141

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL ORDER
v.	:	
CLARIDGE LIMITED, BRENT LUNT, CLARK COOK, JEAN ABBOTT, CARRIE CRIPPEN, LORETTA WALKER, MARK WHITMORE and JOSEPH FUSCALDO	:	

This matter having been opened to the Casino Control Commission upon the filing of a Complaint by the Division of Gaming Enforcement with the Commission on September 17, 1982, alleging various violations of N.J.S.A. 5:12-99, N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1 et seq., pertaining to accounting and internal controls; and the parties having filed with the Commission on June 6, 1983, a jointly executed Settlement Agreement which provided, in pertinent part, that Respondent, Claridge Limited, shall pay $31,000 in settlement of the Complaint and that upon payment of said fine, the Complaint shall be dismissed with prejudice as to Brent Lunt, Clark Cook, Jean Abbott, Carrie Crippen, Loretta Walker, Mark Whitmore and Joseph Fuscaldo; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of July 13, 1983, to adopt the Settlement Agreement and impose upon Claridge Limited a fine in the amount of $31,000 for the aforestated violations,

IT IS on this 14th day of JULY 1983, ORDERED that the proposed Settlement Agreement be and hereby is adopted; and

IT IS FURTHER ORDERED that Respondent Claridge Limited pay a fine in the amount of $31,000, for admitted violations of the Casino Control Act and the regulations promulgated thereunder, as stipulated to in the Settlement Agreement which is incorporated herein by reference, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that upon payment of the aforestated fine, the Complaint shall be dismissed with prejudice as to Brent Lunt, Clark Cook, Jean Abbott, Carrie Crippen, Loretta Walker, Mark Whitmore and Joseph Fuscaldo; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 14, 1983

THOMAS W. GREELISH
Acting Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: MITCHELL A. SCHWEFEL
Deputy Attorney General
(609) 984-6197

FILED
JUN - 6 1983
CASINO CONTROL COMMISSION

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.:

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Plaintiff, vs. CLARIDGE LIMITED, BRENT LUNT, CLARK COOK, JEAN ABBOTT, CARRIE CRIPPEN, LORETTA WALKER, MARK WHITMORE and JOSEPH FUSCALDO, Respondents.	Civil Action SETTLEMENT AGREEMENT

The complaints involved in the above-captioned matter having been discussed by and among the parties involved, Mitchell A. Schwefel, Deputy Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, and Nicholas Ribis, Esquire, of the law office of Ribis, McCluskey and Ruane,

Attorney for Respondents, Claridge Limited, Brent Lunt, Clark Cook, Jean Abbott, Carrie Crippen, Loretta Walker, Mark Whitmore and Joseph Fuscaldo, and an agreement having been reached with regard to the settlement of said complaints, it is hereby consented to and agreed by and among the parties that:

1. WHEREAS, Respondent Claridge Limited, acknowledges that on or about July 21, 1981 through on or about September 8, 1982 it did not accurately reconcile its bank accounts with the Guarantee Bank of New Jersey and the First National State Bank of South Jersey; and

2. WHEREAS, Respondent Claridge Limited, acknowledges that counterchecks deposited for collection in the Guarantee Bank of New Jersey and the First National State Bank of South Jersey had not been properly identified or properly accounted for; and

3. WHEREAS, Respondent Claridge Limited, acknowledges that counterchecks issued for casino gaming credit and deposited into the Guarantee Bank of New Jersey and the First National State Bank of South Jersey were considered cleared by Respondent fourteen (14) days from the date of said counterchecks deposit when Respondent knew or should have known that said counterchecks took a substantially longer period of time greater than fourteen (14) days to clear the bank; and

4. WHEREAS, Respondent Claridge Limited, acknowledges that dishonored checks returned by the Guarantee Bank of New Jersey and the First National State Bank of South Jersey were received directly by the collection department and upon receipt of said dishonored checks the collection manager or her subordinate prepared the return check log; and

5. WHEREAS, Respondent Claridge Limited, acknowledges that its collection department received directly from the Guarantee Bank of New Jersey and the First National State Bank of South Jersey bank advices indicating the disposition of certain counterchecks and received directly from credit patrons payments or substitutions of certain counterchecks; and

6. WHEREAS, Respondent Claridge Limited acknowledges that its actions, or inactions, as described above, failed to comply with provisions of the Casino Control Act contained in N.J.S.A. 5:12-99 and N.J.S.A. 5:12-101 and the regulations promulgated thereunder relating to accounting and internal controls, N.J.A.C. 19:45-1 et seq., including procedures for the collection of gaming credit, procedures for recording checks returned to the casino after deposit, and the proper separation of functions; and

7. WHEREAS, Respondent Claridge Limited, in response to the Division's complaint, has cooperated with the Division in complying with the remedial requests set forth in the Complaint

and has performed the following procedures:

(1) As of October 31, 1982, Respondent has performed a complete accounting of all outstanding and/or returned counterchecks which were deposited into its bank accounts at the Guarantee Bank of New Jersey and the First National Bank of South Jersey.

(2) As of November, Respondent has performed a physical inventory of the assets it maintains in the marker bank and has reconciled said inventory to the marker bank closeout sheet.

(3) Respondent has performed a reconciliation of its bank accounts with the Guarantee Bank of New Jersey and the First National State Bank of South Jersey, including a schedule of all adjusting journal entries to the general ledger cash account and detail supporting the adjustments made.

(4) Respondent has prepared a Detailed Plan for procedures to ensure the proper segregation of the following casino-related functions:

a) Physical custody of all checks;

b) Direct receipt of mail-in payments, consolidations and substitutions of

. 108.

counterchecks and/or personal checks regardless of whether the instruments are current, returned or in the process of collection;

c) Direct receipt and flow of documentation from the banks with which Claridge deals relating to transactions affecting the deposit and return of counterchecks.

d) Direct receipt of deposited checks returned by the bank(s);

e) Preparation of the return check log;

f) Summarization of accounting records and recordation of the transactions in the daily revenue journal; and

8. WHEREAS, the violations of the regulations and statutes noted above constituted a departure from the required controls and raised questions concerning Respondent Claridge Limited's ability to properly account for its assets; and

9. WHEREAS, the Division of Gaming Enforcement has, as a result of an audit conducted prior to the filing of the complaint and a review of those remedial steps performed by Respondent Claridge Limited, found no evidence of fraud or improper diversion of casino revenue; and

10. WHEREAS the parties recognize the need to comply with the Casino Control Commission Regulations and Claridge Limited has agreed to comply with the aforementioned statutory and regulatory provisions in the future, recognizing the significance of any departures therefrom; therefore

It is hereby agreed, consented and stipulated by the parties hereto that:

1. The Division of Gaming Enforcement and Claridge Limited 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. Claridge Limited shall pay to the Casino Control Commission a $31,000.00 fine in settlement of this matter and as a full and complete resolution of the allegations contained within the complaint; and

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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 Brent Lunt, Clark Cook, Jean Abbott, Carrie Crippen, Loretta Walker, Mark Whitmore and Joseph Fuscaldo.

By _____
Mitchell A. Schweitzer
Deputy Attorney General

Counsel for Plaintiff
State of New Jersey
Department of Law and
Public Safety, Division
of Gaming Enforcement

By _____
Nicholas L. Ribis, Esq.

Counsel for Respondents
Claridge Limited, Brent
Lunt, Clark Cook, Jean
Abbott, Carrie Crippen,
Loretta Walker, Mark
Whitmore and Joseph
Fuscaldo

By _____
Arlene Groch, Esquire
Counsel for Respondent,
Jean Abbot.

(K/3-10)

111.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-151
OAL DOCKET NO. CCC 8440-82
APP. NO. 28762-22

IN THE MATTER OF THE APPLICATION
OF KENNETH M. DALE FOR
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on April 28, 1983, recommending that the casino employee license application of Kenneth M. Dale be denied; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on June 1, 1983, to modify the said Initial Decision and to deny the casino employee license application of Kenneth M. Dale,

IT IS on this 12th day of July 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) Those portions of the Initial Decision which indicate that theft offenses must be of the second degree to constitute statutory disqualifying offenses are rejected as inaccurate. Consistent with N.J.S.A. 5:12-86(c)(1), theft and related offenses which constitute crimes of the second and third degrees are automatic disqualifying offenses.

IT IS FURTHER ORDERED that the casino employee license application of Kenneth M. Dale be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified herein, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Kenneth M. Dale is not eligible to apply for or obtain any license, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the denial of the application of Kenneth M. Dale for a casino employee license shall have no present effect on his registration as a casino hotel employee; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Kenneth M. Dale, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 12, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8440-82

AGENCY DKT. NO. 82-EA-151

KENNETH M. DALE,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Kenneth M. Dale, Pro Se

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

Record Closed: March 14, 1983 Decided: April 28, 1983

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

The Division of Gaming Enforcement objected to the application of Kenneth Dale for licensure as a casino employee (maintenance and cleaning). Mr. Dale requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

Mr. Dale is a 29-year-old man with a fairly lengthly arrest and conviction record. The Division contends that these arrests and convictions prevent Mr. Dale from establishing the good character, honesty and integrity required by N.J.S.A. 5:12-89b(2). The Division further contends that two of the convictions require automatic disqualification by virtue of N.J.S.A. 5:12-86c. None of the facts are contested.

New Jersey Is An Equal Opportunity Employer

On December 19, 1971, at the age of 18, Mr. Dale drove the vehicle used in a burglary. He was convicted of burglary, N.J.S.A. 2C:18-2, larceny, N.J.S.A. 2C:20-3, receiving stolen goods, N.J.S.A. 2C:20-7, and conspiracy N.J.S.A. 2C:5-2. There is no evidence in the record concerning the value of the goods stolen. Therefore, there is no way to grade the offense as one that is higher than the third degree. The Division contends that burglary constitutes an automatic disqualifier. However, N.J.S.A. 5:12-86c(1) refers only to burglary "which constitutes a crime of the second degree." Without any further evidence, it is impossible to grade this offense. Therefore, the Division has not established that it is an automatic disqualifier.

On May 7, 1975, Mr. Dale committed simple and aggravated assault, N.J.S.A. 2C:12-1a and b. He was angered by a car that he felt came close to running him down as he crossed the street. He kicked the car and engaged the driver in a fight. He was convicted of having "numchucks" with him, although he denies this.

On September 27, 1975, he committed trespass, N.J.S.A. 2A:170-31, assault and battery, N.J.S.A. 2A:170-26, escape and eluding police, N.J.S.A. 2A:104-6, and molesting and interfering with a police officer, N.J.S.A. 2A:170-29. This incident occurred when Mr. Dale arrived home after a long absence, unaware that his mother was no longer living in the family house. When Mr. Dale entered the house, he found people there who were strangers to him and forcibly evicted them. When he was seated in the patrol car, someone opened the rear door and he bolted from the car and attempted to escape.

On December 27, 1975, Mr. Dale committed burglary, N.J.S.A. 2C:18-2, criminal trespass, N.J.S.A. 2C:18-3, criminal attempt, N.J.S.A. 2C:5-1, and resisting arrest, N.J.S.A. 2C:29-2. He had broken into a pharmacy in the evening and was about to locate the cash register when he heard police cars approaching. He looked out the window and saw a policeman with a gun drawn. He jumped out the window and began to run down the street, at which time he was shot in the leg by a police officer, and apprehended. The Division contends that this incident gave rise to a conviction that is on the list of automatic disqualifiers. However, the burglary was not done with a weapon and the theft was not successful; nothing was actually taken. Therefore, neither the burglary nor the theft constitutes a crime in the second degree, which is necessary for those offenses to

become automatic disqualifiers, N.J.S.A. 5:12-86c(1). The Division argues that the conviction of criminal attempt is a disqualifier, but that is so only where the offense attempted would have been a disqualifier. There is no way to know how much Mr. Dale might have succeeded in stealing had he not been stopped by the police. If he had completed the crime and escaped with less than $500, it would not have been an automatic disqualifier. Therefore, because he escaped with nothing, the attempt at theft cannot be considered an automatic disqualifier.

On September 7, 1978, Mr. Dale committed breaking, entering and larceny, N.J.S.A. 2A:94-1 and N.J.S.A. 2A:119-2. He had broken into a luncheonette and stolen $140 in cash and coins. Another charge of possession of burglary tools and attempted breaking and entering, arising out of an incident on May 13, 1978, was dismissed as part of the plea bargaining process. Mr. Dale was sentenced to serve nine months in the county jail and to attend an alcohol rehabilitation center.

Most of the foregoing offenses were committed while Mr. Dale was under the influence of alcohol. He was convicted twice, on September 18, 1978 and August 5, 1979, of public consumption of alcohol in violation of a local ordinance.

Thus, a series of offenses stretching over an eight-year period create a very strong inference that Mr. Dale simply does not possess the required good character, honesty and integrity. In fairness to Mr. Dale, it may be true that he has turned a corner in his life and has begun the long road of rehabilitation. He has not had an offense since 1979. He was granted an early discharge from probation (P-2). He was a responsible employee for the Atlantic County Supported Work Program (P-3). He attended and completed a vocational class in building maintenance at the Atlantic County Area Vocational Technical School (P-4). He was a responsible employee of the Allied Maintenance Corporation for over a year (P-5). He regularly reported for counseling with a drug and alcohol counselor, who felt, as of October 4, 1979, that Mr. Dale had solved his alcohol problem (P-9).

Nevertheless, in light of the lengthly number of serious convictions over an extended period of time, it is simply not possible to find, by clear and convincing evidence, that Mr. Dale is now a man of good character, honesty and integrity. More time is needed.

For the foregoing reasons, the application of Kenneth M. Dale for licensure as a casino employee (maintenance and cleaning) 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.

April 28, 1983
DATE

Norman D. Smith
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

April 28, 1983
DATE

Christina E. Weaver
CASINO CONTROL COMMISSION

Mailed to Parties:

May 5, 1983
DATE

Ronald L. Packer/sc
OFFICE OF ADMINISTRATIVE LAW

ij

WITNESSES

As set forth in transcript.

EXHIBITS

As set forth in transcript.

118.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-94
OAL DOCKET NO. CCC 8747-82
REGISTRATON NO. 19637-40

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

Complainant,

v.

CLEMISTINE DENSON,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on May 23, 1983, recommending that the casino hotel employee registration held by Clemistine Denson be revoked; and the Respondent having filed exceptions to the Initial Decision on June 15, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on July 20, 1983, to modify the said Initial Decision and to revoke the casino hotel employee registration held by Clemistine Denson,

IT IS on this 22nd day of July 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) That portion of the Initial Decision which finds that the Respondent has failed to demonstrate her good character, honesty and integrity be and hereby is rejected as unnecessary pursuant to N.J.S.A. 5:12-91(b), as amended, L. 1981, c. 503, §12, effective February 15, 1982.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Clemistine Denson be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified herein, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Clemistine Denson is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless she obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Clemistine Denson, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 22, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
MAY 25 1983
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 8747-82
AGENCY DKT. NO. 82-94

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Petitioner
v.
CLEMISTINE DENSON,
Respondent.

APPEARANCES:

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

John H. Fitzgerald, Esq., for the respondent (Cape-Atlantic Legal Services, Inc.)

Record Closed: April 7, 1983 Decided: May 23, 1983

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

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Clemistine Denson, respondent. The Division alleges that Ms. Denson was convicted of violations of 18 U.S.C. § 656 and § 2, embezzlement and aiding and abetting, in the conduct of her employment 121.

by the Atlantic National Bank, for which the Division seeks revocation of Ms. Denson's hotel employee registration, pursuant to section 129 of the Casino Control Act (Act). The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on August 10, 1982. By letter dated September 10, 1982, the respondent requested a hearing. On September 15, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 2, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

Ms. Denson is 44 years of age (J-1). She has resided in the Atlantic City area since November 1975. She relocated from Winston-Salem, North Carolina, when she separated herself from her husband due to physical abuse. Ms. Denson is the mother of five children, one of which, an 18-year-old daughter, resides with her. The respondent also has a four-year-old grandchild residing with her.

From 1957 until recently, the respondent has been employed primarily as a cook. From February 1976 to March 1977, the respondent was employed by Harry Scott in Somers Point as a cook and housekeeper. For the period from March 30 to early September in 1977, 1978, 1979, 1980 and 1981, the respondent was employed as a part-time cook by the Flapjack's on Boardwalk Restaurant.

From April 1979 to February 1980, the respondent was employed by the Atlantic National Bank as a teller. She received three weeks of training at the commencement of her employment. Her employment was terminated for cause.

From July to November 1979, the respondent was involved in misconduct in her position as a teller at the bank. More specifically, she embezzled approximately $6,750 from various statement savings accounts of the banks' customers. During

November 1979, the respondent was transferred from her position as a teller to a bookkeeping position at a different branch of the bank. During February 1980, the respondent was questioned by a bank security officer regarding the purported embezzlement. Although she first denied the charge, she later admitted her misconduct. On March 6, 1980, the respondent was questioned regarding the matter by the Federal Bureau of Investigation. The respondent voluntarily waived her Miranda rights, admitted her criminal conduct and signed a statement to that effect.

On May 5, 1980, a criminal complaint was made against the respondent (P-2 and P-3), charging her with violations of 18 U.S.C. § 656 and § 2 in that she:

> knowingly and willfully embezzled, abstract, purloin and misapply money, funds and credits of said bank and which were entrusted to the care and custody of said bank, in the amount of approximately $6,750 and at the time of said act the Atlantic National Bank was insured by the FDIC.

On October 24, 1980, the respondent entered a guilty plea to the charges (P-4). The court suspended the imposition of a custodial sentence, placed the respondent on probation for three years, with supervision, and imposed the condition of full and complete restitution.

The respondent has satisfied the reporting criteria of her probationary status (J-1). In addition, she has made restitution in an amount of $140, the last payment was made on February 9, 1982. The respondent believes that if she has not made restitution by the end of her probationary period, her probation will be extended for an additional three years.

From April to June 1980, the applicant was employed by Service Master in a housekeeping capacity. Part of her responsibilites was to clean the slot machines at Resorts International Hotel and Casino, Inc. The respondent left the position because she did not like the work.

From August 1980 to August 1981, the applicant was employed by the Sands Hotel and Casino as a cook. She left that position for an offer of employment at the Tropicana Hotel and Casino. The respondent's immediate supervisor at the Sands had secured employment as a chef at the Tropicana and had hired her to work for him commencing in early September 1981. However, the respondent broke her foot and was

not able to return to work until December 1981. At that time, her former supervisor was no longer employed by the Tropicana and his replacement did not hire the respondent.

In July 1982, the respondent was employed by the Playboy Hotel and Casino for a four-week period. Although she was a registrant, the respondent completed and filed an additional Personal History Disclosure Form-4 (R-2). Upon learning of the Division's action against her existing registration, Playboy terminated the respondent's employment. The respondent has remained unemployed to this date.

Ms. Denson described the circumstances underlying her embezzlement of the funds from the bank. Preliminarily, beginning in February 1976 the applicant began to live with a Frank Wigfall. The relationship continued for three years. However, the respondent's daughter did not get along well with Mr. Wigfall. The respondent and Mr. Wigfall separated during June 1979. This separation caused her to be very upset. The respondent began to consume a substantial quantity of alcoholic beverages. She had never done this before. This drinking made the respondent physically ill and had a negative effect upon her work. While she was working on a busy evening in July 1979, the respondent made a $2,000 error. More specifically, the respondent gave a customer an additional $2,000 when she cashed a check. The respondent did not report the incident to the bank, because another person had been fired two days earlier as a result of a $500 error, even though the money had been recovered. The respondent was able to hide her error by falsely balancing her daily statement. Within a few days after the error, the respondent withdrew money from a customer's statement savings account. The respondent accomplished this by forging the customer's signature on a withdrawal slip. The respondent selected a customer who had a substantial balance in his account. The respondent took the money to a casino and gambled it in an attempt to win enough money to cover the $2,000 error and the withdrawal. The respondent intended to replenish the accounts with her winnings. She had won at the casino before. However, the respondent's gambling efforts were unsuccessful. Nevertheless, she continued to withdraw money from various customers' accounts and continued to gamble unsuccessfully at the casinos. She also continued to drink. After she was transferred to a bookkeeping position, her prior actions were discovered by tracing the withdrawals to her teller number.

The respondent further testified that she regularly attends church. Also, the respondent has been a volunteer for the Eastern Service Workers, which distributes items to the poor.

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The respondent expressed remorse for her misconduct and stated that she intends to make restitution in full. However, her efforts to make restitution have been impaired by her lack of employment. The respondent is looking to a favorable resolution of these proceedings as a means of seeking employment.

The respondent also testified that she has ceased the consumption of large amounts of alcoholic beverages. However, she does drink socially.

In response to Question no. 6 on her initial PHDF-4, the respondent did not set forth her employment by the bank, although the question called for such information (P-1). The respondent stated that she listed only employment which was favorable to her, and that she knew that the bank employment was not favorable and would impair any opportunities for employment. However, the respondent stated that she intended to disclose this employment when she got her license. The respondent understood that the license application form was completed under oath and that her responses were to be truthful.

Similarly, in response to Question no. 6 on her second PHDF-4, the respondent also did not disclose her employment at the bank (R-2). Further, the respondent stated that she had been employed by Flapjack's from July 1977 to August 1981 and at the Ritz Hotel from July 1977 to September 1980. However, the same person operated both establishments, and the respondent worked at the Ritz only on a substitute-type basis. Essentially, both positions were the same employment.

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that Ms. Denson's conduct constitutes a violation of

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sections 86c(1) and section 86c(4) of the Act, and, accordingly, establishes that she no longer possesses the requisite degree of good character, honesty and integrity required for registration, under section 89b(2) of the Act. Although the respondent acknowledges her misconduct, she contends that she maintains the requisite degree of good character, honesty and integrity by means of her rehabilitation, pursuant to section 91d of the Act.

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's conviction of violations of 18 U.S.C. § 656 and § 2, constitutes a violation of N.J.S.A. 2C:20-3a, theft by unlawful taking or disposition.

There was no dispute that Ms. Denson took monies from customer accounts at the bank which were not returned. This constitutes a violation of N.J.S.A. 2C:20-3a. Further, pursuant to N.J.S.A. 2C:20-2b(2)(a), the theft of monies in excess of $500 qualifies the offense as a crime of the third degree. Such an offense is an automatic disqualifier under section 86c(1).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conviction of violations of 18 U.S.C. § 656 and § 2 disqualifies her from being a registrant, pursuant to section 86c(1) of the Act.

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

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

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> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

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

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

The Division has raised nothing other than the applicant's conviction to establish that continued registration would be inimical to the Act. However, the inimicality of the misconduct has been established by the conclusion that the conviction is a per se disqualifier under section 86c(1) of the Act. Therefore, section 86c(4) does not apply. There was no charge that the applicant had committed any other act which would render her continued registration to be inimical to the Act.

I **CONCLUDE** that the Division has not established that the continued registration of the applicant would be inimical to the policies of the Act, pursuant to section 86c(4).

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

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

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

First, Ms. Denson is registered as a hotel employee and intends to seek employment as a cook or in another similar position. As such, she would not have any responsibilities for actual gaming activities, nor would she have substantial contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial contact with patrons of the casino.

Second, the applicant was convicted of violations of 18 U.S.C. § 656 and § 2, embezzlement and aiding and abetting an embezzlement. Under section 86c(1) of the

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Act, these are statutory disqualifiers. The respondent's actions were knowing, purposeful and planned. Further, at the time the respondent committed the acts, she was in a position of trust and had responsibility for substantial amounts of money of others, which was held by her employer in a fiduciary capacity. Nevertheless, the respondent has successfully argued that the duties and responsibilities she had as a teller are not directly comparable to those of a cook. Of course, other positions the respondent could hold as a registrant have duties and responsibilities which are substantially similar to those of a bank teller. Therefore, the offense was extremely serious.

Third, the respondent portrayed a depressing scenario of events which preceded her misconduct. More specifically, she and her boyfriend had separated and she had begun heavy consumption of alcoholic beverages. Thereafter, the applicant committed a $2,000 error in the performance of her duties. This error was not reported to her supervisors because of her fear of being fired. Subsequently, in an attempt to cure the shortfall, the respondent committed the thefts. However, the sequence of events preceding the admitted commission of criminal conduct does not logically lead to that end. In the first instance, although the respondent may have had a legitimate fear of being fired if she reported the error as stated, it is clear that had she reported the incident immediately, the means were available to identify the person who purportedly received the monies, which, in turn, could have been retrieved. The respondent did not chose this course of action. Again, although I understand a fear of being fired, such a fear should have been overcome by the option of nondisclosure and ultimately criminal conduct. Further, the respondent's criminal conduct occurred over a five-month period, during which time she unlawfully took $6,750 in excess of the $2,000 error. This misconduct also included various acts of forgery. The underlying circumstances described by the respondent do not excuse or mitigate her misconduct to any degree, rather the opposite is true. Assuming that the respondent did not wish to disclose the $2,000 error, she had other noncriminal means available to her to replenish the shortfall. She had her earnings as a bank employee and from her part-time job as a cook. The respondent's explanation that she took the money and gambled it in order to win enough funds to replenish the shortfall was illogical, as it is well-known that the odds on successful gambling are virtually nonexistent. It was also evident that the respondent only ceased committing thefts because of her position transfer. Also, she only admitted her misconduct because she was caught. Such actions do not support the respondent's exculpatory explanation for her conduct.

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Fourth, the respondent committed the offense from July 1979 to November 1979, approximately three and one-half years ago. However, she did not admit her misconduct until she was confronted during February 1980.

Fifth, at the time of the offense, respondent was 40 years of age; her misconduct was not the result of immaturity.

Sixth, the respondent's misconduct, although it lead to one criminal charge, was not isolated. Her misconduct included the commission of a series of thefts over an extended period of time. Also, the respondent only ceased her misconduct because she was transferred to a different position, which eliminated the opportunity for further thefts.

Seventh, there were no social conditions which contributed to the offense. The personal and emotional stress described by the respondent has already been discussed.

Eighth, the applicant has demonstrated some rehabilitation. She admitted her misconduct and pled guilty to the charges. Further, she has satisfied the reporting requirements of her probation. The respondent has also made restitution in the amount of $140 of the $6,750 taken. It is apparent that the probation office has tolerated the lack of restitution because of the respondent's unemployment. However, the respondent was employed at the Sands for a period of ten months following her conviction and was employed as a cook on a part-time basis during the summer of 1981. Therefore, it is apparent that the respondent's efforts to make restitution have been minimal at best. The applicant testified that she needed employment in order to make restitution. However, I reject the proposition that the casino industry is the respondent's best opportunity for employment as justification for continuation of her registration. The respondent offered no evidence of any employment search. Also, the respondent attempted to attribute her misconduct, in part, to excessive consumption of alcoholic beverages. The respondent testified that she did not drink prior to June 1979. However, the respondent admitted that she had not stopped consuming alcoholic beverages nor had she sought counseling, rather she only reduced the level of her consumption. Aside from the satisfaction of the reporting requirements of her probation, the only evidence of rehabilitation was the nonrecurrence of such misconduct.

I am not persuaded that the respondent has met her statutory burden to establish her rehabilitation. Although the respondent expressed remorse for her misconduct and accepted, for the most part, responsibility for her actions, she has not made a significant effort to satisfy her obligation of restitution, nor has she demonstrated a willingness to disclose fully her misconduct when necessary. More specifically, in response to Question No. 6 on her PHDF-4 filed with the Commission on September 12, 1980, the applicant did not disclose her employment at the bank. The respondent conceded that the omission was purposeful, but that she intended to so disclose upon successful employment. She did not. Similarly, the respondent did not disclose her employment at the bank in response to Question no. 6 on her PHDF-4 filed with the Commission on July 22, 1982. The respondent stated that she was embarrassed by her conviction and did not want her family to know of her misconduct. This is clearly understandable. However, this explanation is not consistent with the respondent's failure to disclose the employment on the two PHDF-4's, which she knew would be filed with the Commission. Therefore, I am not persuaded to believe that the respondent has accepted fully her responsibility for her misconduct.

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

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

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

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Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra at 2.

The inability of the respondent to establish her rehabilitation from her recent criminal conduct, precludes her ability to show that she possesses the degree of good character, honesty and integrity required to maintain her registration. In addition, it was evident that the respondent's misconduct was knowing, intentional and premeditated. The respondent's explanation of the circumstances underlying her misconduct was not persuasive and did not serve to mitigate the seriousness of her actions. Accordingly, it is clear that the respondent has failed to maintain the requisite degree of good character, honesty and integrity.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that she possesses the requisite degree of good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2).

(E) PENALTY

Sections 129 and 130 of the Act provide for various penalties and or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's registration. Given the fact that the respondent does not possess the qualifications for licensure and there being no mitigating factors, the respondent's registration must be revoked. I so **CONCLUDE.**

DISPOSITION

It is **ORDERED** that the hotel employee registration (registration no. 19637-40) held by Clemistine Denson be **REVOKED.**

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

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

May 23, 1983
DATE

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

Receipt Acknowledged:

May 25, 1983
DATE

Bernadette T. Friesen
CASINO CONTROL COMMISSION

Mailed to Parties:

June 1, 1983
DATE

Ronald L. Parker/sh
OFFICE OF ADMINISTRATIVE LAW

fms/e

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Letter to Dick Wilson from Peter J. Straup, March 22, 1983

P-1 Personal History Disclosure Form-4, Clemistine J. Denson, filed September 12, 1980 (9 pages)

P-2 United States of America v. Clemistine Denson, United States District Court for the District of New Jersey, Magistrate's Docket No. 80-0045M01, Complaint, May 5, 1980 (2 pages)

P-3 United States of America v. Clemistine I. Denson, United States District Court for the District of New Jersey, Criminal Docket No. 80-00340, Accusation

P-4 United States of America v. Clemistine I. Denson, United States District Court for the District of New Jersey, Docket No. CR. 80-00340, Judgment and Probation Order, October 24, 1980

R-1 Letter from Reverend Isaac S. Cole, April 5, 1983

R-2 Personal History Disclosure Form-4, Clemistine J. Denson, filed July 22, 1982 (6 pages)

WITNESS LIST

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Clemistine Denson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-278
OAL DOCKET NO. CCC 129-83
APP. NO. 40487-22

APPLICATION OF LUIS A. ESQUILIN
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision on October 19, 1983, recommending that the application of Luis A. Esquilin for a casino employee license be granted; and no exceptions or objections having been filed by either party; and the Commission having considered the entire record in this matter and having resolved at its public meeting of November 30, 1983, to affirm and adopt the initial decision and grant the casino employee license application of Luis A. Esquilin,

IT IS on this 6th day of December 1983, ORDERED that the initial decision filed by the Office of Administrative Law be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of Luis A. Esquilin for a casino employee license be and hereby is granted based upon the reasons set forth in the initial decision which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: December 6, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0129-83

AGENCY DKT. NO. 82-EA-278

LUIS A. ESQUILIN,

Applicant

v.

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

Respondent.

APPEARANCES:

Jose B. Velez, Esq., for the applicant (Reuss & Cavagnaro, attorneys)

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

Record Closed: September 1, 1983 Decided: October 17, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Luis A. Esquilin, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant failed to disclose information material to licensure and lacked the requisite good character, honesty and integrity.

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PROCEDURAL HISTORY

Mr. Esquilin filed his Personal History Disclosure Form - 2 (PHDF-2) with the Commission on February 6, 1982. By letter dated December 23, 1982, the Commission advised the applicant that, based upon information received in a report from the Division, dated November 30, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter dated December 30, 1982, the applicant requested a hearing. On January 4, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 30, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Esquilin is 46 years of age (J-1). He was born in Puerto Rico. Mr. Esquilin completed the ninth grade in Puerto Rico. The applicant can read and understand some English, but he gets confused. He cannot write English. The applicant testified with the aid of an experienced and well-qualified interpreter. The applicant was married on December 28, 1958, and is the father of two children, ages 23 and 21. From 1958 to 1968, the applicant was employed as an electrician by John Davis, Inc., of Santurce, Puerto Rico. The applicant relocated to the United States in 1966 at the age of 21. He has resided in Vineland since that time.

From 1968 to 1979, the applicant was employed as a machine operator by Shield Alloy, Corp., in Newfield, New Jersey.

The applicant was involved in an incident on February 13, 1971, which led to his arrest on February 15, 1971, by the City of Vineland Police Department (R-1). In a complaint signed by his wife he was charged with assault and battery. The applicant was released on bail posted by his sister-in-law. The charges were dismissed with the concurrence of Mrs. Esquilin.

The applicant was arrested on January 12, 1975, by the City of Vineland Police Department (R-2). The applicant was charged with violations of N.J.S.A. 2A:111-2, obtaining unemployment checks under false pretenses, concerning checks purportedly received by the applicant during March and April 1972. The charges were downgraded to alleged violations of N.J.S.A. 2A:170-43, obtaining a valuable thing from state, municipality, charitable organization or association by false statement, a disorderly persons offense. The applicant pled guilty and was ordered to make restitution, but was not fined. The applicant stated that he made restitution in full.

At 5:00 a.m. on September 25, 1979, the applicant was arrested by the Newfield Borough Police Department at his place of employment, Shield Alloy Corporation (R-3 and R-4). The applicant was charged with a violation of N.J.S.A. 2C:20-3, theft of a metal alloy with a value of $265. More specifically, based upon information provided to the police by Louis Magliocco, an employee of Shield Alloy, the police were called to the facility. The police directed the applicant to open the trunk of his automobile. The applicant responded that he had lost the key to the trunk and requested permission to go to his residence to obtain a spare key. The police escorted the applicant to his residence, where he obtained a spare key. When the applicant opened his trunk, a brown paper bag was observed which contained the alloy material. Upon discovery of the material, the applicant fell to the ground and began to cry. The applicant was arrested, charged and released on his own recognizance (R-5). He was subsequently indicted on the charge (R-6). However, on June 9, 1980, the court granted a motion to suppress the evidence. Thereafter on June 26, 1980, the indictment was dismissed upon motion of the prosecutor. The incident resulted in the applicant's loss of employment at Shield Alloy.

Since August 26, 1981, the applicant has been employed by the Claridge Hotel and Casino in a maintenance and cleaning capacity and has held a casino hotel employee registration. In this capacity, the applicant is responsible to fix, clean and maintain the facility housing the hotel and casino. The applicant has received one warning for lateness. The applicant has received all regular raises on a scheduled basis.

140.

On February 6, 1982, the applicant filed his PHDF-2 with the Commission (J-1). Because of his inability to fully comprehend English and his inability to write in English, the applicant was aided in the completion of his PHDF-2 by his daughter-in-law, Stella Esquilin. Stella Esquilin translated each question to the applicant and wrote on the form the answers he provided. Although Stella Esquilin's name was not disclosed on page 24 as an interpreter, it is apparent that the applicant necessarily had the aid of another individual. In response to question number 46, the applicant responded that he had not been arrested, charged or otherwise prosecuted for any alleged violations of the criminal law.

At approximately 1:25 a.m. on February 15, 1982, the applicant was arrested by the Hamilton Township Police Department (Atlantic County) in an area adjacent to a Cumberland Farms store on Route 40 (R-7 and R-8). The applicant was charged with a violation of N.J.S.A. 2C:20-3, theft of three large metal food racks with a value under $500, which were found in his pickup truck. The applicant was released on his own recognizance. On March 16, 1982, the applicant was found guilty of the charge in the Hamilton Township Municipal Court, and was fined $125 and $25 court costs (R-9).

On October 18, 1982, a Division investigator, Sergeant David Chippendale of the New Jersey State Police, conducted a telephonic interview with the applicant. Because of the language difficulties, the applicant's cousin, Benjamin Nunez, acted an an interpreter. During the course of the interview, the applicant did not disclose any of his arrests and related charges until after specific details of the incidents were called to his attention.

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

(B) DISPUTED FACTS

In dispute were the reasons for the applicant's failure to disclose his criminal record and his good character, honesty and integrity.

141.

The Division established that the applicant did not disclose his criminal record on his PHDF-2, nor did the applicant disclose his criminal record during the telephonic interview with a Division investigator until confronted with details of each incident. However, the applicant described the various factors which led to his nondisclosure.

First, the applicant testified that he believed an arrest meant that a police officer would come to his house, place him in handcuffs and take him to jail, where he would be locked up, and that he would have to go to court.

Second, although the applicant conceded that he had been arrested in 1971, the charges had been dismissed, and the applicant had forgotten about the incident because he had had no further problems with his wife.

Third, with regard to the incidents in 1975 and 1979, the applicant contended that he had not been arrested because he had not been handcuffed, no bail had been posted and he was not placed in jail. With regard to the January 12, 1975 incident, the police report indicated that bail was set and that the applicant was released upon the posting of $50 bail (R-2). Nevertheless, the applicant was adamant in his position that no bail had been posted.

Fourth, the incident of February 15, 1982, occurred subsequent to the applicant's filing of his PHDF-2 with the Commission.

Also significant are the circumstances under which the PHDF-2 was completed and the circumstances surrounding the telephone interview. Although the applicant did not disclose that he had enlisted the aid of a third party at the time he completed his PHDF-2, it was readily apparent that he could not have completed the form otherwise. Given the lack of the applicant's communication skills in the English language, it is virtually impossible to hold him responsible for the deficiencies in information on the application form. Although the applicant must be the responsible individual and be held accountable for the information disclosed or not disclosed, the degree of responsibility, at least in this instance, must be mitigated according to the applicant's lack of sufficient communication skills.

142.

Similarly, the telephone interview was complicated substantially by the applicant's inability to communicate in English with any degree of reliability. Although the investigator and the applicant both sought the aid of an interpreter, it is not possible now to determine whether the investigator's questions were reasonably translated to the applicant. Mr. Nunez testified that he did not translate word for word the questions asked by the investigator. Telephonic interviews are fraught with confusion under favorable circumstances; but, in the subject instance, the communication difficulties not only with the applicant but also with the interpreter virtually nullify the significance of the failures to disclose.

Also significant was Mr. Esquilin's credibility as a witness. Initially, Mr. Esquilin's position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during the review of the record that, from my observations of the applicant's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence and my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was believable, sincere and persuasive. I am persuaded to accept his testimony.

The applicant produced Reverend Jose Velez, pastor of the Iglesia Pentecostal Rehoboth Church to testify on his behalf. Reverend Velez has known the applicant for two years as an active member in the church. The witness was of the opinion that the applicant was one hundred percent honest and a person of his word.

The applicant also produced a letter from Emil Neumann, chief engineer of the Claridge (P-1). Mr. Neumann related that the applicant's work performance during the past one and one-half years has been outstanding and that the applicant is a loyal and honest employee.

The applicant also described the circumstances underlying the various incidents. Although he did not describe the circumstances that led to his arrest in 1971 in detail, it is apparent that there was a reconciliation and that there has been no repetition of the charged misconduct.

With regard to the charges of obtaining unemployment checks under false pretenses, the applicant indicated that there was confusion regarding his return to work and continued receipt of benefits. Nevertheless, the applicant pled guilty and made restitution. Again, the misconduct has not been repeated.

The charges made on September 25, 1979 were dismissed. Further, the applicant denied that he had committed the offense. The applicant stated that he had had his keys and watch stolen from him while at work approximately one week before the incident. This theft purportedly occurred while the applicant showered. The applicant stated that he had reported the loss to Mr. Magliocco, the same individual who had identified the applicant to the police as having committed the theft. The applicant carried an extra key for the door and ignition of his vehicle, but not an extra key for the glove compartment and trunk.

With regard to the incident of February 15, 1982, the applicant testified that it was his practice to pick up junk metal and sell it for "gas" money. There was apparently no dispute that the applicant was arrested at the time he was taking metal food racks which were discovered outside of a closed and locked store.

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

1. The applicant understood an arrest to mean being taken into custody by police authorities, handcuffed, incarcerated and required to appear in court.

2. The applicant failed to disclose his arrest in 1971 on his PHDF-2 because he forgot about the incident. This was reasonable.

3. The applicant failed to disclose his arrest of January 12, 1975 and September 25, 1979, on his PHDF-2, because he did not believe that he had been placed under arrest. This explanation was reasonable.

4. The applicant failed to disclose his arrests during a telephonic interview with a Division investigator because he had forgotten about them or did not believe that he had been placed under arrest. This was reasonable.

144.

5. The applicant lacked sufficient communication skills in the English language to complete his PHDF-2 alone. Therefore, the applicant did not have the means available to verify the written responses to the questions asked.

6. The telephonic interview with the applicant by the Division investigator was permeated with confusion because of the applicant's lack of sufficient communicative skills and the fact that the interpreter did not accurately translate each question as asked.

7. The applicant's testimony was believable and persuasive.

8. The applicant enjoys a favorable reputation for good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission succinctly described the purposes for the inclusion of Section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning) OAL DKT. CCC 1276-79 (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. 5:12-80(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 (January 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (December 6, 1979), modified, Casino Control Commission, 79-EA-9 (June 30, 1980) at 3; In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission, 80-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. Material includes both positive and negative information. Section 86b penalizes the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse a failure to disclose or the provision of misleading statements by an applicant, which are not the result of ignorance or inadvertence, would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

146.

The applicant argued that the nondisclosure of his criminal record was excusable because of his ignorance of the English language, which caused him to rely upon third parties, who may have contributed to the confusion, and because either he forgot about an incident or had a reasonable belief that he had not been arrested. 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 failed 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. Nevertheless, the circumstances present in this matter are unique.

Although it was apparent that Mr. Esquilin may have forgotten about one of the incidents and that he had some basis for believing that he had not been placed under arrest at other times, the essential reason for his failure to disclose his criminal record was his lack of communication skills in the English language. This necessitated that Mr. Esquilin seek out the aid of third parties when he completed his PHDF-2 and for purposes of his telephonic interview with a Division investigator. The applicant had no means to verify the accuracy of the interpretation of the questions read to him by his daughter-in-law or the accuracy and truthfulness of the answers which she placed on the PHDF-2. Similarly, it was apparent that Mr. Nunez did not accurately translate to the applicant the questions read to him by the Division investigator. Under such circumstances, the applicant cannot be held strictly accountable for the deficiencies in the information provided to the Division. Ideally, the applicant might have enlisted the aid of a professional translater or someone else better able to assist him during his communication with the Division. The fact that he did not is not surprising. The nondisclosures were clearly a result of ignorance and inadvertence. Under the circumstances, if the applicant were to be held strictly accountable for the nondisclosures, an injustice would occur.

I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the applicant failed to disclose his criminal record to the extent that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86b.

147.

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

Under section 89b(2) of the Act, Mr. Esquilin was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of the Resorts International Hotel, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's purported nondisclsoure of his criminal record and the circumstances underlying his convictions.

Mr. Esquilin has applied for licensure as a casino employee in a maintenance and cleaning capacity. He has held a casino hotel employee registration, and has been so employed by the Claridge for the past two years and has earned a most favorable employment record. In the capacity for which he seeks licensure, the applicant would not have any direct or indirect responsibilities for gaming activities, although he would work in the area of gaming activities. The applicant's purported misconduct only involves two convictions for minor offenses. In each the applicant has complied with the penalty imposed by the court. Further, the other incidents for which the applicant was charged would not have involved a statutory disqualifying offense if he had been convicted. The only purported act of violence occurred in 1971 and has not been repeated. Further, although there were several alleged incidents of misconduct, they do not appear to be related. Also, the circumstances underlying the two convictions do not appear to be serious. Therefore, the applicant presents little, if any, risk to the public or to the

integrity of casino gaming in this State. The positive elements in the applicant's presentation more than outweigh the negative factors. I am persuaded that the applicant has made a sufficient showing of his qualifications for licensure.

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

DISPOSITION

It is **ORDERED** that the application of LUIS A. ESQUILIN for licensure as a casino employee be **GRANTED.**

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

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

October 17, 1983
DATE

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

Receipt Acknowledged:

October 19, 1983
DATE

Bernadette J Fragen
CASINO CONTROL COMMISSION

Mailed to Parties:

October 21, 1983
DATE

Ronald L. Parker/jeb
OFFICE OF ADMINISTRATIVE LAW

ij/ee

150.

WITNESS LIST

FOR THE APPLICANT:

Luis A. Esquilin

Benjamin Nunez

Reverend Jose Velez

FOR THE RESPONDENT:

David Chippendale

Edward P. Quirk

INTERPRETER:

Carmen Claudio

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-EA-6
OAL DOCKET NO. CCC 976-83
APP. NO. 40697-21

IN THE MATTER OF THE APPLICATION OF GREGORY P. FIORE FOR LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law with the Commission on August 15, 1983, recommending that the casino employee license application of Gregory P. Fiore be granted; and neither party having filed exceptions; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 21, 1983, to affirm and adopt the said initial decision and to grant the casino employee license application of Gregory P. Fiore,

IT IS on this 22nd day of September 1983, 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 Gregory P. Fiore 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 Gregory P. Fiore and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 22, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 976-83

AGENCY DKT. NO. 83-EA-6

GREGORY FIORE,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Charles Eckel, Esq., for petitioner

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

Record Closed: July 1, 1983 Decided: August 15, 1983

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

The Division of Gaming Enforcement objected to the application of Gregory P. Fiore to the Casino Control Commission for licensure as a casino employee (blackjack dealer). Mr. Fiore 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 bases its objections on Mr. Fiore's arrest and conviction record. Both counsel stipulated that the narrative in the Division's letter of January 3, 1982, accurately sets forth that record. The stipulation does not extend to the truth of the

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charges contained in the indictments that do not result in convictions. The following is the appropriate excerpt from that letter:

> This applicant was arrested three times in March of 1981 for multiple criminal violations. He was arrested March 7, 1981 by Hamilton Township Police for burglary and theft. He was arrested again on March 7, 1981 for burglary by Egg Harbor Police, and was arrested again on March 9, 1981 for burglary by Northfield Police. As a result of three arrests, the applicant was indicted by the Atlantic County Grand Jury in four separate indictments.
>
> In one indictment, the applicant was indicted for one count of conspiracy to commit theft, two counts of theft of property valued at $500 or more, one count of theft of property valued at less than $500, three counts of conspiracy to commit burglary, and three counts of burglary. As a result of a plea bargain, all counts of this indictment were dismissed.
>
> In a second indictment, the applicant was indicted for conspiracy to commit burglary, burglary and theft by unlawful taking of property valued in excess of $500. As a result of a plea bargain, he pled guilty to burglary; the remaining counts were dismissed. He was sentenced to two years probation, conditioned upon performance of 16 hours per month community service, and fined $1,000, payable at the rate of $10 per week. He was also required to pay $25 to the Victim's Crime Board.
>
> In a third indictment, the applicant was indicted for two counts of conspiracy to commit burglary, two counts of burglary, one count of conspiracy to commit theft, one count of theft of property valued in excess of $500, and one count of wreckless tampering causing loss of property having a value of $500. As a result of a plea bargain, the applicant pleaded guilty to one count of conspiracy to commit burglary, and one count of wreckless tampering. He was sentenced to two years probation to run concurrent with his previous sentence, and required to make payments of $50 to Victims of Crime Compensation Board.
>
> In a fourth indictment, the applicant was indicted for conspiracy to commit theft and theft of a .22 caliber rifle. As a result of a plea bargain, the applicant pled guilty to theft of a .22 caliber rifle. He was sentenced to two years probation, concurrent with his other sentences, and required to pay $25 to the Violent Crime Commission.
>
> The applicant was convicted of a disqualifying offense, theft of a firearm, N.J.S.A. 2C:20-2(b)(2)(b). His other crimes, while not disqualifiers, reflect adversely upon his character. The Division, therefore, objects to his licensure.

Thus, the only real issue in this case is whether Mr. Fiore has established his rehabilitation by clear and convincing evidence, pursuant to N.J.S.A. 5:12-90(h). The evidence concerns itself with ostensible reasons for Mr. Fiore's trouble with the law, and his attempts at rehabilitating himself.

Mr. Fiore was raised on a farm of over 100 acres. His mother is a Jehovah's Witness and raised him in strict accordance to the tenets of that religion. His only friends were children who lived on the neighboring farms. Sometime before 1977, his mother left the household and lived nearby. Mr. Fiore stayed on the farm with his father. Mr. Fiore's father was more liberal in his outlook than Mr. Fiore's mother. The father and son shared a strong and close relationship. In 1977, his father died. In 1978, the farm was sold and Mr. Fiore and his mother moved into a condominium in Mays Landing. He was then 16 years old and beginning to have "minor juvenile problems" as described by Sergeant Joseph O'Donoghue of the Hamilton Township Police Department.

In late 1980, Mr. Fiore's mother made temporary arrangements to live in Philadelphia with relatives so she could take a computer course. Mr. Fiore, then 18 years old, was left alone in the condominium in Mays Landing. About that time, a neighbor's son, two years older than Mr. Fiore, moved back into his parents' home after spending five years in correctional institutions. He soon moved into Mr. Fiore's home and paid rent to Mr. Fiore's mother, who was still in Philadelphia. The two quickly became friends. Each of the offenses for which Mr. Fiore was charged was instigated by his new-found friend. Eventually, his friend was arrested and the shared condominium was searched by police. Mr. Fiore, in a state of guilt and panic, volunteered his complicity in the criminal offenses. All of the offenses were committed in the early months of 1981.

Counsel for Mr. Fiore argues that the offenses were aberrations and out of character for Mr. Fiore, who had been a high school basketball star. It is further argued that Mr. Fiore's subsequent separation from his friend has been a major step in petitioner's rehabilitation. It is true that petitioner's mother, his uncle and his girlfriend have all taken personal interest in his rehabilitation. I find the frequent visits by his uncle to have been especially helpful in setting a proper role model for Mr. Fiore. The uncle, mother and girlfriend all testified before me and appeared to be very sincere and devoted people. Mr. Fiore should count himself fortunate in this regard.

156.

His probation officer expressed her opinion, in her testimony before me, that Mr. Fiore has been rehabilitated. During the initial months of his probation, he was apparently disrespectful to a supervising police officer for whom he was performing community service. The officer made an unreasonable request that Mr. Fiore wash some police cars during a snow storm. Nevertheless, unreasonable or not, Mr. Fiore displayed a certain amount of immaturity. He requested a new community service assignment and the request was honored. He was then fortunate enough to come under the supervision of Charles Bell, Atlantic County Department of Social Services, who supervised a youth detention center. There, Mr. Fiore found purpose in coaching youngsters, 16 and under, in sports and driving their parents to and from a visitor's center in a county van. He took well to this activity and volunteered to serve extra hours so that the 400-hour community service requirement could be completed earlier. He impressed Mr. Bell with his trustworthiness and responsibility so much that Mr. Bell would hire him to work in that department. Mr. Fiore's probation was terminated early by the Superior Court at the urging of the county probation department. Sergeant Joseph O'Donoghue, the juvenile officer of Hamilton Township, has known Mr. Fiore since the latter's early juvenile problems. Sergeant O'Donoghue is of the opinion that Mr. Fiore has been completely rehabilitated.

Mr. Fiore also testified before me and appeared to be sincere and respectful.

I am faced with a series of serious criminal conduct, engaged in only two years ago. Ordinarily, I would like more than two years to have passed to demonstrate satisfactorily rehabilitation. However, the offenses were committed at a time when Mr. Fiore was at the height of adolescent rebellion, without any strong parental guidance, under the urging of a slightly older friend. Mr. Fiore now understands that those acts were wrong and he deeply regrets them. His mother has returned home to reinstate her relationship. His uncle has taken a personal interest by visiting frequently and acting as a role model. His girlfriend, who attends college and hopes to go to law school, has also devoted much time and emotional energy to encouraging his rehabilitation. His probation officer, an assistant director of youth services, and a police officer in his community are all of the opinion that he has completely rehabilitated himself. There is also a letter from the State of New Jersey attesting to Mr. Fiore's good character, honesty and integrity (P-1).

157.

For all of these reasons, it appears to me that Mr. Fiore has demonstrated by clear and convincing evidence his rehabilitation. For the same reasons, he has demonstrated his good character, honesty and integrity as he now appears before me and the community.

Therefore, it is hereby **ORDERED** that a casino employee license for blackjack dealer be issued to Mr. Fiore.

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 15, 1983
DATE

Norman D. Smith
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Aug 17, 1983
DATE

Elizabeth Lopez, CS
OFFICE OF ADMINISTRATIVE LAW

fms/ee

158.

WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

159.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-EA-15
OAL DOCKET NO. 00953-82
APP. NO. 20136-21

IN THE MATTER OF THE APPLICATION
OF EULA MAE GIBBONS FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on November 22, 1982, recommending that the casino employee license application of Eula Mae Gibbons be denied based upon her failure to disclose a 1977 conviction for welfare fraud in violation of N.J.S.A. 2A:111-2, as required by N.J.S.A. 5:12-86(b), notwithstanding the favorable finding that she had rehabilitated herself from the otherwise disqualifying conviction; and Eula Mae Gibbons having filed exceptions to the Initial Decision on December 15, 1982; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of January 11, 1983, to reject the Initial Decision and to grant the casino employee license application of Eula Mae Gibbons; and it appearing that an order reflecting the Commission's determination of January 11, 1983, not having heretofore been entered,

IT IS on this 31st day of October 1983, ORDERED that certain findings and conclusions of law contained in the Initial Decision of the Office of Administrative Law in this matter be and hereby are rejected as follows:

(1) Eula Mae Gibbons intentionally failed to disclose her 1977 conviction for welfare fraud contrary to N.J.S.A. 2A:111-2 in response to question 46 of the Personal History Disclosure Form for licensure as required pursuant to N.J.S.A. 5:12-86(b).

(2) The casino employee application of Eula Mae Gibbons be denied.

IT IS FURTHER ORDERED that the casino employee license application of Eula Mae Gibbons be and hereby is granted based upon the following Commission findings:

(1) Eula Mae Gibbons's explanation for her failure to disclose her criminal record was credible;

(2) Ms. Gibbons did not with intent or conscious disregard of the regulatory process fail to disclose information pertaining to her criminal record; and

(3) There being no basis for objection other than the nondisclosure which has been found by this Commission to be unintentional, Eula Mae Gibbons has demonstrated her qualifications for licensure.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 21, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 953-82

AGENCY DKT. NO. 82-EA-15

EULA MAE GIBBONS,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

John Fitzgerald, Esq. for petitioner

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

Record Closed October 6, 1982 Decided November 19, 1982

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

Eula Mae Gibbons has applied to the Casino Control Commission for licensure as a casino employee (security guard). The Division of Gaming Enforcement objected to licensure of the petitioner in a letter to the Commission dated December 8, 1981. In its letter, the Division pointed out two possible bases for denial of the license. These ultimately became issues in the Prehearing Order issued on August 11, 1982, following a prehearing conference held in the Office of Administrative Law before Administrative Law Judge Jeff S. Masin. A hearing on the matter was held before Judge Masin at the Absecon Municipal Court on October 6, 1982. For the reasons expressed below, I **CONCLUDE** that the petitioner's license application must be denied.

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The Prehearing Order notes the following issues:

A. Does the applicant's alleged conviction for welfare fraud in 1977, a violation of N.J.S.A. 2A:111-2, constitute a statutory disqualifier under the terms of the Casino Control Act, N.J.S.A. 5:12-86(c)(2)?

B. Did the applicant fail to disclose information concerning the above conviction, which information was material to licensure, in violation of N.J.S.A. 5:12-86(b)?

In addition to the above, which were raised in the Division's letter of December 8, the following issue was added at a prehearing conference:

C. Has the applicant demonstrated that she has rehabilitated herself from the adverse affects of the aforesaid conviction, as permitted by N.J.S.A. 52:12-91(h)?

At the hearing, the conviction entered against the petitioner in 1977 was not at issue. The judgment of conviction was entered into evidence and it discloses that Ms. Gibbons entered a plea of guilty to the first count of indictment 84-76-S-3 and was sentenced on March 28, 1977, to a term of 60 days in the Atlantic County Jail with the stipulation that she serve 12 days and be given credit for 1 day previously confined; the balance of the sentence was suspended, and the petitioner was placed on 5 years' probation (4 of which were nonreporting). The petitioner was further ordered to make restitution of $4,935.

Evidence entered also indicates that the sentencing judge, Honorable Robert Neustadter, issued an order in August 1979 excusing Ms. Gibbons from paying the remainder of her restitution "due to hardship of a physical and economic nature." The probation was also terminated at that time.

It is, further, not disputed that the respondent did not disclose in her Personal History Disclosure Form that she had been convicted of welfare fraud. In answer to question no. 46, which requested information about prior convictions, the respondent indicated "does not apply." The Personal History Disclosure Form was filed with the Casino Commission on or about April 16, 1980.

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In connection with the circumstances leading to the conviction for welfare fraud, Ms. Gibbons testified that she had been on welfare since 1959 and had received support from her husband, from whom she had been separated since 1955, from that time on, with interruptions, up to about 1971. At that time, the support ceased for a period about which Ms. Gibbons was uncertain. She testified that she had reported the receipt of support payments to welfare beginning in 1959 and until the payments stopped. Welfare was aware that her husband had stopped paying her. When he began to pay again, she did not report the change in her income to welfare. She "assumed that they knew" but did nothing to inform them herself. She was aware that she had to report the renewed receipt of support but did not. When asked why she had not, she indicated that she was behind in her bills and was trying to catch up. She received about four years of support payments without reporting the receipt thereof. Eventually someone called welfare and advised them that she was receiving payments, and she, ultimately, was indicted and convicted for welfare fraud and was ordered to make restitution. The requirement for restitution was ultimately waived and she was aware of the waiver.

In connection with the failure to disclose the conviction, Ms. Gibbons testified that she had been putting applications into various casinos and had put one in at Bally's prior to its opening. She had been listing her conviction on these applications and when she was interviewed at Bally's, she informed the interviewer that the judge had waived the restitution and terminated the probation. She explained that the gentlemen told her that she did not have to put the conviction on the application. She also testified that she had paid $3.25 to someone at the County Clerk's office in Mays Landing on the understanding that such payment would remove the criminal matter from the books. While it is unclear exactly what Ms. Gibbons was told and exactly by whom, she did produce a receipt for $3.25 which apparently came from the Clerk's office in Mays Landing and which, in fact, was a discharge of an ROR bail which had been posted by Ms. Gibbons. The $3.25 was paid on July 12, 1977. When shown this receipt at the hearing, Ms. Gibbons was unable to explain exactly what it was but said that she thought it was to "clear the books" and thought that she had no criminal record. As a result of her understanding, she filled out a new application at Bally's and then when she filled out a Personal History Disclosure Form for the Commission, she did not list the conviction. Ms. Gibbons testified that she was unfamiliar with the term expungement and had never heard the word before.

Since Ms. Gibbons' troubles began with welfare in 1974, she has held several jobs, originally baby-sitting for working mothers and, ultimately, becoming a security

officer at Narco, a narcotics rehabilitation center in Atlantic City. At that position, she was responsible for assuring that the building was secure and for conducting strip searches and searches of belongings brought into the facility by individuals returning thereto. In 1980, the respondent became employed by Service Master and she swept casino floors. She did so while on a temporary license and worked at Resorts International for about a year and a half. She then became a school crossing guard. A letter from her supervisor speaking favorably about her work in that position was introduced in evidence as P-4.

Ms. Gibbons testified that a friend had filled out the form for her, although, of course, she had reviewed and signed it.

The only other witness presented at the hearing was Diane Bozarth. Ms. Bozarth is a counselor at private clinics and has known the petitioner since 1972, when she was a social worker at the Atlantic City Medical Center and came in contact with the petitioner through Ms. Gibbons' daughter. They became friendly and have stayed in touch. Ms. Bozarth was aware of the petitioner's problems with welfare.

The witness testified that she later became the Executive Director of the Atlantic City Y. Ms. Gibbons did volunteer work for the Y, including phone duty and chaperoning of dances. She was not paid for this work, which was carried on at random approximately three times a month. Ms. Bozarth testified that she found Ms. Gibbons to be helpful and understanding and to have a very good reputation for honesty. Both Ms. Gibbons and Ms. Bozarth testified that the petitioner has worked with senior citizens.

DISCUSSION

The evidence before me indicates that the petitioner ran afoul of welfare because of her failure to report income which she knew she had the obligation to report. She has been convicted for that crime and has paid her debt to society, to the extent that she has served time in jail and has paid a small amount of restitution. The remainder of the restitution was waived by Judge Neustadter, and neither this court nor anyone else can look behind the order of the Superior Court waiving the restitution to see why the entire debt was not repaid. Obviously, the judge felt that the economic and medical reasons were sufficient to relieve Ms. Gibbons of this responsibility.

Ms. Gibbons' activities since 1977 would appear to indicate that to the best of her ability, she has rehabilitated herself from the effects of the criminal conviction. She has worked in the community and has held employment. She has avoided any further problems with the law. Given the nature of the conviction, the circumstances under which it arose, the long period of time during which Ms. Gibbons received welfare without any apparent problem with the authorities, and her activities since the conviction, I **CONCLUDE** that she has rehabilitated herself. However, there is a further issue which must be considered and which I **FIND** to be disturbing.

The explanation provided by Ms. Gibbons for her failure to disclose her conviction seems difficult to believe. It is hard to imagine that any sensible person would believe that the payment of $3.25 would eliminate a criminal conviction for an offense which involved fraud and the receipt of over $4,000 in benefits to which she was not entitled. Although Ms. Gibbons may not have fully understood the reason for paying the $3.25, I cannot believe that she really felt that her conviction had been erased from the books.

The petitioner's explanation that she began to eliminate the listing of the conviction from her applications, including her Personal History Disclosure Form, following a discussion with an interviewer at Bally's, is also difficult to believe. While some uninformed interviewer might have mistakenly thought that an expungement had occurred, it seems strange that anyone would have told Ms. Gibbons not to list a conviction only because she informed the interviewer that the judge had waived restitution and the probation had been terminated. No one with any understanding of the process would feel that the criminal conviction was somehow not to be listed because the probation had been terminated. Ms. Gibbons was totally unfamiliar with the term expungement and it seems unlikely that an interviewer would have thought that such an expungement had occurred. I am unconvinced by the petitioner's story and decline to believe it.

I **CONCLUDE** that the petitioner knowingly and willfully failed to list her conviction on her Personal History Disclosure Form. Although it may be that she was only fearful that the conviction would somehow damage her chances of obtaining a license, and while I am convinced that she did not intend to hide from the agency anything which would ultimately have been fatal to her application given her rehabilitation, I am constrained to **CONCLUDE** that she has violated N.J.S.A. 5:12-86(b) and that, therefore, her application must be **DENIED.** It is so **ORDERED.**

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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 19, 1982
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

Nov. 22, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

November 24, 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

fms

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EVIDENCE LIST

On Behalf of the Respondent, Division of Gaming Enforcement:

R-1 Indictment No. 84-76-S-3

R-2 Judgment of Conviction

On Behalf of the Petitioner:

P-1 Letter of August 10, 1979 from Probation Office of the County of Atlantic

P-3 ROR Discharge

P-4 Letter from Sergeant Edward Klimecke, dated October 1, 1982

P-5 Personal History Disclosure Form-2

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-34

STATE OF NEW JERSEY, DEPARTMENT OF :	
LAW & PUBLIC SAFETY, DIVISION OF :	
GAMING ENFORCEMENT, :	FINAL ORDER
Complainant, :	
v. :	
GNAC CORPORATION t/a GOLDEN NUGGET, :	
Respondent. :	

This matter having been opened to the New Jersey Casino Control Commission (Commission) upon the complaint of the Division of Gaming Enforcement (DGE) filed with the Commission on May 21, 1982, alleging that GNAC Corp., t/a Golden Nugget (GNAC) mailed promotional announcements advertising the availability of double odds in the game of craps in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b); and GNAC having filed a notice of defense with the Commission on June 18, 1982, in which it admitted that the mailings occurred; and a prehearing conference, having been conducted on March 9, 1983, E. Kenneth Burdge, Hearing Commissioner presiding, and the parties having agreed that no facts were in dispute and that the record contained

sufficient information to enable the Commission to resolve the complaint; and the Commission having considered the entire record of these proceedings resolved at its public meeting of September 21, 1983, that GNAC had advertised information about odds in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b), and further resolved to assess a civil penalty of $25,000 for this violation,

IT IS on this 5th day of October 1983 ORDERED that respondent GNAC be and hereby is found to have violated N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b) based upon the following:

1. Mailgrams dated April 13, 1982, were sent to various preferred patrons advising of, among other things, the availability of double odds in the game of craps;

2. Such mailings were advertisements;

3. N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b) prohibit casinos from, among other things, advertising information about odds;

4. Double odds is a supplemental amount wagered after a point has been established for a "Pass", "Don't Pass", "Come" and "Don't Come" bet; otherwise known as the taking and laying of odds. Double odds gives the patron the benefit of true odds on the supplemental amount wagered. The effect of double odds is to both increase overall the payout odds on the available bets and reduce the house advantage. N.J.A.C. 19:47-1.2 through 1.6;

5. The above-referenced mailings constituted advertising information about odds in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19.51-1.3(b); and

IT IS FURTHER ORDERED that respondent GNAC pay a civil penalty in the amount of $25,000 for violations of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b), which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 5, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 9251-82
AGENCY DOCKET NO. 82-EA-194
APPLICATION NO. 31221-21

IN THE MATTER OF THE APPLICATION OF CLARENCE K. GOLDSBY, JR. FOR LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been brought before the New Jersey Casino Control Commission upon the filing of an initial decision by tne Office of Administrative Law on June 13, 1983, recommending that the casino employee license application of Clarence K. Goldsby, Jr. be denied; and Clarence K. Goldsby, Jr. having filed exceptions to the initial decision on June 30, 1983; and the Commission having considered the entire record of the proceedings and having resolved at its public meeting of August 24, 1983, to reject certain findings and conclusions of law contained in the initial decision and to grant tne casino employee license application of Clarence K. Goldsby, Jr.,

IT IS ON THIS 20th day of October 1983, ORDERED that the following conclusions of law contained in the initial decision be and hereby are rejected:

1. The conclusion that Mr. Goldsby's 1976 conviction of voluntary manslaughter, contrary to N.J.S.A. 2C:11-4, is an automatic disqualifying offense pursuant to N.J.S.A. 5:12-86(g) is rejected as unnecessary in view of the previous finding that the conviction is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1).

2. The conclusion that Mr. Goldsby has not shown by clear and convincing evidence his rehabilitation pursuant to N.J.S.A. 5:12-90(h) from his disqualifying offense be and hereby is rejected.

3. The conclusion that the petitioner has not demonstrated his good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89(b) [and -90b] be and hereby is rejected.

4. That portion of the Initial Decision which Orders that the application of Clarence K. Goldsby, Jr. be denied be and hereby is rejected.

IT IS FURTHER ORDERED that the casino employee license application of Clarence K. Goldsby, Jr. be and hereby is granted for the reasons stated on the record of the public meeting of August 24, 1983, and in the Final Commission Decision to be issued forthwith by the Commission which are incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Clarence K. Goldsby, Jr., the Division of Gaming Enforcement and the authorized agents of the operating casino hotels within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 20, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-194
OAL DOCKET NO. CCC 9251-82
APP. NO. 31221-21

IN THE MATTER OF THE APPLICATION OF CLARENCE K. GOLDSBY, JR. FOR LICENSURE AS A CASINO EMPLOYEE	:	FINAL COMMISSION DECISION

John L. Grossman, Esq. appeared for the Applicant.

Lee D. Gottesman, Deputy Attorney General, appeared for the Division of Gaming Enforcement.

This matter arises out of the application of Clarence K. Goldsby, Jr. ("applicant") for licensure as a casino employee (security officer) pursuant to sections 7 and 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq. (hereinafter "the Act").[1] Mr. Goldsby's application was filed on May 15, 1981. Thereafter, on September 15, 1982, the Division of Gaming Enforcement ("Division") issued a report to the Commission regarding its investigation into the applicant's qualifications for licensure. N.J.S.A. 5:12-76. In that report, the Division objected to the applicant's licensure based upon his conviction in 1976 for voluntary manslaughter.

1 Sections of the Casino Control Act may be cited throughout this opinion by the section number only, omitting the prefix "N.J.S.A. 5:12-."

On October 6, 1982, pursuant to the applicant's written request for a hearing filed on his behalf by his attorney, John L. Grossman, the matter was transmitted to the Office of Administrative Law in accordance with N.J.S.A. 5:12-107(a)(1), N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. A prehearing conference was held on January 13, 1983, and the matter proceeded to a formal hearing before the Honorable Beatrice S. Tylutki, Administrative Law Judge, on April 27, 1983.

On June 10, 1983, the Administrative Law Judge ("ALJ") filed an initial decision with the Commission recommending that the application for licensure be denied. A copy of this initial decision is appended at A-1 to A-23 for convenient reference. On July 5, 1983, exceptions to the initial decision were filed by the applicant.

Upon review and consideration of the initial decision and the entire record of the proceedings, we determined at our public meeting of August 24, 1983, by a vote of 4-1, Chairman Read opposing, to reject portions of this initial decision and to grant the casino employee license application of Clarence K. Goldsby, Jr. More specifically, we adopt all the findings of fact contained in the initial decision (A-11 to A-14) and the conclusion that the 1976 conviction for voluntary manslaughter in Pennsylvania constitutes a disqualifying

offense under section 86(c) of the Act (A-14).[2] However, we reject the conclusion that Mr. Goldsby failed to adequately demonstrate his rehabilitation from this disqualifying conviction and find to the contrary that the applicant has shown by clear and convincing evidence that he is rehabilitated pursuant to N.J.S.A. 5:12-90(h). We also reject the conclusions that: (1) Mr. Goldsby has not established by clear and convincing evidence his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b); and (2) his licensure is inimical to the policies of the Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4). We reach the opposite conclusion as to the first issue and note that, in light of the applicant's conviction of an offense equivalent to an offense listed in section 86(c), the latter

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2 In the initial decision, the ALJ cited section 86(g) in addition to section 86(c) as a basis for disqualification. Section 86(c) provides in pertinent part:

> The conviction of the applicant... of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:....

Section 86(g) provides:

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

In view of the applicant's conviction for voluntary manslaughter, the only criminal charges brought against the applicant, we perceive no reason for reliance on section 86(g). This follows because we have considered the circumstances of the offense in the course of our rehabilitation analysis and we see no ground to conclude that the applicant would be culpable of any higher grade of homicide.

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issue is subsumed in the rehabilitation question. We issue this opinion to set forth more fully our reasons for rejecting portions of the initial decision and granting the casino employee license application of Mr. Goldsby. R. 2:5-1(b).

In light of our adoption of the ALJ's extensive factual findings, a brief statement of the operative facts will suffice. The applicant is 55 years old and has been living in the Atlantic City area since June 1982. For 19-1/2 years, until his dismissal on February 10, 1974, Mr. Goldsby was a member of the Philadelphia Police Department. His dismissal from the police force resulted from his arrest on a murder charge in connection with the death on January 15, 1974, of one Ralph Spencer. This offense occurred when the applicant shot and killed Mr. Spencer, with whom he had been drinking and socializing, after the decedent said he had engaged in sexual relations with the applicant's wife. Following the shooting, the applicant and another companion, a Mr. Green, removed Mr. Spencer's body from the back seat of Goldsby's car, discarded it in a vacant building, and disposed of certain incriminating evidence. However, shortly after he parted company with Mr. Goldsby, Mr. Green informed the police of the crime and Goldsby was arrested and charged with murder and possession of a firearm.

On May 21, 1976, following a second jury trial, Mr. Goldsby was found guilty of voluntary manslaughter in

Pennsylvania despite his plea of not guilty by reason of insanity.[3] He was sentenced to the State Correctional Institute for a term of not less than three years nor more than ten years. After serving one-half of the minimum term, Mr. Goldsby was allowed to participate in a halfway house program, which he completed successfully. The applicant was paroled on January 29, 1979, by the Pennsylvania authorities. On May 3, 1982, the applicant's parole was transferred to New Jersey. He will remain on parole until January 1986.

The Legislature has determined that the casino gaming industry and those who wish to participate in it must be strictly regulated. See, In re Martin, 90 N.J. 295, 319 (1982); Knight v. Margate, 86 N.J. 374, 381-382 (1981); In re Boardwalk Regency Application, 180 N.J. Super. 324, 339-342 (1981), mod. on other grounds, 90 N.J. 361 (1982), app. dism. 103 S.Ct. 562 (1982). The Casino Control Act contains extensive, detailed regulation of every aspect of the industry. See, Uston v. Resorts International Hotel, Inc., 89 N.J. 163, 169 (1982).

The licensing criteria for casino employee license applicants are set forth in section 90 of the Act. Of particular significance to this case are sections 90(e) and 90(h). Section 90(e) provides that the Commission shall deny a

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3 An earlier jury trial, which concluded on October 19, 1974, had also resulted in a verdict of guilty of voluntary manslaughter. However, on October 28, 1975, a motion for a new trial was granted, based upon an improper jury charge.

casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86. Section 90(h) provides that, section 90(e) notwithstanding, no applicant shall be denied a casino employee license on the basis of a section 86(c) disqualifying offense, "provided that the applicant has affirmatively demonstrated his rehabilitation." Section 90(h) further provides the specific factors to be considered by the Commission in determining whether the applicant has sufficiently demonstrated his or her rehabilitation:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

The ALJ correctly found that the applicant was convicted of voluntary manslaughter in Pennsylvania, an

offense which is equivalent to a New Jersey conviction for manslaughter pursuant to N.J.S.A. 2C:11-4, an automatic disqualifier from licensure under section 86(c)(1). (A-14). Indeed, the existence of a statutory disqualifying offense is not now, nor has it ever been, seriously challenged by the applicant. See, applicant's exceptions at 1. Rather, it is evident that this case turns on the issue of whether the applicant has demonstrated his rehabilitation from that disqualifying offense. (2T-227 to 2T-266).[4] The ALJ, noting the date of the conviction,[5] the fact that it was an isolated incident, that the applicant had been a model prisoner, that he had received psychiatric treatment, that he had resolved his alcohol problems and had acquired additional schooling, determined that the applicant had "made a showing of rehabilitation." (A-15). However, after weighing this showing against the seriousness of the offense, the circumstances surrounding the crime, and the duties of a casino security officer, the position for which Goldsby seeks licensure, she concluded that the applicant "has not shown by clear and convincing evidence that he has achieved the degree of rehabilitation mandated by the provisions of N.J.S.A. 5:12-90h." Ibid.

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4 1T refers to the transcript of proceedings in the Office of Administrative Law on April 27, 1983.

2T refers to the transcript of proceedings before the Commission on August 24, 1983.

5 The initial decision inaccurately states that the applicant's conviction for voluntary manslaughter occurred nine years ago. While the offense occurred in 1974, the actual date of conviction was May 1976.

It is evident from the initial decision that the ALJ struggled to strike the appropriate balance between the section 90(h) factors which weighed in the applicant's favor and those which weighed against him. In her final analysis, the ALJ's adverse decision was predicated upon three of the eight ennumerated factors in section 90(h).

That the applicant seeks licensure as a security officer is indeed a source of concern. We recognize, as did the ALJ, that the capacity for violent behavior must be closely scrutinized in light of the function of security officers in casino hotels. Certainly the seriousness of Mr. Goldsby's offense can hardly be overstated; the unjustified taking of a human life is a reprehensible act which warrants the full measure of opprobrium that all civilized society attaches to it. Like Judge Tylutki, we too are seriously concerned with the applicant's persistent efforts to eradicate the evidence of his vile act on the night of the homicide.

These factors have, as they must, a very significant impact on our deliberation on the issue of rehabilitation. Indeed, in prior cases presenting similar but distinguishable circumstances, we have concluded that such factors precluded a finding of rehabilitation. See, In the Matter of the Application of James Carty for Licensure as a Casino Employee (Security Officer), Docket No. 81-EA-405 (1983); In the Matter of the Application of James F. Crown for Licensure as a Casino Employee (Security Officer), Docket No. 82-EA-14 (1983); compare, In the Matter of the Application of Thomas Stabile for

Licensure as a Casino Employee, (Security Officer), Docket No. 82-EA-174 (1983).[6] Nevertheless, we must also bear in mind that these latter two factors represent a static condition in that they were fixed in time some 9-1/2 years ago. Our function is to evaluate the applicant as he is today, mindful of his past deeds and misdeeds, with attention to the evidence of his rehabilitation as it relates to the remaining factors in section 90(h).

Section 90(h) is but a restatement of the provisions of the Rehabilitated Convicted Offenders Act ("RCOA"), N.J.S.A. 2A:168-1 to -6. The enumerated factors in the RCOA and section 90(h) are essentially identical, with minor semantical variations designed for conformity with other provisions of the Casino Control Act. See, Maietta v. N.J. Racing Comm'n, 93 N.J. 1, 8 n.1 (1983), aff'g 183 N.J. Super. 397 (App. Div. 1982). While the RCOA is not, strictly speaking, applicable

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6 Carty and Crown were former police officers who had been convicted in 1978 of conspiring to violate, under color of state law, the civil rights of others contrary to 18 U.S.C.A. §241. Their offense, which we found to be inimical under section 86(c)(4), constituted a betrayal of the public trust; their conduct, which was characterized as "barbaric" by the federal appellate court, included repeated acts of violence and intimidation of certain citizens in concert with other police officers over a 16 hour period. We found the seriousness of the offense, coupled with the potential abuse in the casino security positions sought, outweighed the proofs of rehabilitation offered by each.

The Stabile case involved a former police officer who had been convicted in 1972 of the statutory disqualifying offense of extortion, which offense occurred in the course of his official duties. Based upon the 12-1/2 year interval, the fact that it was an isolated offense, the applicant's sincere expression of remorse and other evidence of rehabilitation, we found Stabile to have overcome the disqualification.

to casino employee license application cases (Maietta, supra), the public policy behind both statutory provisions is the same, i.e., that the public interest is served by the rehabilitation of convicted offenders. Maietta, supra, 183 N.J. Super. at 402.

Upon careful review of the record in this case, based upon the facts as found by the ALJ, and mindful of the above policy, we are persuaded, clearly and convincingly, that Mr. Goldsby has sufficiently demonstrated his rehabilitation to relieve him of the effects of his disqualifying offense in 1974. Of prime significance to our determination on this issue are the following: the 9-1/2 years that have elapsed since Mr. Goldsby's sole, albeit quite serious offense; his acknowledgment of his wrongful conduct and remorse for it; his substantial efforts to improve himself personally and academically both during and subsequent to his period of incarceration; his willingness to seek and respond to professional counselling and thereby overcome both his alcohol-related and psychological problems; the positive recommendations of those who have had him under their supervision; and, finally, his acceptance of his responsibilities to his minor children. But cf., Maietta, supra.

Earlier in this opinion we succinctly stated our disagreement with other legal conclusions drawn by the ALJ. It suffices to note here that, based upon our review of the entire

and particularly the evidence demonstrating rehabilitation, we find that he has the necessary good character, honesty and integrity (See, In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113 (1980)) and that he meets all other requirements for licensure as a casino employee. N.J.S.A. 5:12-90. Accordingly, we reject the contrary conclusions contained within the initial decision and grant the application of Clarence K. Goldsby, Jr. for licensure as a casino employee (security officer).

By: _____
Carl Zeitz
Vice Chairman

_____
Joel R. Jacobson
Commissioner

_____
E. Kenneth Burdge
Commissioner

_____
Don M. Thomas
Commissioner

Dissenting: _____
Walter N. Read
Chairman

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DATED: November 7, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 9251-82

AGENCY DKT. NO. 82-EA-194

CLARENCE K. GOLDSBY, JR.,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW & PUBLIC SAFETY,

Respondent.

APPEARANCES:

John L. Grossman, Esq., for the petitioner (Cooper, Perskie, Katzman, April, Niedelman & Wagenheim, attorneys)

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

Record Closed: April 27, 1983 Decided: June 10, 1983

BEFORE BEATRICE S. TYLUTKI, ALJ:

This matter concerns the recommendation by the Division of Gaming Enforcement (hereinafter referred to as "Division") that the petitioner, Clarence K. Goldsby, not be licensed as a security officer. Mr. Goldsby 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 in this matter on January 13, 1983, and at that time the parties agreed that the issues in this matter are:

(1) Whether the petitioner is disqualified for licensure as a result of his voluntary manslaughter conviction in Pennsylvania, pursuant to N.J.A.C. 5:12-86c(1) and (2).

(2) Whether the petitioner was disqualified as a result of said out-of-state conviction, pursuant to the provisions of N.J.A.C. 5:12-86g.

(3) Whether the conduct of the petitioner underlying the conviction would render licensure inimical to the policy of the Casino Control Act as provided in N.J.A.C. 5:12-86c(4).

(4) Whether petitioner can establish his reputation for good character, honesty and integrity as required by N.J.A.C. 5:12-89b(2) which is incorporated in N.J.A.C. 5:12-90b.

(5) Whether petitioner can establish that he has been rehabilitated as provided in N.J.A.C. 5:12-90h.

At the start of the hearing on April 27, 1983, the parties stipulated to the fact that under the current rules and procedures of the Casino Control Commission (hereinafter referred to as "Commission") a security guard is not authorized to carry any weapons. Deputy Attorney General Gottesman noted for the record that the Commission is considering a proposed regulation which would permit certain security guards to carry weapons.

Mr. Grossman then asked that I take judicial notice of the provisions of N.J.A.C. 2A:168a-3, relating to rehabilitation. However, since the necessary proofs required by this statute do not exist or were not available, I ruled that this statute has no relevancy in this matter.

Clarence K. Goldsby, Jr., testified that he served in the armed services for approximately 16 months and received an honorable discharge. Mr. Goldsby was employed as a policeman by the Philadelphia Police Department for approximately 19 years and six months, and he was discharged as a result of an incident that took place on January 15, 1974 (R-23).

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For the 19 and 1/2 years that he was a Philadelphia policeman, Mr. Goldsby stated that he was an exceptionally good officer, received superior evaluations (P-8) and received many commendations. Copies of some of these commendations were introduced into evidence (J-21, J-3, J-4, P-10, P-15, P-16, P-17, P-18). Mr. Goldsby admitted that, on a number of occasions, disciplinary charges were brought against him; however, he stated that most of them were for minor offenses, several were for motor vehicle accidents, and some of them were eventually dismissed after he had an opportunity to respond (R-7 through R-11, R-13 through R-22).

Petitioner admitted that it was his normal practice to spend the evening with Robert Green at one of a number of local bars and that usually Mr. Green drove his car to the bar. On January 15, 1974, the petitioner worked as a police officer, assigned to the 17th Police District, from 7:30 a.m. to 3:30 p.m. After work on that day, Mr. Goldsby drove to Mr. Green's home, and on the way he picked up Ralph Spencer, who insisted on joining him.

Mr. Goldsby was a very close friend of Mr. Green and had known him for a number of years. Mr. Goldsby had lived near Mr. Spencer for approximately three years and knew him for a total of about five years. Mr. Goldsby denied that he knew that Mr. Spencer was retarded.

After Mr. Green joined the petitioner and Mr. Spencer, Mr. Green drove the petitioner's vehicle. They went to the First District Police station and, while Mr. Green and Mr. Spencer remained in the vehicle, the petitioner went into the station to test two pistols as a favor for a fellow police officer. When the petitioner returned, Mr. Green drove the vehicle to the 17th District Police station. The petitioner went into the station alone with the intention of leaving the two pistols in his locker; however, he changed his mind after he entered the station and decided that it would be safer to retain the pistols in his possession. The petitioner returned to the vehicle and it was decided that they should go to a bar.

According to the petitioner, each time he left the vehicle, he placed his unloaded .38-caliber revolver under the front seat of the vehicle. After he left the 17th District Police station, Mr. Goldsby, who was sitting in the front seat of the car next to Mr. Green, took out his revolver and proceeded to reload the weapon.

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Mr. Goldsby, Mr. Green and Mr. Spencer stopped for liquor and later for soda, and they were drinking alcoholic beverages in the car as they drove to the two police stations.

According to the petitioner, the three of them were talking about general topics, including women and sports. After they left the 17th District Police station, Mr. Spencer, who was sitting in the back seat of the car, started to talk about the "loose" girls he knew and said that he had "fucked" the petitioner's wife. Mr. Goldsby stated that he became very angry, that he wanted to explode, and that he turned around and shot Mr. Spencer several times with his .38-caliber revolver. Mr. Goldsby stated that he remembered saying "God I shot him," and that his first thought was that he had to give himself up. The shooting took place on the Schuylkill expressway, near 34th Street and Reed Street.

According to the petitioner, Mr. Green stopped the vehicle to check if Mr. Spencer was dead and then talked the petitioner out of giving himself up. The petitioner later realized that Mr. Green was patronizing him and that Mr. Green was afraid that the petitioner was going to shoot him.

According to the petitioner, Mr. Green drove around for awhile and then Mr. Green suggested that they put the body into a vacant house. Mr. Green stopped in front of a row of vacant houses, at 28th and Alter Streets, which is within the 17th Police District. He and the petitioner took the body out of the car and pushed the body through a cellar window of one of the vacant houses. Mr. Green then drove to his house where he got a can of gasoline, and he and the petitioner cleaned the back seat of the vehicle. They found Mr. Spencer's coat on the back seat, and Mr. Green suggested that they burn it. Using some of the gasoline, they burned the coat in a container near 21st Street and Westmoreland. Afterwards, they drove to the bar at 21st Street and Westmoreland for a drink. Petitioner stated that he was not thinking clearly and that he knew he should give himself up. He stated that he knew he could not get away with the crime.

The petitioner thought that Mr. Green had called another friend, Eugene Haley, to meet them at the bar. Mr. Green remained in the bar, and Mr. Haley and the petitioner left the bar. Mr. Haley drove the petitioner's car to do an errand, took the petitioner to another bar and then took the petitioner home. When he arrived at home,

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Mr. Goldsby had something to eat and went to bed. According to the petitioner, he realized that he should give himself up, but he decided to wait until he was sober. While he was asleep, the police arrived and arrested Mr. Goldsby at approximately 2:30 a.m. on January 16, 1974.

Mr. Goldsby stated that at the time of his arrest, he had in his possession the two pistols that he had tested, his .38-caliber revolver and another gun that was registered in his name. Later, Mr. Goldsby found out that the .38-caliber revolver, which he used to shoot Mr. Spencer, was missing; however, he could offer no explanation for why it was not found in his home. This weapon was never found.

At the time of his arrest, Mr. Goldsby was 45 years old, married and the father of nine children.

The petitioner admitted that he had had problems in his marriage since 1968. Sometime during 1968, Mr. Goldsby saw his wife as he was driving a police vehicle. Mr. Goldsby stopped, went into the bar where he had seen her, shook his wife and told her that she should be at home taking care of the children. The petitioner stated that on a number of occasions he had accused his wife of having affairs and that he had accused her of having an affair with Mr. Spencer. His wife denied that she had had an affair with Mr. Spencer.

The petitioner was charged with murder and possession of a firearm and he pled not guilty by reason of insanity. After a jury trial, Mr. Goldsby was convicted of voluntary manslaughter on October 19, 1974. His motion for a new trial was granted because of an error as to a jury charge. After a second jury trial, the petitioner was convicted of voluntary manslaughter on July 10, 1976.

Petitioner received a jail sentence of not less than three years nor more than ten years at the State Correctional facility in Graterford, Pennsylvania (R-4, R-6). Because of a threat to his life by a inmate, petitioner was transferred to Rockview Prison. While in Rockview Prison, he was assigned to B-Block North which was used for model prisoners. Prisoners assigned to this Block were permitted to wear their own clothes and had a key to their own cell. The prison regulations allowed the inmates in B-Block North to run their own government and for a while, Mr. Goldsby held the position of chief teacher, which was the highest position in the Block's government structure.

While in prison, the petitioner was a boxing coach, joined various clubs, including an AA Chapter, and participated in a program which permitted him to leave the prison to give speeches at various clubs (P-12, P-13, P-14, P-20). Petitioner was released from prison in 1979, after he had served the shortest possible time in jail.

After his release from prison, the petitioner spent one and one-half years at a halfway house in Philadelphia, and during part of that time he was counseled by Ms. Langdon. While at the halfway house, Mr. Goldsby had to report in every night at 11:00 p.m. and could leave the house for weekends. During this time, the petitioner went to school and obtained an Associate Degree in Criminal Justice from the Community College of Philadelphia (P-9).

Mr. Goldsby had difficulty obtaining a job in Philadelphia and had his parole transferred to New Jersey in 1982 (R-5).

Mr. Goldsby admitted that he is an alcoholic and that he received help by joining AA in prison. Since his release, Mr. Goldsby has not consumed any alcoholic beverages. He and his wife separated after he was released from prison; however, he spends a great deal of time with his children and helps support the family. Mr. Goldsby's current income is his police pension (P-19) and his salary from part-time jobs as a handyman and also as an investigator for Allen Silverman, an attorney in Philadelphia (P-1).

With the exception of the voluntary manslaughter conviction, Mr. Goldsby has never been arrested nor convicted of any crime.

Mr. Goldsby testified that he filled out the Personal History Disclosure Form No. 2 and that in it he admitted that he had been arrested and had been convicted in 1976 of voluntary manslaughter (J-1). However, he interpreted Question No. 46 incorrectly and did not again state the information regarding his arrest and conviction (p. 19 of J-1).

Mr. Goldsby represented that because of his police experience and his Associate Degree, he is qualified for a security guard license. Mr. Goldsby has spoken to several casino security employees and is confident he can obtain such a job if he receives a license.

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Christopher H. Goldsby and K.G.,[1] children of the petitioner, testified at the hearing that their father is concerned about the well being of his children and about their education. Christopher Goldsby stated that while the petitioner was in prison he would call his children several times a week to find out how they were doing and to check on their schoolwork. K.G., an elementary student, stated that her father helps her regularly with her homework and that he is concerned about her schoolwork, her music lessons and her sports activities.

At the prehearing conference, Mr. Grossman indicated that he would bring in a number of witnesses regarding Mr. Goldsby's rehabilitation; however, at the hearing he indicated that he had not been successful and since the persons were Pennsylvania residents, he could not subpoena them. As an alternative, Mr. Grossman had introduced into evidence a number of letters regarding Mr. Goldsby (P-1 through P-7).

In a letter dated April 22, 1983, Allen Silverman, a Pennsylvania attorney, stated that he had personally known Mr. Goldsby for approximately 13 years, that he had represented him in a number of matters, that he had been character witness for the petitioner at his jury trial and that he has had Mr. Goldsby perform certain investigative work for his law firm since his release from jail (P-1). Mr. Silverman considers the petitioner to be "eminently qualified to work as a security guard," feels that the petitioner "is less likely to commit any act of dishonesty or violence than the average citizen" and considers the petitioner to be "totally and fully rehabilitated"(P-1).

John M. McCullough, Director of Treatment at the State Correctional Institution at Rockview, in a letter dated February 23, 1983, stated that he considers the petitioner's crime to be "a bad mistake made during an emotional moment but certainly not the act of a person who made a practice of harming others." He also stated that while he was in jail, the petitioner showed "maturity" and "good sense" and was "given major responsibilities in helping to run the program" in B-Block North (P-4).

[1] Initials are used since K.G. is a minor.

Marion W. Langdon, Director of Community Service Center III, in a letter dated February 11, 1983, stated that Mr. Goldsby resided in a center for approximately one year, that for awhile she was his counselor, and that, while he was at the center, Mr. Goldsby was devoted to his family and expressed remorse about his crime (P-6). In her letter, Ms. Langdon concluded that Mr. Goldsby's offense was "situational" and that he was a "responsible individual who is capable of doing a good job and worthy of being placed in a position of trust" (P-6).

In a letter, Mr. Harold K. Hunter stated that he was the petitioner's parole officer in Philadelphia for two years and that Mr. Goldsby had made every effort to further his education and to find a job (P-2).

On behalf of the Division, Robert M. Barsony testified that he was assigned to do the background investigation regarding petitioner's application. After receiving the FBI criminal report (R-3), Mr. Barsony contacted the FBI as well as the Philadelphia District Attorney's office. On or about May 25, 1982, Mr. Barsony interviewed the petitioner. During the interview, Mr. Barsony asked the petitioner about the circumstances leading to the shooting of Mr. Spencer. At that time, the petitioner stated that Mr. Spencer had said something that was so bad that he did not want to repeat it. After the shooting, the petitioner admitted that he wanted to get rid of the body, that he knew the area and that he told Mr. Green where to go. Mr. Goldsby stated that he suspected that Mr. Spencer was having an affair with his wife and admitted that it was a stupid thing for him to allow Mr. Spencer to go out with him that evening.

Based on the petitioner's statements during the interview, Mr. Barsony suspected that the petitioner asked Mr. Spencer to come along that evening in order to murder him.

Mr. Barsony spoke to Mr. Raymond Lampe, who is the petitioner's current parole officer (R-5), who indicated that he would testify, if requested.

Ronald Walraven, who is employed by the Division, testified that he was requested to help prepare this matter for hearing. He reviewed and copied the police report regarding the 1974 incident (R-26) and got certain other records from Philadelphia.

Mr. Walraven spoke to Ms. Langdon by phone, who stated that she had counseled Mr. Goldsby for approximately four months, that he had been a father figure to the younger violators living at the center and that his behavior was good. Mr. Walraven also called Allen Silverman, who confirmed that from time to time he had the petitioner do certain investigations and locate certain witnesses for his law office.

Although Mr. Green did not testify at the hearing, his testimony at the jury trial on February 5, 1976, was introduced into evidence (R-24). In his testimony, Mr. Green stated that he, the petitioner and Mr. Spencer were engaged in general conversation in the vehicle when he heard the shots. Mr. Green did not recall specifically what was said before the shooting; however, after the shooting the petitioner said: "No man should go into another man's woman's womb without being knocked off" (p.234 of R-24). After the shooting, the petitioner told Mr. Green to keep driving. At that time they were in South Philadelphia, near the expressway, heading back to North Philadelphia, approximately at 13th Street and Passyunk Avenue. The petitioner looked angry and Mr. Green was scared and afraid that the petitioner might shoot him.

Mr. Green was directed by the petitioner to drive to a vacant building, and the petitioner removed Mr. Spencer's body from the car and pushed it through a cellar window of a vacant house. The petitioner then told Mr. Green to drive to North Philadelphia to a bar located at 21st Street and Westmoreland. On the way, the petitioner had Mr. Green stop at a gasoline station so he could purchase a container of gasoline. He also burned Mr. Spencer's coat in a trash can at Woodstock and Madison (p. 245 of R-24)

Mr. Green stated that his one thought was to separate himself from the petitioner and that while at the bar, he successfully got Mr. Goldsby to go to another bar with Eugene Haley. Once he left the bar, Mr. Green went to see his father-in-law, who is a Philadelphia detective, and he then went to the police station to report the crime. He and a police officer then went to find the body, but it took them a considerable period of time to locate the vacant home since Mr. Green was not familiar with South Philadelphia.

During the jury trial, on February 6, 1976, Mrs. Goldsby testified that, on October 3, 1970, Mr. Spencer's sister gave her a birthday party and that she went to the party alone since her husband was working that evening (R-25). While at the party, Mrs. Goldsby had had too much to drink and Mr. Spencer helped her home. In her house he

kissed her and asked her to have sex with him. Mrs. Goldsby refused. This was not the first time that Mr. Spencer had made advances toward her. After Mr. Spencer left, Mrs. Goldsby's husband came home at midnight and they went out. Later that evening, when her husband touched her, Mrs. Goldsby said, "Stop, Ralph." The petitioner questioned her as to why she said "Ralph" and became convinced that she was having an affair with Ralph Spencer. Two years later, the petitioner was still badgering his wife regarding her relationship with Ralph Spencer and on one occasion, in June 1973, he beat her.

On the same day, James D. Nelson, M.D., a specialist in neurology and psychiatry, testified that he evaluated and treated Mr. Goldsby starting on January 30, 1974 (p.351 of R-25). He stated that the first time he saw Mr. Goldsby, he was in a state of "acute agitated depression" (p. 354 of R-25). It was Dr. Nelson's opinion that the petitioner did not remember the exact details of what took place at the time of the shooting and that he "exploded" when Mr. Spencer bragged about his sexual conquests, including that of petitioner's wife. Dr. Nelson stated that this explosion was equivalent to an acute psychotic break (pp. 363-4 of R-25). Dr. Nelson stated that due to the petitioner's childhood experiences, he was extremely sensitive to rejection by his wife in favor of another male (p. 363 of R-25). According to Dr. Nelson, an "acute psychotic break" means "the loss of contact with reality, loss of ability to critically appraise the realities of the situation which was confronting him; loss of the ability to judge critically; loss of ability to look within himself and appreciate what he was feeling and what he was thinking and what he was doing; loss of the ability to control his behavior; loss of the ability to control the immense emotionality that he was seized with" (p. 364 of R-25). Dr. Nelson stated that a psychosis is an illness and that it can be prolonged or transient and, in his opinion, the petitioner's psychotic episode was transient (p. 365 of R-25).

A letter from Arnold H. Gorden, Assistant District Attorney, Philadelphia, Pennsylvania, dated February 4, 1983, was introduced into evidence (R-1). In this letter, Mr. Gordon stated that he prosecuted the case against the petitioner and, in his opinion, Mr. Goldsby "may present a substantial threat to the casino industry if employed in a security position" (R-1).

Also introduced into evidence was a psychiatric evaluation summary of the petitioner, dated March 5, 1976, prepared by Dr. Arthur Boxer, pursuant to an order of Judge Theodore Smith (R-2). As to the petitioner's condition, Dr. Boxer's conclusion was

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"Passive-Aggressive Personality with mild paranoid elements and some impulsivity, particularly when under the influence of alcohol, at which time his normal controls tend to be suspended and he acts in an unthinking and aggressive manner" (R-2).

In closing, Mr. Gottesman argued that the Pennsylvania conviction for voluntary manslaughter was equivalent to a New Jersey conviction of N.J.S.A. 2C:11-4 and N.J.S.A. 2A:113-5, and that this conviction is an automatic disqualifier pursuant to N.J.S.A. 5:11-86(c) and N.J.S.A. 5:11-86(g). Mr. Gottesman argued that the petitioner has not shown his good character, honesty, integrity, that his licensure would be inimical to the policy of the Casino Control Act and that the petitioner has not met the statutory requirements regarding rehabilitation as set forth in N.J.S.A. 5:12-90(h). Mr. Gottesman stated that, although the shooting of Mr. Spencer was an isolated incident, it is a serious crime committed by a mature person who was trained as a police officer and who afterwards tried to hide the crime rather than to report it.

On behalf of the petitioner, Mr. Grossman argued that the petitioner's action was a bad mistake which was committed nine years ago and that he has paid his debt to society. Mr. Grossman argued that the petitioner has demonstrated that he is rehabilitated; he now spends his evenings with his children and is concerned with their welfare and education, he has received psychiatric treatment, he has joined AA and no longer drinks alcoholic beverages, and he has gone back to school to improve his chances of finding gainful employment.

Based on the testimony presented, I **FIND** that the pertinent facts are:

(1) Mr. Goldsby was employed as a Philadelphia policeman for 19 and 1/2 years. The petitioner was evaluated as superior by his supervisors and received numerous commendations for his service as a police officer. Although there were several disciplinary actions taken against the petitioner during his employment as a police officer, they involved relatively minor incidents.

(2) Prior to January 15, 1974, it was the petitioner's custom to go out, almost every night, to drink at local bars with Mr. Green.

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(3) Since 1968, Mr. Goldsby and his wife were having marital problems, due in part to Mr. Goldsby's conviction that his wife was having affairs, including an affair with Mr. Spencer.

(4) On January 15, 1974, the petitioner picked up Mr. Spencer on his way to Mr. Green's residence. At that time, Mr. Goldsby had in his possession his personal .38-caliber revolver, as well as two other pistols which he planned to test-fire that evening.

(5) Mr. Goldsby, Mr. Green and Mr. Spencer were drinking alcoholic beverages in the car while Mr. Green drove first to the First District Police station where Mr. Goldsby tested the two pistols and then to the 17th District Police station where initially Mr. Goldsby planned to leave the two pistols.

(6) While they were drinking, Mr. Goldsby, Mr. Green and Mr. Spencer were engaged in general conversation, discussing topics which included sports and the promiscuous women they knew.

(7) After they left the 17th District Police station, the petitioner reloaded his .38-caliber revolver. Petitioner shot Mr. Spencer several times after Mr. Spencer stated that he was having an affair with the petitioner's wife.

(8) At the time of the shooting, Mr. Green was driving the car, the petitioner was in the passenger's seat next to the driver and Mr. Spencer was in the back seat.

(9) Mr. Goldsby was angry and Mr. Green was afraid that the petitioner would shoot him.

(10) The petitioner directed Mr. Green to drive to a vacant house and they pushed Mr. Spencer's body through a window into the cellar.

(11) Mr. Goldsby purchased gasoline and they cleaned the rear seat of the vehicle.

(12) The petitioner burned Mr. Spencer's coat in a trash can.

(13) Mr. Green and the petitioner then went to a bar where they met Mr. Haley. Mr. Green was able to separate himself from the petitioner when Mr. Haley and the petitioner went to another bar.

(14) Sometime thereafter, Mr. Haley took Mr. Goldsby to his home, at which time Mr. Goldsby had something to eat and went to bed.

(15) Mr. Green reported the shooting to the police and showed the police where he and the petitioner had placed Mr. Spencer's body.

(16) The police went to Mr. Goldsby's home and arrested him at around 2:30 a.m. on January 16, 1974. The petitioner's revolver, which he used to kill Mr. Spencer, was never found.

(17) Mr. Goldsby was convicted of voluntary homicide, after he pled not guilty by reason of temporary insanity.

(18) Mr. Goldsby has received psychiatric treatment from Dr. James Nelson. Dr. Nelson concluded that Mr. Goldsby shot Mr. Spencer during an acute psychotic break and that the petitioner's psychotic episode was transient in nature.

(19) Mr. Goldsby was a model prisoner and because of his good behavior, he served the minimum period of time in prison.

(20) Mr. Goldsby joined AA and no longer drinks alcoholic beverages.

(21) Since his release, Mr. Goldsby spends more time with his children and is concerned with their welfare and their education.

(22) Mr. Goldsby has received an Associate Degree in Criminal Justice since his release from prison.

(23) Since his release, Mr. Goldsby has resumed supporting his family and his current income comes from his pension and from his various jobs working as a handyman or as an investigator employed by an attorney, Mr. Silverman, in Philadelphia.

(24) On the Personal History Disclosure Form No. 2, Mr. Goldsby admitted the conviction for voluntary manslaughter; however, he did not accurately answer Question No. 46 regarding his arrest and conviction because he misunderstood the question.

(25) Except for the voluntary manslaughter conviction, Mr. Goldsby has never been arrested or convicted of any crime.

Based on the facts, I **CONCLUDE** that the petitioner's conviction of voluntary manslaughter in Pennsylvania is equivalent to a New Jersey conviction for manslaughter, pursuant to N.J.S.A. 2C:11-4, or to the previous statute relating to manslaughter, N.J.S.A. 2A:113-5, and that this conviction is an automatic disqualifier from licensure, pursuant to the provisions of N.J.S.A. 5:12-86c and 5:12-86g.

The law further provides that a person who is disqualified pursuant to N.J.S.A. 5:12-86 can obtain a license if he or she can affirmatively demonstrate rehabilitation. This statute provides that in order to determine whether or not a person has been rehabilitated, the Commission shall take into consideration the following factors:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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(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 recommendetion of persons who have or have had the applicant under their supervision [N.J.S.A. 5:12-90b]

Based on the facts, I **CONCLUDE** that the petitioner has made a showing of rehabilitation. The conviction for voluntary manslaughter occurred nine years ago, it was an isolated incident, the petitioner was a model prisoner and successfully participated in a halfway house program. Further, he received psychiatric treatment, joined AA and is no longer drinking alcoholic beverages, and he has also acquired additional schooling. However, this affirmative showing of rehabilitation has to be weighed against the seriousness of the offense committed, the circumstances surrounding the crime, and the duties of the position for which the person is seeking licensure.

I **CONCLUDE** that the Philadelphia court had determined that the killing of Mr. Spencer was voluntary manslaughter and that, based on the principle of res judicata, I will not reconsider the facts behind the conviction. Also, based on the facts, I **CONCLUDE** that Mr. Goldsby, after shooting Mr. Spencer, had no intention of giving himself up to the police and intentionally and systematically destroyed all evidence of his involvement in the crime. Additionally, the responsibilities of a security guard include enforcing laws, maintaining order and protecting the people in a casino.

Having considered the facts as well as the statutory requirements, I **CONCLUDE** that the petitioner has not shown by clear and convincing evidence that he has achieved the degree of rehabilitation mandated by the provisions of N.J.S.A. 5:12-90h.

In this matter the Division also questioned whether the petitioner can establish a reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).

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The fact that the petitioner committed an offense which is an enumerated disqualifier pursuant to N.J.S.A. 5:12-86 is an obvious adverse reflection upon his good character, honesty and integrity. Although the petitioner has taken affirmative steps to rehabilitate himself, I cannot overlook the fact that, after having killed Mr. Spencer, while under the influence of alcohol, the petitioner intentionally tried to hide the crime rather than report it to the police. Mr. Goldsby's allegations that he recognized that he had to report it and that he planned to report the crime are in direct conflict with his actions. Based on Mr. Goldsby's conduct, I **CONCLUDE** that the Division has raised a serious question regarding the applicant's good character, honesty and integrity and, therefore, that the applicant has not established by clear and convincing evidence his compliances with N.J.S.A. 5:12-89b.

Lastly, the Division questioned whether the licensure of Mr. Goldsby as a security officer would be inimical to the policy of the Casino Control Act as provided in N.J.S.A. 5:12-86c(4).

The public policy for the Act, in part, provides:

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises. [N.J.S.A. 5:12-1b(6)]

As to the criteria to be used in determining whether licensure would be inimical, the Commission, in a decision, stated:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is inimical to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operation or would create

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> or enhance the dangers of unsuitabe, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to the gaming operation, [In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 79CL-1, decided on February 26, 1979, at p. 15].

Pursuant to the facts and the public policy of the Act, I **CONCLUDE** that the respondent has not shown by clear and convincing evidence that his licensure would not be inimical as required by N.J.S.A. 5:12-86c(4). In particular, I note that the job of security officer involves the physical contact with potentially unruly people, and I **CONCLUDE** that the testimony of Dr. Nelson at the petitioner's jury trial as well as the report of the court-appointed psychiatrist, Dr. Boxer, raises questions relating to the emotional stability of the petitioner and, therefore, to his suitability for licensure as a security guard.

Finally, it is **ORDERED** that the application of Clarence K. Goldsby, Jr., for licensure as a security guard 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.

201.

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

June 10, 1983
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

June 13, 1983
DATE

Bernadette T. Fraser
CASINO CONTROL COMMISSION

Mailed to Parties:

June 14, 1983
DATE

Ronald L. Lankenau
OFFICE OF ADMINISTRATIVE LAW

ks/ee

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EXHIBITS

Joint

J-1 Personal History Disclosure Form No. 2 filed by Clarence K. Goldsby, Jr., dated April 13, 1981

J-2 Official Commendation for Policeman Clarence Goldsby, approved on October 4, 1963

J-3 Official Commendation for Policeman Clarence Goldsby, approved on July 10, 1964

J-4 Official Commendation for Policeman Clarence Goldsby, approved on February 12, 1965

For the petitioner:

P-1 Letter from Allen H. Silverman to John Grossman, dated April 22, 1983

P-2 Letter from Harold K. Hunter to John Grossman, dated April 18, 1983

P-3 Letter from Paul V. Clark, dated January 31, 1983

P-4 Letter from John McCullough to Clarence Goldsby, dated February 5, 1979

P-5 Letter from John McCullough to Clarence Goldsby, dated February 23, 1983

P-6 Letter from Marian W. Langdon to John Grossman, dated February 11, 1983

P-7 Letter from Marian W. Langdon to John Grossman, dated March 15, 1983

P-8 Performance Report for Clarence Goldsby, Jr., dated July 1, 1973

P-9 Associate Degree in Applied Science from the Community College of Philadelphia awarded to Clarence Goldsby, Jr., dated June 1981.

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P-10 Official Commendation letter, dated March 2, 1965, addressed to Policeman Clarence Goldsby

P-11 Certificate of Participation in the Law Enforcement Seminar of the Philadelphia Bar Association issued to Policeman Clarence Goldsby, dated April 4, 1967

P-12 Best Table Topics Speaker of the Evening, Nittany Gavel Club, issued to Clarence Goldsby, dated November 23, 1965

P-13 Best Speaker of the Evening, Nittany Gavel Club, issued to Clarence Goldsby, dated April 27, 1977

P-14 Best Speaker of the Evening, Nittany Gavel Club, issued to Clarence Goldsby, dated May 25, 1977

P-15 Official Merit Commendation for Policeman Clarence Goldsby as to his action on January 29, 1967

P-16 Official Bravery Commendation for Policeman Clarence Goldsby for his action on Febraury 6, 1965

P-17 Official Merit Commendation for Policeman Clarence Goldsby for his action on July 5, 1964

P-18 Official Merit Commendation for Policeman Clarence Goldsby for his action on October 1, 1963

P-19 Pension pay stub for Clarence Goldsby, dated March 31, 1983

P-20 Letter from J. F. Mazurkiewicz to Clarence Goldsby, dated February 10, 1978

P-21 Marked for Identification Only

P-22 Photograph showing Clarence Goldsby receiving a Official Commendation

For the respondent:

R-1 Letter from Arnold H. Gordon to Lee D. Gottesman, dated February 4, 1983

R-2 Psychiatric Evaluation Summary for Clarence Goldsby, dated March 5, 1976

R-3 Fingerprints and FBI Criminal report on Clarence Goldsby, Jr.

R-4 Certified Criminal Record for the Commonwealth v. Clarence Goldsby, Common Pleas Court of Philadelphia, dated July 23, 1982

R-5 Transfer of Parole of Clarence Goldsby, dated June 11, 1982

R-6 Initial Sentence Status Report for Clarence Goldsby, dated May 21, 1976

R-7 Statement of Clarence Goldsby regarding use of a service revolver while on duty, dated September 22, 1956

R-8 Memorandum of Captain William Bryer regarding a shooting at the Charles Young Post, American Legion, dated October 2, 1956

R-9 Memorandum recommeding a one-day suspension of Clarence Goldsby, dated May 9, 1957

R-10 Memorandum recommending a two-day suspension of Clarence Goldsby, dated December 11, 1957

R-11 A Notice of Suspension addressed to Clarence Goldsby, dated March 15, 1958

R-12 Memorandum of Albert Ross, Assistant Personnel Officer regarding a conversation with Clarence Goldsby, dated May 20, 1958

R-13 Notice of Suspension addressed to Clarence Goldsby, dated July 3, 1958

R-14 Notice of Suspension addressed to Clarence Goldsby, dated January 29, 1960

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R-15 Official reprimand of Clarence Goldsby, dated August 17, 1960

R-16 Memorandum as to disciplinary action for Clarence Goldsby, dated January 11, 1963

R-17 Official Reprimand of Clarence Goldsby, dated March 17, 1965

R-18 Memorandum regarding an incident involving Clarence Goldsby, dated March 26, 1966

R-19 Report of the Philadelphia Police Department Safety Review Board, dated October 27, 1967

R-20 Notice of Suspension addressed to Clarence Goldsby, dated September 25, 1968

R-21 Report of the Philadelphia Police Department Safety Review Board, dated November 10, 1972

R-22 Report of the Philadelphia Police Department Safety Review Board, dated May 18, 1973

R-23 Notice of Dismissal addressed to Clarence Goldsby, for conduct unbecoming an officer, dated February 11, 1974

R-24 Portion of the transcript of the trial in Commonwealth v. Clarence Goldsby, dated February 4, 1976 and May 19, 1976.

R-25 Portion of the transcript of the trial in Commonwealth v. Clarence Goldsby, dated February 6,9,10, 1976

R-26 Homicide Case Summary, dated March 20, 1974

R-27 Marked for Identification Only

R-28 Marked for Identification Only

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R-29 Marked for Identification Only

R-30 Marked for Identification Only

WITNESSES

For the petitioner:

Christopher H. Goldsby

K. G.

Clarence K. Goldsby, Jr.

For the respondent:

Robert M. Barsony

Ronald Walraven

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-72
OAL DOCKET NO. CCC 6285-82 (on remand), CCC 2162-83
APP. NO. 26428-21
REGISTRATION NO. 28096-40

IN THE MATTER OF THE APPLICATION OF DOROTHY J. HAIRE FOR LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law filed with the Commission August 16, 1983, recommending that the application casino employee license application of Dorothy J. Haire be denied; and neither party having filed exceptions; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 21, 1983, to affirm and adopt the said Initial Decision and to deny the casino employee license application of Dorothy J. Haire,

IT IS on this 22nd day of September 1983, 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 Dorothy J. Haire 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 Dorothy J. Haire is not eligible to apply for or obtain any license (except a casino key employee license), qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order, pursuant to N.J.A.C. 19:41-8.8(a), unless she obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g), and she is ineligible to apply for a casino key employee license until ten (10) years have elapsed from the date of her conviction for the disqualifying offense absent early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the denial of Dorothy J. Haire's casino employee license shall have no present effect on her casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Dorothy J. Haire, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 22, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2162-83
AGENCY DKT. NO. 82-EA-72

DOROTHY J. HAIRE,
Petitioner
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

Dorothy J. Haire, petitioner, Pro Se

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

Record Closed: July 12, 1983 Decided: August 15, 1983

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

The petitioner seeks licensure as a casino employee (cage cashier). The Division of Gaming Enforcement, in a letter of March 29, 1982, advised the Commission of its opposition to licensure. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F et seq. A hearing was held before Administrative Law Judge Jeff S. Masin at the Atlantic County Courthouse in Atlantic City on July 12, 1983.

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The Division opposes licensure because it believes that the respondent cannot establish the requisite good character, honesty and integrity required to be proven by clear and convincing evidence, pursuant to N.J.S.A. 5:12-89b(2) and 90b. The Division also contends that Ms. Haire failed to disclose a 1971 arrest and conviction, a violation of N.J.S.A. 5:12-86b. Further, the Division argues that the 1971 conviction, which was for petty larcency under $200 in violation of N.J.S.A. 2A:119-2, constitutes the conviction of an offense which would make licensure of the respondent inimical to the policies of the Casino Control Act and the casino industry. A finding of such inimicality would require denial of licensure under N.J.S.A. 5:12-86c(4).

The Division also alleges that the respondent's 1978 conviction for welfare fraud, a violation of N.J.S.A. 2A:111-2, equivalent to N.J.S.A. 2C:20-4 constitutes an enumerated disqualifying offense, pursuant to N.J.S.A. 5:12-86c(1) and that such a conviction requires denial of licensure.

The respondent does not deny the convictions. She claims that she has rehabilitated herself from the adverse affects thereof and that licensure may continue, pursuant to N.J.S.A. 5:12-90h.

Dorothy Haire testified that she is the mother of three children, ages 21, 19 and 15. All three children live at home and none are employed. Ms. Haire is not employed and has not been since July 1980, when her employment with the Atlantic County Supported Work Program ended because the job ended. Ms. Haire admitted that she had been convicted in 1971 of petty larceny under $200. She had been charged with petty larceny and embezzlement and after entering a plea to the petty larceny count, the embezzlement count was dismissed as part of the plea bargain. Ms. Haire, who was then known as Dorothy Sellers, was sentenced to an indeterminite term at the Woman's Reformatory at Clinton, which sentence was suspended. She was placed on probation for two years and fined $100. She was also required to make restitution of $50 to her employer, Spencer Gifts. According to Ms. Haire, while working at Spencer Gifts she worked in the mail room with a person named Rhonda Jones. Ms. Haire claimed that she would bring the mail into Rhonda and other women working in the mail room and that they would sort the mail and take out money from the envelopes. Ms. Haire claimed that she never got any of the money, although she did know what was going on.

An Atlantic City Police Department Investigation Report which was admitted into evidence indicates that Ms. Sellers signed a confession in which she stated that she stole $50 in cash between October 1970 and March 1971. The statement itself was not placed in evidence. Ms. Haire did admit that she had signed the statement.

In addition to her 1971 conviction, Ms. Haire admitted that in 1978 she was convicted of welfare fraud. The two count indictment charged her with welfare fraud during two different periods of time, the first between July 1, 1973 and March 31, 1974, and the second between September 1, 1974 and December 31, 1977.[1] Ms. Haire pled guilty to the first count, which contended that she had received financial assistance from the Atlantic County Welfare Board after having misrepresented that she was unemployed. In fact she was employed by the Linwood Convalescent Home and Lenox, Inc. In addition, the first count of the indictment also charged her with receiving unemployment benefits and not revealing this to the welfare agency.

Following her plea of guilty to the one count of indictment 374-77-J, Ms. Haire was sentenced to a term of four months in the Atlantic County Jail. The sentence was suspended, except for eight days which she served over a period of four weekends. Ms. Haire was also placed on probation for five years, the first year to be reporting and the remainder to be non-reporting. In addition, she was to make restitution for $1,300 to the Welfare Board at the rate of $5 per week.

Ms. Haire testified that her probation period has ended and that the welfare agency takes the $5 a week out of her welfare payments.

In connection with her application for licensure, Ms. Haire filed a Personal History Disclosure Form - 2 (PHD). The answer to question 46 of the PHD, which asks whether the applicant had ever been convicted of a criminal or disorderly person's offense, indicated initially in black lettering "does not apply." The box marked "no" was also checked. However, written in ink in the section for explanation was Ms. Haire's name with the indication of a conviction for unemployment fraud/welfare and the fact that she was sentenced by the Superior Court in December 1977 to two years probation. Nothing concerning the 1971 conviction for petty larceny was listed.

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[1] The indictment heading lists unemployment fraud. This appears to be an error. The body of the indictment speaks of welfare fraud.

Ms. Haire testified that she recalled filling out the PHDF. She remembered having initialed the second page thereof and believes that she saw the heavy type thereon which indicated that "FAILURE TO ANSWER ANY QUESTION ON THIS FORM COMPLETELY AND TRUTHFULLY WILL RESULT IN DENIAL OF YOUR LICENSE APPLICATION."

According to the applicant, her application was actually filled out, at least in part, by someone at the CETA office. She believes that the CETA personnel placed the handwritten information concerning the conviction on the form, but she is uncertain. She recalls that she had sent for her rap sheet from the State Police and that she filed the rap sheet as part of her application for a casino hotel employee license. That application was submitted sometime after the PHDF-2 form. Both applications were admitted into evidence at the hearing and it appears that the application for the hotel registration (PHDF-2) bears a certification date of November 12, 1980.

Ms. Haire was uncertain whether the failure to list the 1971 conviction was her mistake or that of the personnel at CETA. She believes that when she received her rap sheet she left it with the CETA office. She also stated that in connection with question 46, when she originally filled it out, she wrote in "does not apply" and checked the box saying "no" because she had to fill out the document in front of students at the Casino Career Institute. Other students were looking when she filled out the form and she did not desire to list her convictions in front of them. She had the intention of changing the document and had sent for the rap sheet to get the accurate information.

Ms. Haire was questioned concerning her employment and the fact that she had not listed each and every employment that she had in response to question 31 of the PHD form, which question asks for employment and licensing data. Ms. Haire had not listed her employment with Spencer Gifts, which she believed lasted for approximately two to four months. She only listed those employments which lasted the longest. As a result, she did not report her employment with Lenox China or the Linwood Convalescent Home or her employment with Steinbach's or Bradlee's.

In respect to the welfare fraud conviction, Ms. Haire maintained that she had sent letters to the welfare agency advising them of her employment, but that someone at the agency had burned them. She plead guilty because she wanted to get the matter over with and her public defender was not interested in her case. She had no money to pay a

private attorney. She merely indicated that she was guilty when the judge questioned her, although she did believe that she had advised the agency of her employment by mail.

Ms. Haire testified that she has been trying to get jobs in the casino industry based on her being a registered casino hotel employee. She has had no success in her quest for employment.

Ms. Haire also admitted that she had not listed the 1971 conviction on the PHD-4 application. She said that she was not sure if that matter had been dismissed, although she thought so.

DISCUSSION

A review of the evidence in this case indicates that Ms. Haire appears to have been less than frank with the Commission. Although she has provided several explanations for her failure to list her 1971 conviction, none of them seem to ring true. Her story about having not listed the convictions because she was filling out the document in front of students seems far fetched. Her failure to list as employment the Lenox, Steinbach's and Linwood Convalescent Home employments seems interesting in light of the fact that those were the employments involved in her unemployment fraud conviction. Her claim that she was not guilty of the welfare fraud, but only plead guilty because she wanted to get the matter over with and because of the lack of interest of her public defender, is of questionable credibility. On the whole, I found Ms. Haire's stories and explanations to be unsatisfactory.

N.J.S.A. 5:12-86c requires the Commission to deny a casino license to any applicant who is disqualified because she has been convicted of a violation of N.J.S.A. 2A:111-2. Since Ms. Haire has such a conviction, her license must be denied unless she can establish her rehabilitation. In addition, N.J.S.A. 5:12-86b requires denial of licensure where an applicant has been convicted of an offense "which indicates that licensure of the applicant would be inimical to the policy of this Act and to casino operations." A conviction for petty larceny, involving the taking of money which was intended for her employer, is exactly the type of conviction which indicates that licensure of this applicant would be inimical. As a casino teller, Ms. Haire would have a great deal of contact with monies of her employer and monies intended for her employer. Given her history, to give her a license to serve in such a capacity would appear foolhearty and clearly against the

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interests of the Act in assuring the integrity of casino operations and the financial stability of the industry.

Ms. Haire's prior convictions for petty larceny and welfare fraud indicate flaws in her character which make it impossible for her to meet the burden of establishing by clear and convincing evidence that she has the good character, honesty and integrity required of an applicant for licensure under N.J.S.A. 5:12-89b(2) and 90b.

Although the applicant is permitted to demonstrate rehabilitation in order to overcome the detrimental effects of her prior convictions, in this case I cannot find that such rehabilitation has been shown. The prior history indicates several convictions of a similar type, involving fraud and the taking of money in an employment related situation. The applicant's testimony at this hearing was less than satisfactory, being I believe less than candid and filled with attempts to evade responsibility for her past actions. Under the circumstances, Ms. Haire does not appear to be an individual who has straightened herself out and who is unlikely to ever again engage in the kind of criminal conduct in which she has previously participated. Given all of the circumstances, I cannot find by clear and convincing evidence that she has rehabilitated herself.

I **CONCLUDE** that the respondent has not proven by clear and convincing evidence that she has the requisite good character, honesty and integrity required for licensure. I **FIND** that her licensure would be inimical to the policies of the Casino Control Act and the casino industry. I **FIND** that she has been convicted of an enumerated disqualifying offense. Finally, I **CONCLUDE** that she has not demonstrated rehabilitation by clear and convincing evidence. Therefore, I **CONCLUDE** that the license application must 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.

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

August 15, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

8/-/83
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Aug. 18, 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

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216.

EVIDENCE LIST

JOINT EXHIBITS:

J-1 PHDF-4, dated February 19, 1981

ON BEHALF OF RESPONDENT:

R-1 Atlantic County Superior and County Court Criminal Record, dated November 9, 1971, with attached continuation; Indictment I374-77-J; Judgment of Conviction and Order for Committment, dated September 27, 1978, with attached statement of reasons; and certification of Clerk of the County of Atlantic

R-2 New Jersey State Police, State Bureau of Identification Record of Criminal History (rap sheet)

R-3 Investigation Report, dated March 22, 1971

R-4 Atlantic City Police Department Report, dated June 28, 1971

R-5 Letter of July 1976, from George F. Smith, Investigator, Atlantic County Prosecutor's office, to Atlantic County Welfare Board

R-6 Complaint, dated July 9, 1976

R-7 Investigation Initiation Sheet

R-8 Two page document, dated December 12, 1977, re: Summary and Conclusion

R-9 Arrest Report

R-10 Personal History Disclosure Form - 2, dated November 12, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 82-CSI-19
through 82-CSI-22
OAL DOCKET NO. CCC 11034-82
[consolidated]
APP. NOS. 39-50; 686-70;
991-70; 44171-21

IN THE MATTER OF THE APPLICATIONS OF HAPPY DAY TOURS, INC., LUCKY TOURS, INC., AND VIP EXECUTIVE TOURS, INC., FOR LICENSURE AS CASINO SERVICE INDUSTRIES AND JUNKET ENTERPRISES AND IN THE MATTER OF THE APPLICATION OF ALLAN MELTZER FOR LICENSURE AS A CASINO EMPLOYEE (JUNKET REPRESENTATIVE)	FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on June 6, 1983, recommending that: (1) the applications of Happy Day Tours, Inc., Lucky Tours, Inc. and VIP Executive Tours, Inc., (Applicants) for casino service industry and junket enterprise licenses be denied; and (2) the Applicants not be required to pay $62,217.93 in fees to the Commission which were attributable to the investigation conducted by the Division of Criminal Justice; and the Division of Gaming

Enforcement and the Applicants having filed exceptions to the Initial Decision on July 19 and July 25, 1983, respectively, and further, the Applicants having filed a response to the Division of Gaming Enforcement's exceptions on July 30, 1983; and the Commission having considered the applications of Allan Meltzer for a casino employee license (junket representative); and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 28, 1983, to affirm and adopt the said Initial Decision in all respects and to deny the aforementioned applications,

IT IS on this 17th day of November 1983, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino service industry and junket enterprise license applications of Happy Day Tours, Inc., Lucky Tours, Inc. and VIP Executive Tours, Inc., and the application of Allan Meltzer for a casino employee (junket representative) be and hereby are 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 Allan Meltzer be and hereby is prohibited from reapplying for or obtaining any license,

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

IT IS FURTHER ORDERED that any existing business agreements, written or unwritten, between Allan Meltzer individually, Happy Day Tours, Inc., Lucky Tours, Inc., or VIP Executive Tours, Inc., and any casino licensee, its employees or agents, be terminated within fifteen (15) days from the date of this order; and

IT IS FURTHER ORDERED that Allan Meltzer individually, Happy Day Tours, Inc., Lucky Tours, Inc., and VIP Executive Tours, Inc., be prohibited from engaging in any future business with any casino licensees, its employees or agents until further order of this Commission; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicants, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL
COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 17, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 11034-82

AGENCY DKT. NO. 82-CSI-19,
582-CSI-20, 82-CSI-21 and
82-CSI-22

HAPPY DAY TOURS, INC.,
LUCKY TOURS, INC., AND
V.I.P. EXECUTIVE TOURS, INC.,
Petitioners

v.

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

APPEARANCES:

Mark H. Sandson, Esq., and **Stephen Hankin,** Esq., for the petitioners (Hankin, D'Amato & Sandson, attorneys)

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

Record Closed: April 20, 1983 Decided:

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

This matter concerns the applications filed with the Casino Control Commission (hereinafter referred to as the "Commission") by Happy Day Tours, Inc. (hereinafter referred to as "Happy"), Lucky Tours, Inc. (hereinafter referred to as "Lucky") and V.I.P. Executive Tours, Inc. (hereinafter referred to as "V.I.P.") for licensure as casino service

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industries, N.J.S.A. 5:12-92, and as junket operators, N.J.S.A. 5:12-102. By letter dated April 20, 1982, and supplemented on June 7, 1982, the Division of Gaming Enforcement (hereinafter referred to as the "Division") objected to the licensure of Happy, Lucky and V.I.P. because of certain matters which allegedly raised questions regarding the financial stability, integrity and responsibility of Allan Meltzer and his reputation for good character, honesty and integrity. Allan Meltzer is the sole owner and president of Happy, Lucky and V.I.P.

The petitioners denied the allegations of the Division and stated further that even if they were true, there were insufficient grounds for the denial of licensure. The petitioners 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.

PART I - PROCEDURAL HISTORY

At the prehearing conference held on February 28, 1983, the parties agreed that the issues are:

A. Whether the petitioners are required to pay the fee for the investigation by the Division of Criminal Justice conducted at the request of the Division.

B. Whether the petitioners can meet the licensure requirements for financial stability, integrity and responsibility; business ability; and reputation for good character, honest and integrity.

As to Issue B, the Division's objections to licensure are based on:

1. The allegation regarding the business relationship between Irwin Nowick and Mr. Meltzer, Happy and Lucky.

2. The allegation that Happy and Lucky overbilled Broadwalk Regency Corporation (hereinafter referred to as "Caesars") and Greate Bay Hotel and Casino, Inc. (hereinafter referred to as "Brighton").

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3. The allegation that V.I.P. used undisclosed field agents.

Prior to the hearing, the petitioners filed a motion to compel more specific answers to interrogatories. After a conference by telephone, I orally denied that portion of the motion which related to the information gained by the Division during its investigation of the petitioners' applications based on the confidential provision in N.J.S.A. 5:12-74(e).

The hearing in this matter was held on March 21 through 25, April 8 and April 20, 1983. On or before April 20, 1983, I received briefs from the parties regarding Issue A, the fee assessment, and the record in this matter closed on April 20, 1983.

Each of the issues will be discussed in a separate part of this initial decision with the pertinent findings of fact and conclusions of law as to that issue set forth therein.

PART II - FEE ISSUE

After receipt of the licensure applications filed by the petitioners, the Division began its investigation as required by N.J.S.A. 5:12-76. This investigation raised concerns that certain acts of Happy, Lucky and their corporate officers were illegal and the Division referred the matter to the Division of Criminal Justice. After its investigation, the Division of Criminal Justice did not initiate any criminal action against the petitioners or their corporate officers and employees. The results of the investigation by the Division of Criminal Justice were used by the Division in its review of the licensure applications.

At the conclusion of its investigation, the Division assessed a fee of $69,986.81 on the petitioners. By letter dated November 9, 1982, Dennis Daly, Senior Assistant Counsel for the Commission, stated that part of this fee, $62,217.93, was attributable to the criminal investigation conducted by the Division of Criminal Justice. The undisputed portion of the fee, $7,768.88, was paid by the petitioners.

Prior to the hearing in this matter, the petitioners attempted to obtain from the Division information regarding the nature and extent of the investigation by the Division of Criminal Justice; however, all such information was claimed to be confidential

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pursuant to N.J.S.A. 5:12-74(e). During the hearing, the Division presented the testimony of three investigators, all of whom are now or were formerly assigned to the Division. There was no showing as to what part of the Division's proofs, if any, had originated from the investigation by the Division of Criminal Justice.

I **FIND** that the facts as stated above are not in dispute and are pertinent to this issue.

The petitioners argued that that portion of the fee attributable to the investigation costs of the Division of Criminal Justice should not be assessed on the petitioners since these costs were not incurred by the Commissioner or the Division, and that such an assessment would be fundamentally unfair and in violation of the Fifth Amendment of the United States Constitution.

Ms. Quinn argued that the petitioners should be required to pay these costs since the Division used the information gained by the Division of Criminal Justice and, therefore, the Division of Criminal Justice was acting as the agent of the Division in accordance with N.J.A.C. 19:41-9.8 and 9.9.

The pertinent statutes and regulations provide:

N.J.S.A. 5:12-141

> The commission shall, by regulation, establish annual fees for the issuance and renewal of registrations and licenses other than casino licenses, which fees shall be payable by the licensee or the registrant.

N.J.S.A. 5:12-143

> a. There is hereby created and established in the Department of the Treasury a separate special account to be known as the 'Casino Control Fund,' into which shall be deposited all license fee revenues imposed by sections 139, 140, 141 and 142 of this act.
>
> b. Moneys in the Casino Control Fund shall be appropriated, notwithstanding the provisions of P.L. 1976, c. 67 (C. 52:9H-5 et seq.), exclusively for the operating expenses of the commission and the division.

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N.J.A.C. 19:41-9.8(b)

> In order to recover the cost of the thorough investigation and consideration of license applications by those sensitive industries [gaming related], the following application and issuance fee schedule is adopted:
>
> 1. A minimum application charge of $2,500, which shall be credited to the total fee; and
>
> 2. Payment for the efforts of professional agents and employees of the Commission and the Division at the rate of $30.00 per hour in matters directly related to the applicant; and
>
> 3. Payment for all unusual or out of pocket expenses incurred by the Commission or the Division in investigating and considering the application.

N.J.A.C. 19:41-9.9(b)

> The issuance fee for a three year non-gambling related casino service industry license shall be as follows:
>
> 1. A minimum application charge of $1,000, which shall be credited to the total fee; and
>
> 2. Payment for the efforts of professional agents and employees of the Commission and the Division at the rate of $30.00 per hour spent on matters directly related to the applicant; and
>
> 3. Payment for all unusual or out of pocket expenses incurred by the Commission or the Division in investigating and considering the application. . . .

Based on the facts and the law, I **CONCLUDE** that the investigation by the Division of Criminal Justice was for the prime purpose of determining whether or not criminal charges should be brought against any of the petitioners or their officers and employees and, therefore, the fee for this investigation does not meet the criteria set forth in N.J.A.C. 19:41-9.8(b) or 9.9(b). The mere fact that the Division later used information gained by the Division of Criminal Justice in its investigation regarding the applications does not mean that the criminal investigation was "directly related to the application" or that the Division of Criminal Justice was acting as the "professional agent" of the Division. The Division did not refer the matter to the Division of Criminal Justice in order to get assistance in its licensure investigation but because the Division suspected that some of the activities of the petitioners and their officers and employees were criminal violations.

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It is also clear that the statute intended that fees would be used for the limited purpcse of paying for the operating expenses of the Commission and the Division. A criminal investigation would be a legitimate expense of the Division of Criminal Justice, and there was no proof that the Division of Criminal Justice was seeking any reimbursement from the Division or the Commission.

Therefore, I **CONCLUDE** that the petitioners do not have to pay that portion of the assessed fee which relates to the investigation by the Division of Criminal Justice, namely, $62,217.93. Since I have concluded that the cost of the criminal investigation cannot be assessed on the petitioners as a matter of law, it is not necessary for me to consider the argument presented by the petitioners that such an assessment is fundamentally unfair and in violation of their Fifth Amendment rights.

PART III - LICENSURE ISSUE

The only questions raised as to business ability; financial stability, integrity and responsibility; and as to reputation of the petitioners and Allan Meltzer for good character, honesty and integrity were set forth in the April 20, 1982 and June 7, 1982 letters of the Division.

A. BUSINESS BACKGROUND OF ALLAN MELTZER

Allan Meltzer testified that for the last 35 years he has resided in Atlantic City. He was president of the M and G Corp., a family corporation, from 1961 through 1974, and this corporation owned and operated the Breaker Hotel in Atlantic City. In 1972, Mr. Meltzer purchased the Colony Motel, which he operated until it went into bankruptcy in 1975. Mr. Meltzer was then employed by the Lafayette Hotel in Atlantic City as a manager. Later, Mr. Meltzer returned to the Colony, took it out of receivership and paid all of its debts. Mr. Meltzer operated the Colony until he sold it in 1978 to Brighton for purposes of the construction of a casino, now known as the Sands Hotel and Casino.

In 1978, Mr. Meltzer and Mr. Nowick started Happy (P-2), a bus brokerage business serving the hotels and later the casino industry. Mr. Meltzer and two corporations started Lucky (P-3) in 1979, also a bus brokerage business serving the casino

industry. In 1981, Mr. Meltzer started V.I.P. (P-1) as a separate corporation to service the casino industry by bringing people with a propensity to gamble to casinos by air charters, etc. All these corporations were successful, and Mr. Meltzer is currently the owner and president of all three corporations. Mr. Meltzer admitted that he used the three corporations interchangeably.

Happy, Lucky and V.I.P. filed applications for licensure as casino service industries and were permitted to operate while their applications were under review. In January 1983, the statutes were amended and a license is now necessary prior to engaging in any junket business activities. Happy and Lucky are now basically inactive companies and V.I.P.'s business has declined and is limited to room brokerage at primarily non-casino hotels in Atlantic City.

In addition, Mr. Meltzer has other business interests in the Atlantic City area.

Dr. Victor Bressler, Rabbi Krauss, Samuel Kligerman, Albert Stern, Mildred Fox and Bernard Capaldi testified as to Mr. Meltzer's involvement in civic, cultural, religious and charitable activities in the Atlantic City area, and they all stated that Mr. Meltzer has a reputation in the community for good character, honesty and integrity. Mr. Steven J. Batzer, in a written statement, also indicated that Mr. Meltzer had a reputation for good character, honesty and integrity in the community (P-57).

Jerry Greenberg, Guy Deninger and John Skoglund testified that Mr. Meltzer has a reputation for good character, honesty and integrity in the business and financial communities in the Atlantic City area.

Louis DiGregorio, Assistant Vice-President for Customer Development for Caesars, testified that Mr. Meltzer had a reputation for good character, honesty and integrity with the casino industry in Atlantic City.

Richard Boyle, an audit manager, employed by the accounting firm of Alexander Grant in Philadelphia, testified that he was employed by the law firm of Hankin, D'Amato and Sandson to conduct an independent study of the internal accounting controls of V.I.P. for the period of June 1981 through March 1983. Mr. Boyle concluded that the controls were adequate for a corporation of its size and made three suggestions for improvement. Mr. Meltzer told Mr. Boyle that the suggestions would be implemented.

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During the hearing, the personal federal tax returns of Mr. & Mrs. Meltzer from 1975 through 1981 (P-13a-g), and the federal tax filings of the three petitioners (P-1 a-d, P-11, P-12a-f) were placed into evidence.

I FIND that the facts as set forth above are not in dispute and are pertinent to the issue. Since the Division has raised objections to licensure based on N.J.S.A. 5:12-89, the petitioners must present clear and convincing evidence that they and Mr. Meltzer meet the requirements for business ability; financial stability, integrity and responsibility; and reputation for good character, honesty and integrity. See, In Re: Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981).

B. BUSINESS INVOLVEMENT WITH MR. NOWICK

The most serious objection raised by the Division relates to the business relationship between Mr. Nowick and Mr. Meltzer, Happy and Lucky.

The undisputed facts relating to this objection are:

(1) Irwin Nowick started to work for Mr. Meltzer in 1975 as a waiter at the Colony Hotel and went with Mr. Meltzer to the Lafayette Hotel. When Mr. Meltzer returned to the Colony Hotel, Mr. Nowick became head waiter and later was employed as a combination maitre d' and sales manager.

(2) After the sale of the Colony Hotel, Mr. Nowick convinced Mr. Meltzer to start a bus brokerage company and they formed Happy in December 1978 (P-2). Each owned 50% of the stock of Happy (P-24).

(3) Over the years, Mr. Meltzer and Mr. Nowick became close personal friends.

(4) The checking account authorization established in 1978 for Happy required two signatures on each check. Those persons authorized to sign were Allan Meltzer, Dorothea Meltzer and Irwin Nowick (P-36, P-43, P-30).

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(5) Due in part to Mr. Nowick's skills in promoting business, Happy was a success. Mr. Nowick helped at least one casino (Caesars) design its bus program and Happy was assigned bus slots (spaces) at several of the casinos. These slots were filled by bus groups brought in by Happy or by subcontracting the slots to other companies.

(6) In June 1979, Mr. Meltzer discovered, by accident, a shortage in the advance deposits account and, when confronted, Mr. Nowick confessed that he took some deposits and used the money for gambling. After reviewing the Happy records, it was established that Mr. Nowick took approximately $10,000. It should be noted that at the hearing, Mr. Meltzer stated that the amount was $10,000 but that in the Division's letter of April 20, 1982, there is a statement that Mr. Meltzer told the Division that the amount was $50,000.

(7) Prior to the discovery of the shortage, Mr. Meltzer was aware that Mr. Nowick gambled but did not know that he had a gambling problem.

(8) Because of the shortage, Mr. Meltzer required Mr. Nowick to sign an agreement, dated June 11, 1979, whereby Mr. Nowick's Happy stock was put into escrow for a period of one year, within which time Mr. Nowick had to show that he could control his gambling problem (P-15).

(9) Mr. Meltzer also had Mr. Nowick resign his corporate positions as Director, Vice-President and Treasurer of Happy (P-16).

(10) On June 5, 1979, a Happy resolution was prepared to eliminate Mr. Nowick's right to sign Happy checks (P-37, P-44), but the bank signature card was not changed until April 11, 1980 (P-32).

(11) Mr. Nowick received a salary of $500 a week plus a percentage of the profits. After the discovery regarding the $10,000, Mr. Nowick received just a salary from Happy.

(12) Sometime after June 1979, Mr. Meltzer assumed that Mr. Nowick had his gambling problem under control.

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(13) In October 1979, Mr. Meltzer as President of Happy, Peter Picknelly on behalf of Peter Pan World Travels, Inc., and Joseph Casser on behalf of Manhattan Travel Bureau, Inc. formed Lucky (P-3).

(14) Peter Picknelly and Joseph Casser knew both Mr. Meltzer and Mr. Nowick through their business dealings with Happy and were impressed with the business skills of Mr. Nowick. As of October 1979, they may also have known that Mr. Nowick liked to gamble.

(15) Mr. Nowick was made the managing director of Lucky, was put in complete charge of the business operation and was given the right to ten shares of nonvoting common stock (P-23).

(16) The Lucky resolution required only one signature on a check, and Mr. Nowick was authorized to sign Lucky checks (P-34, P-27).

(17) Mr. Nowick received a salary of $800 a week plus a percentage of the profit from Lucky.

(18) Prior to the start of Lucky, Mr. Meltzer did not tell either Mr. Picknelly or Mr. Casser that Mr. Nowick had illegally taken $10,000 from Happy, nor did he tell them that he had required Mr. Nowick to put his stock in trust (P-15), resign his corporate positions (P-16) and give up his right to sign Happy checks (P-37, P-44).

(19) Happy, Peter Pan World Travels, Inc., and Manhattan Travel Bureau, Inc., each paid $5,000 for ten shares of voting common stock and lent $20,000 to Lucky. Lucky repaid the three loans within a short time after it initiated doing business.

(20) Mr. Casser was the first President of Lucky (P-56) and Mr. Meltzer was the Treasurer. Thereafter, Mr. Meltzer was both the President and Treasurer of Lucky.

(21) Once Lucky started doing business, Mr. Meltzer had very little to do with the everyday operation of Lucky and devoted his time to the operation of

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Happy. Neither Peter Pan World Travels, Inc., nor Manhattan Travel Bureau, Inc., involved itself in the everyday operation of Lucky.

(22) After being contacted by Atlantic National Bank regarding the fact that the Lucky account was overdrawn, Mr. Meltzer spoke to the Lucky bookkeeper, Jean Berger, and to Mr. Nowick, and was assured that it was a mistake and that everything was alright. Mr. Meltzer asked Ms. Berger for the most recent bank statement and was told that it was misplaced.

(23) Mr. Meltzer asked to see the last several Lucky bank statements and when he did not receive them after a period of time, he became suspicious and had the accountant, George Barbetto, look into the matter.

(24) Mr. Barbetto received a call from Ms. Berger in the latter part of March 1980 and she informed him that Mr. Nowick was taking Lucky money. Soon after, Ms. Berger left Lucky and disappeared.

(25) Mr. Meltzer confronted Mr. Nowick, and Mr. Nowick admitted that he took some money and he accused Ms. Berger of also taking money from Lucky.

(26) The completion of Mr. Barbetto's review was delayed by the fact that Atlantic National Bank was having staff problems and its bank statements were being sent out late.

(27) Mr. Barbetto determined that between January and May 1980, Mr. Nowick took $342,800 and that he repaid $110,500 of this amount (P-39, P-40).

(28) Mr. Nowick took the money by making out checks to himself and to other staff personnel of Lucky who then cashed the checks and gave Mr. Nowick the money (P-39).

(29) On April 11, 1980, Mr. Meltzer changed the Lucky check authorization card at the Atlantic National Bank to cancel Mr. Nowick's right to sign

Lucky checks (P-28) and Happy checks (P-32). A resolution to delete Mr. Nowick's right to sign Lucky checks was signed on May 14, 1980 (P-35), and another Atlantic National Bank signature card for Lucky was signed on May 14, 1980 (P-29).

(30) At the request of Mr. Meltzer, the trust agreement was revoked as to the Happy stock on April 7, 1980 (P-17), and Mr. Nowick relinquished his interest in Lucky on June 12, 1980 (P-21).

(31) Mr. Meltzer removed Mr. Nowick from his positions with Happy and Lucky in June 1980 (P-21). Mr. Nowick formed a consulting firm called IN Associates and his firm was hired by Mr. Meltzer as a consultant for Lucky and Happy. IN Associates was paid $1,000 a week by Happy.

(32) On July 22, 1980, Mr. Nowick signed an agreement acknowledging a debt of $180,000 to Lucky, and he also signed a promissory note for this amount (P-22).

(33) Mr. Meltzer did not notify the police about the monies Mr. Nowick took either from Happy or from Lucky.

(34) In late April 1980 and in July 1980, Mr. Meltzer met with Mr. Picknelly and Mr. Casser and discussed buying out their interest in Lucky. Mr. Meltzer offered both of them $50,000 for their interest and Mr. Meltzer had the Lucky accountant prepare a financial report on Lucky (P-18, P-19). The money taken by Mr. Nowick appears on the financial report as an account receivable. The amount listed is $199,000 which represents the amount taken by Mr. Nowick less the amount he returned and less an amount due to Happy from Lucky.

(35) Mr. Picknelly agreed to sell his interest in Lucky for $50,000 in July 1980, but the agreement was not signed until March 18, 1981 (P-19).

(36) After negotiating with Mr. Casser, Mr. Meltzer bought out the interest of Manhattan Travel Bureau, Inc. in Lucky for $100,000. This agreement is dated September 23, 1980 (P-18).

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(37) Both of the agreements contain a clause releasing and discharging Lucky, Mr. Meltzer and Mr. Nowick from any claims or other causes of action (p. 4 of P-18, sec. 5 of P-19). These are unusual clauses since they provide for the release and discharge of a nonparty to the agreements.

(38) While Mr. Nowick was a consultant to Lucky and Happy, Mr. Meltzer provided Mr. Nowick with a free apartment and paid certain gambling debts of Mr. Nowick, amounting to more than $100,000. Happy paid for some of the furniture in Mr. Nowick's apartment (R-7) and paid for some home furniture for Mr. Meltzer.

(39) When Mr. Meltzer became aware that there was an investigation regarding Mr. Nowick, the consultant agreement was terminated by letter, dated February 25, 1981 (P-20).

(40) Mr. Nowick has not repaid any of the monies he improperly took from Happy or Lucky. Although Mr. Meltzer stated that he personally absorbed the loss of the monies taken by Mr. Nowick, these monies now appear in the Happy and Lucky records as additional compensation to Mr. Nowick.

The most important factual issue deals with the Lucky buyout and whether or not Mr. Meltzer told either Mr. Picknelly or Mr. Casser that Mr. Nowick had taken Lucky money. When initially interviewed by a representative of the Division, Mr. Meltzer stated that he did not tell either Mr. Casser or Mr. Picknelly. At the hearing, Mr. Meltzer stated that his memory was later refreshed by Mr. Picknelly. Mr. Picknelly told Mr. Meltzer that he had informed him about the missing money before he agreed to sell his interest in Lucky. Mr. Meltzer felt confident that if he had told Mr. Picknelly, he also would have told Mr. Casser.

In anticipation of Mr. Casser's testimony, Mr. Meltzer testified that Mr. Casser would be a hostile witness. Mr. Meltzer felt that he had to overpay Mr. Casser for his interest in Lucky and stated that he terminated all business dealings with Manhattan Travel Bureau, Inc. after the buyout, which annoyed Mr. Casser.

At the hearing, Mr. Picknelly confirmed that sometime in May 1980, he was informed by Mr. Meltzer about the money taken by Mr. Nowick, and that Mr. Meltzer told him that he would be personally responsible for the money taken by Mr. Nowick. Mr. Picknelly stated that the sale agreement was reviewed by his accountant and attorney, and that he was satisfied with the $50,000 he received for his Lucky stock.

Mr. Casser testified that he did not know about the money taken by Mr. Nowick; however, he was aware that Mr. Nowick was gambling heavily while he was employed by Lucky. Mr. Casser stated that he was forced out of Lucky and that he considered $100,000 an insufficient amount in light of the fact that Lucky was a successful business. After a lengthy negotiation, Mr. Casser agreed to sell his Lucky stock, and the agreement was reviewed by his accountant and attorney (P-25, P-26a - f).

At the hearing, the question of why Mr. Meltzer decided to buy out the interests of the other two incorporators of Lucky was not fully developed. Mr. Meltzer stated that he was not satisfied with the business growth of Lucky and that he wanted to be out of the company; however, after he purchased all the stock, he continued to operate Lucky. Additionally, I have some questions as to the adequacy of the compensation paid to Mr. Picknelly and Mr. Casser. The compensation appears to have been based on the book value of Lucky, without taking into consideration the future earning capacity of the company.

Based on the above, I **FIND** that Mr. Picknelly and Mr. Casser became aware of the fact that Mr. Nowick took Lucky money sometime prior to the finalization of the buyout agreements. Further, I **FIND** that insufficient information was presented to make any findings of facts, as to why Mr. Meltzer wanted to get full control of Lucky or as to the adequacy of the compensation paid to Mr. Casser or Mr. Picknelly.

The next factual issue is when Mr. Meltzer found out that Mr. Nowick was illegally taking Lucky money. At the hearing, Mr. Meltzer stated that he found out in March 1980; however, he admitted that he had told an investigator employed by the Division that he found out either in December 1979 or in January 1980. When confronted with his prior statement, Mr. Meltzer stated that he was advised in January or February 1980, that the Lucky account was overdrawn; however, he believed the statements of Ms. Berger and Mr. Nowick that it was a mistake. Mr. Meltzer went away at the end of February and it was sometime in March 1980, that he "put it together" and determined

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that Mr. Nowick was taking money from Lucky's account. The Lucky records show that Mr. Nowick started to take money in January 1980 (P-39, P-40).

Based on the facts, I **FIND** that Mr. Meltzer did not find out that Mr. Nowick was taking Lucky money until sometime in March 1980.

The last factual issue relates to the apparent delay by Mr. Meltzer to take any affirmative action to prevent Mr. Nowick from taking additional Lucky funds. Mr. Nowick continued to take Lucky money illegally by signing checks until May 5, 1980 (P-39, P-40). In his testimony, Mr. Meltzer admitted that he found out in March 1980 but that he did not take Mr. Nowick's name off the bank signature card until April 11, 1980, and that at about the same time, Mr. Meltzer told the new Lucky bookkeeper that Mr. Nowick was not to sign Lucky checks. Mr. Meltzer claimed that the bank failed to tell him that a Lucky resolution was also necessary on April 11, 1980. Later he was informed that a resolution was necessary, and the resolution was signed on May 14, 1980 (P-35) and a new bank signature card was signed on May 14, 1980 (P-29). Also, it was not until May 1980 that he made sure that Mr. Nowick could not get his hands on blank Lucky checks. Mr. Nowick stayed with Lucky until June 1980.

Based on the above, I **FIND** that Mr. Meltzer offered no reasonable explanation for his delay in taking action after he found out in March 1980 that Mr. Nowick was illegally taking Lucky money.

Based on all the facts, I **CONCLUDE** that the Division has raised a substantial challenge as to the business ability, and financial stability, integrity and responsibility of Mr. Meltzer based on the fact that he allowed Lucky to engage the services of Mr. Nowick without informing Mr. Picknelly and Mr. Casser that Mr. Nowick had illegally taken Happy money, the fact that he allowed Mr. Nowick to have full control over Lucky without taking any precautions, and the fact that he delayed taking quick and affirmative action when he found out in March 1980 that Mr. Nowick had taken some Lucky money.

In fact, Mr. Nowick was given a greater opportunity to steal with Lucky. The facts show that Mr. Nowick and Mr. Meltzer or Mrs. Meltzer had to sign a Happy check (P-36, 30) while Mr. Nowick alone could sign a Lucky check (P-34, 27). I can understand Mr. Meltzer's reluctancy, because of his friendship with Mr. Nowick, to contact the police after he found that money was missing from Happy; however, friendship does not

justify his failure to tell the other two incorporators of Lucky nor does it justify his permitting Mr. Nowick to be put in a position from which he could deplete the Lucky account. To put Mr. Nowick in this position is similar to a person asking a friend who he knows is an alcoholic to serve as his bartender. Not only was it not a gesture of friendship to expose Mr. Nowick to such an opportunity, but it shows a gross lack of business ability, and financial stability, integrity and responsibility to expose himself and the two other incorporators to possible substantial losses.

C. OVERBILLING

There was a great deal of testimony at the hearing regarding the allegation made by the Division in its April 20, 1982 letter that Happy and Lucky overbilled Caesars, Brighton and Harrah's Marina Associates during a three-month period, October 1, 1980 through December 30, 1980. Specifically, the Division alleged that Caesars was overbilled in the amount of $3,806.50 and that Brighton was overbilled in the amount of $13,925.

I **FIND** that at the hearing no evidence was produced to show that Harrah's Marina Associates was overbilled by any of the petitioners.

The Division subpoenaed and obtained from Happy and Lucky all their business records for the 1980 calendar year, which involved more than 20,000 bus trips. Three investigators, Michael Brown, James Niwinski and Peter Scofide were assigned to this matter by the Division. Each investigator worked independently and was directed to check certain bus companies' business dealings with the petitioners in 1980 and thereafter was told to concentrate on a three-month period, October 1, 1980 through December 31, 1980.

In addition to the records of Happy and Lucky, the three investigators reviewed the bus records of the casinos, and of the bus and tour companies who dealt with Happy and Lucky during the three-month period. The investigators discussed the bus billing procedures with representatives of the casinos, bus companies and tour companies; however, they did not discuss the alleged overbillings with Mr. Meltzer, nor did any representative of the Division give Mr. Meltzer an opportunity to respond to the documents that were assembled to support this allegation.

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The documents to support the Division's allegation of overbilling (P-47a through P-53a) were given to the petitioners ten days before the first day of the hearing, pursuant to the provisions of the Prehearing Order. This documentation consists of seven separate booklets, each dealing with a different bus company.

In order to evaluate the documents presented by the Division, it is necessary to understand the procedures used by the petitioners, the casinos and the bus companies.

The various casinos have bus programs which permit a certain number of buses to arrive at the casino each day. The number of authorized buses, known as bus slots, are then assigned to various bus companies, tour companies and bus brokers, such as the petitioners. The casinos compensate these companies for bringing buses with potential gamblers to their casino. During the period in question, Caesars and Brighton had a number of different bus programs and the amount of the compensation and the method of determining the compensation varied between programs. In general, the casinos paid a company based on the number of buses, on the number of passengers in a bus, or on the number of buses provided each bus had a minimum number of passengers.

In order to keep track of the number of buses and/or passengers, the casinos employed greeters who were present when the buses arrived. During the period in question, Brighton required its greeters to list bus arrival information on a paper called a Greeter Sheet (hereinafter referred to as "BGS"). During the same period of time, Caesars used a voucher system and each voucher was to be signed by the casino employee and by the representative of the bus company or bus broker. The casino greeters also gave to the passengers on the buses whatever "giveaways" were being given by the casino. The number and type of giveaways, which included coins, food coupons, show tickets, etc., varied depending on the bus program. After each bus arrived, the BGS or vouchers, along with the unused giveaways were returned to a designated location by the greeter.

Happy and Lucky also employed greeters who were present when the buses arrived at the various casinos. Each greeter was given a daily sheet listing the buses that were expected and identifying each bus by the name of the bus company and the name of the group. It was the responsibility of the petitioners' greeters to note the bus number and, if required, the number of passengers on the bus. These greeter sheets were then used by Happy and Lucky to prepare their bills to the casinos, (greeter sheets prepared by a Lucky employee will be hereinafter referred to as "LGS").

In addition, when Lucky and Happy had an insufficient number of bus trips to fill the slots assigned to them by the casinos on a certain day, they allowed other companies to use their slots and were compensated by said company rather than by the casino.

There were two major types of bus trips. A charter bus trip where a bus is used for one group of people, all of whom are picked up at one location, and a line bus trip where a bus picks up various people at several locations and takes them to a casino.

The bus companies kept records as to where each of their buses went on a given day and these records were based primarily on the driver's log which was kept by the bus driver and listed the starting point, destination, route used, etc.

The allegation of overbilling was based on the Division's conclusion that certain buses for which the petitioners received compensation from the casino did not actually arrive at the casino on the date specified, that the petitioners were paid for more passengers than actually arrived on certain buses, or that the petitioners and a bus company both billed the casino for certain buses.

During the hearing, there was extensive testimony by Mr. Meltzer as to the documents (P-47a through P-53a) presented by the Division and the rebuttal documents which were introduced into evidence as P-47b through P-53b.

Prior to the conclusion of the hearing, Ms. Quinn, on behalf of the Division, stipulated that certain Happy or Lucky bus trips were no longer in dispute. The stipulations are:

P-49a Safety Bus Company - the bus trips which remain in dispute are:
November 1, 1980 LGS
November 8, 1980 LGS
November 24, 1980 LGS
December 16, 1980 LGS

P-50a Melni Bus Company - nothing remains in dispute

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P-51a Domenico Bus Services, Inc. - the bus trips which remain in dispute are:

(a) October 28, 1980 Domenico Bus Service, Inc. invoice:
October 1, 1980 - Bus 706, 605, 601
October 2, 1980 - Bus 706, 603, 405, 701, 502, 710
October 3, 1980 - Bus 705, 406, 701, 502, 605
October 4, 1980 - Bus 706, 604, 709
October 7, 1980 - Bus 706
October 17, 1980 - Bus 603

(b) November 3, 1980 Domenico Bus Services, Inc. invoice:
October 27, 1980 - Bus 712

(c) November 17, 1980 Domenico Bus Services, Inc. invoice:
November 15, 1980 - Bus 709
November 16, 1980 - Bus 603

(d) November 30, 1980 LGS - Bus 512

P-52a Starr Bus Company - The bus trips which remain in dispute are:
October 10, 1980 LGS
November 7, 1980 LGS
November 10, 1980 LGS
November 13, 1980 LGS
November 22, 1980 LGS
November 9, 1980 LGS
October 24, 1980 LGS

There were no stipulations as to P-47a, P-48a and P-53a.

For purposes of this initial decision, I will not discuss the testimony of Mr. Meltzer or of any of the investigators as to the bus trips that are no longer in dispute, except as this information may have a bearing on other issues in this matter.

Mr. Meltzer testified that based on his review of P-47a through P-53a, he had difficulty determining what bus trips were questioned by the Division; however, he estimated that there were 75 bus trips in issue (prior to the stipulations set forth above). According to Mr. Meltzer, from October 1, 1980 through December 31, 1980, Happy and Lucky had 7,800 buses going to various casinos in Atlantic City, and of that number 2,200

buses (excluding super buses) went to Brighton and 2,757 buses went to Caesars. Also during the period of time in issue, Happy and Lucky submitted bills to the various casinos totaling more than 3.4 million dollars, of which more than 1.2 million dollars was billed to Caesars and more than 1.3 million dollars was billed to Brighton.

I **FIND** that the foregoing background facts as to the overbilling allegation are pertinent and are not in dispute.

As to the bus trips that remain in controversy, I will set forth all the pertinent testimony as to each bus company rather than present the testimony in the order it was presented at the hearing.

P-47a AND b

These exhibits involve Asbury Park (Rollo) Bus Company (hereinafter referred to as "Asbury"), Lucky and Caesars. All of the bus trips in issue were package four trips which meant that Lucky was paid $7.50 per person by Caesars. In his investigation, Detective Peter E. Scofide found discrepancies as to the passenger counts for the bus trips in issue. In each case, the records of Lucky and Caesars listed the same number of passengers and the records of the bus company had a smaller number of passengers. As to Asbury, Detective Scofide testified that he was permitted to inspect the bus company's records; however, he was not permitted to make any copies of the records and the records were not subpoenaed by the Division.

Bus Identification	Asbury Passenger Count	Lucky and Caesars Passenger Count
October 24, 1980 LGS, Bus 156	9	44
October 25, 1980 LGS, Bus 164	33	45
October 10, 1980 LGS, Bus 164	8.	10

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October 17, 1980 LGS, Bus 160	20	40
October 18, 1980 LGS, Bus 162	29	40

Detective Scofide and the two other investigators testified that they placed greater reliance on the records of the bus companies than on the records kept either by the petitioners or by the casinos. This was based, in part, on their belief that the greeters employed by the casinos and the petitioners worked together and that the bus companies kept independent records which were not subject to the influence of the petitioners.

Mr. Meltzer testified that he questioned the Division's reliance on the records kept by the bus companies. According to Mr. Meltzer, some of the bus companies kept poor records, and, in addition, he represented that it was not uncommon for the bus driver to pick up additional passengers, receive their payment for the trip and not report the additional passengers to the company so that the bus driver could keep the money. Therefore, Mr. Meltzer stated that it is not surprising that the records of the bus company, which are based on the driver's log, showed a smaller number of passengers than the number reported by the representatives of the petitioners and casinos. Mr. Meltzer also stated that Caesars had a good system for keeping track of buses.

As to the Asbury bus trips in issue, Mr. Scofide testified that they were all charter trips and not line runs. Mr. Meltzer admitted that it was harder for the bus driver to add passengers to charter trips.

P-48a AND b

These exhibits involve P and L Enterprises (hereinafter referred to as "P & L"), Happy and Brighton, and relate to two super bus trips. Super buses are luxurious buses holding a maximum of 20 people which are used to convey persons with a propensity to gamble to a casino.

The first bus trip in issue is shown on a Happy bill, dated November 10, 1980, in which Happy billed Brighton $1,200 for a super bus trip on November 3, 1980, on Bus V2 for charter 4541. The P & L records for that date show that bus V2 did not go to Brighton

and that P & L did not bill Happy for the rental of Bus V2. The general manager of P & L informed Detective Scofide that V2 was stopped by the State Police and never picked up any casino passengers. Both the HGS and the BGS show that V2 arrived at Brighton on November 3, 1980.

The second bus trip in issue is shown on a Happy bill, dated December 15, 1980, in which Happy billed Brighton $1,200 for a super bus trip on December 12, 1980, on Bus V5 for charter 1316. The P & L records for that date show that V5 arrived at the pickup point but that there were no passengers. P & L billed Happy for one-half of the trip. The general manager of P & L admitted to Detective Scofide that the bus may have arrived late at the pickup point. Both the HGS and the BGS show that Bus V5 arrived at the Brighton on December 15, 1980.

In response, Mr. Meltzer testified that it was Happy's responsibility to make sure that the passengers arrived at the casino. If a super bus did not arrive at the pickup point on time, the passengers contacted Happy's office and the company provided alternative means of transportation, which could be a limousine or a taxi. Since the passengers did arrive at the casino, Mr. Meltzer felt that he was justified in billing the casino for the trips. Mr. Meltzer offered no explanation as to why the Happy and Brighton greeters did not note that the passengers arrived by an alternative means of transportation. According to Mr. Meltzer, during the period of time in issue, Brighton had a poor system of keeping track of buses.

Detective Scofide admitted that he did not check with Brighton, now the Sands Casino, to find out if the passengers scheduled for the two super bus trips in issue arrived by an alternative means of transportation.

In rebuttal to the testimony of Mr. Meltzer, Ms. Quinn called two witnesses.

Jerome E. Palma, who was Executive Casino Host at Brighton during the period of time in issue, stated that it was Brighton's policy to pay for super buses; however, if he were advised by the bus broker that the passengers scheduled for the super bus trip arrived at the casino by an alternative means of transportation, he would evaluate the facts and decide whether or not the casino would pay the broker the standard super bus fee or would pay another amount.

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Charles Muller, who was Mr. Palma's assistant during the time period in question, stated that it was Brighton's policy to pay for the super bus and that a bus broker would not be paid if the passengers arrived by another means of transportation. On cross-examination, Mr. Muller stated that Mr. Palma had the authority to approve a payment for an alternative means of transportation.

P-49a AND b

These exhibits involve Safety Bus Company (hereinafter referred to as "Safety"), Lucky, Brighton and Caesars. The specific bus trips that remain in issue are:

BUS IDENTIFICATION	SAFETY	LUCKY AND CASINO
Nov. 1, 1980 LGS, Bus 90	Bus 90 went to Cherry Hill	Arrived according to Brighton and Lucky
Nov. 8, 1980 LGS, Bus 30	Does not have a Bus 30	Arrived according to Brighton and Lucky
Nov. 24, 1980 LGS, Bus 75	Bus 75 was replaced by Bus 83	Arrived according to Lucky and Brighton
Dec. 16, 1980 LGS, Bus 102	Bus 102 was replaced by Bus 82	Arrived according to Lucky and Caesars

Mr. Niwinski, formerly employed by the Division, testified that only the November 8, 1980 bus trip involved an alleged overbilling and that the other bus trips were included since both Lucky and the casino greeters listed the wrong bus. The fact that both Lucky and the casino had the same error was an indication that the greeters were working together and supported his conclusion that the bus company's records were more reliable.

Mr. Meltzer admitted that Bus 90 did not arrive at Brighton on November 1, 1980, and stated that a Lincoln bus was used for that trip. Lucky paid Lincoln for the bus

(P-49b). As to the November 8, 1980 bus trip, Mr. Meltzer stated that Bus 30 was added onto the LGS by someone other than the Lucky greeter and that he did not bill Brighton for Bus 30 (P-49b). It was Mr. Meltzer's conclusion that a Brighton representative added Bus 30 to the LGS and then amended his bill and paid for Bus 30. As to the November 24 and December 16, 1980 bus trips, Mr. Meltzer stated that he paid for the buses for the two trips (P-49b) and that the greeters' error in not listing the right bus number was not important since the buses did arrive.

P-50a AND b

These exhibits involve one Melni Bus trip, and Ms. Quinn stipulated that this bus trip is no longer in issue.

P-51a AND b

These exhibits involve Domenico Bus Service, Inc. (hereinafter referred to as "Domenico"), Happy and Brighton. For purposes of clarification, I am dividing the documentation into two sections. The first section relates to the November 30, 1980 LGS which shows that Bus 512 as well as Bus 418 arrived at Brighton (P-51a, R-11). According to Domenico, Bus 418 and not Bus 512 went to Brighton on that day. Happy billed Brighton for two buses on November 30, 1980 and Mr. Meltzer presented a Happy voucher to show that Domenico was paid for Bus 418 (P-51b).

The second section relates to Domenico's billings to Brighton for bus trips it allegedly brought to the casino. As to each of the buses listed below, both Domenico and Happy submitted a bill to Brighton. The specific bus trips that remain in issue are:

Domenico Invoice, dated October 28, 1980:

October 1, 1980 - Bus 706, 605, 601
October 2, 1980 - Bus 706, 603, 405, 701, 502, 710
October 3, 1980 - Bus 705, 406, 701, 502, 605
October 4, 1980 - Bus 706, 604, 709
October 7, 1980 - Bus 706
October 17, 1980 - Bus 603

Domenico Invoice, dated November 3, 1980:

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October 27, 1980 - Bus 712

Domenico Invoice, dated November 17, 1980:
November 15, 1980 - Bus 709
November 16, 1980 - Bus 603

Mr. Meltzer admitted that there was some overbilling by Happy and Domenico because of a confusion between Domenico, a bus company and Domenico Tours, Inc., a company which arranged bus trips and used Domenico buses. The greeters did not distinguish between the two companies and used "Domenico" to represent both companies. According to Mr. Meltzer, it is impossible at this time to determine whether Happy or Domenico made the error as to the bus trips in issue. Brighton representatives made certain adjustments to a number of bills submitted by Happy because of this confusion, and Brighton received an appropriate $7,000 credit for these overbillings as part of a settlement. This settlement related to a law suit brought by Happy against Brighton to collect moneys due to Happy (P-4, P-5, P-6). Mr. Meltzer represented that Brighton was satisfied with the credit and he considered this matter closed.

On cross-examination, Mr. Niwinski, who reviewed the Domenico records, admitted that he was aware that there was a confusion as to the names and that there was a settlement between Happy and Brighton. Additionally, when shown certain Happy bills (P-51a and b), Mr. Niwinski admitted that a Brighton representative had made certain downward adjustments.

P-52a AND b

These exhibits involve the Starr Bus Company (hereinafter referred to as "Starr"), Lucky, Happy, Caesars and Brighton. The specific bus trips that remain in issue are:

BUS IDENTIFICATION	STARR	LUCKY AND CASINO
Oct. 10, 1980 LGS, Bus 50	Bus 50 went someplace else, See R-10.	Arrived according to Lucky and Caesars

Nov. 7, 1980 LGS, Bus 66	Bus 66 was cancelled	Arrived according to Lucky and Caesars
Nov. 22, 1980 LGS, Bus 32 (F Program)	31 passengers	BGS and LGS - 45 passengers
Nov. 9, 1980 LGS Bus 78 (Package Four Program)	41 passengers	BGS - 45 passengers LGS - 41 passengers (changed to 45)
Oct. 24, 1980 LGS, Bus 90	Bus 7300 was substituted for Bus 90	LGS for Brighton lists Bus 90 and LGS for Caesars lists Bus 7300
Nov. 10, 1980 LGS, Bus 78 (F Program)	40 passengers	BGS and LGS - 47 passengers
Nov. 13, 1980 LGS lists 5 buses (three buses for the W.B. group)	Billed Happy for three buses for the W.B. group	Lucky paid Starr for three buses for the W.B. group

According to Mr. Meltzer, the Starr voucher system was an excellent way of keeping track of casino bus arrivals. As to the October 10, 1980 bus trip, Mr. Meltzer stated that Starr used Bus 32 instead of Bus 50 and presented a Starr voucher signed by the casino greeter and a bus driver indicating that Bus 32 arrived at Caesars. The LGS for October 10, 1980, shows that 14 Starr buses arrived at Caesars. Mr. Meltzer presented 13 Starr vouchers, several of which did not list a bus number (P-52b).

In support of his position that Bus 66 arrived, Mr. Meltzer presented a Starr voucher for November 7, 1980, showing that Bus 66 did arrive (P-52b). As to Bus 90 on October 24, 1980, Mr. Meltzer represented that Bus 90 went to Brighton and that Bus 7300 went to Caesars. It may be that Bus 7300 was substituted for Bus 90 for the Caesars trip and, therefore, that there was some confusion in the Starr records. Lastly, as to the

November 13, 1980 LGS, Mr. Meltzer argued that the LGS was correct and that there may have been some confusion since the W.G. group was reduced from five to three buses.

As to the three bus trips where the number of passengers is in issue, the November 22, 1980 bus trip was identified as a charter, however, no information was given as to whether the other two bus trips were line runs or charters.

There was conflicting testimony as to method used to determine how much the petitioners could charge Brighton pursuant to the F Program and the Package Four Program. Mr. Meltzer was not sure but thought that as to both programs, he was paid for the bus if the passenger count exceeded 35 or 40, and, therefore, that the difference in count as to the November 9 and 10, 1980 trips made no difference as to his compensation from Brighton. On the other hand, the Division investigator, Mr. Brown, was not sure but thought that Brighton based the payments on the number of passengers as to each of these programs.

As to Brighton's F Program, Mr. Muller testified that in October and November 1980, the casino paid for the bus if it arrived and in December 1980, the casino paid for the bus if the bus had at least 40 passengers, otherwise the payment was prorated based on the passenger count.

P-53a AND b

The exhibits involve Talmage Tours, Lucky and Caesars. The bus trips in question were night package trips for which Caesars paid Lucky $4.75 per person. The specific bus trips are:

BUS IDENTIFICATION	TALMAGE PASSENGER COUNT	LUCKY AND CAESARS PASSENGER COUNT
Jan. 24, 1980 LGS, Bus 20	35	43
Jan. 29, 1980 LGS, Bus 52	39	49

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Feb. 5, 1980 LGS,	11*	46
Bus 18		
Feb. 10, 1982 LGS,	18	49
Bus 7932		
Feb. 11, 1980 LGS,		
Bus 83	30	40
Bus 89	34*	48
Feb. 14, 1980 LGS,		
Bus 19	27	47
Feb. 15, 1980 LGS,		
Bus 52	40	43
Bus 44	38	40
Feb. 19, 1980 LGS,	No testimony	
Bus 98	or records	47
Bus 24		41
Feb. 22, 1980 LGS,		
Bus 98	39	44
Bus 38	40	41
Bus 16	9*	44
Feb. 23, 1980 LGS,		
Bus 89	31*	43
March 13, 1980 LGS,		
Bus 64	20*	40
March 26, 1980 LGS,		
Bus 26	47	46
Bus 82	29	40

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March 30, 1980 LGS,		
Bus 40	46*	47
Bus 78	25*	45
Bus 56	29*	47

* Day-trip records.

Mr. Niwinski, who investigated Talmage, stated that these documents related to bus trips that took place prior to the period in question and that he had assembled the information prior to the decision to concentrate on October, November and December, 1980. As to several of the bus trips in question, identified by an asterisk, Mr. Niwinski could not find a Talmage record for a night package trip on that date and the information in the Talmage column relates to a day trip on the day in question.

On cross-examination, Mr. Niwinski admitted that he did not personally review all the Talmage records. Mr. Niwinski asked for the Talmage records which showed the company's business dealings with Happy and Lucky and relied on the representation that he received all the information requested.

Mr. Meltzer stated that Talmage used a poor record system and that all of the above-listed bus trips were line runs. Mr. Meltzer again stated that it was not unusual for a bus driver on a line run to pick up more than the anticipated number of passengers, not record the extra passengers and pocket the trip fees. Therefore, Mr. Meltzer questioned the Division's reliance on the Talmage records.

During the testimony of Michael Brown, one of the Division investigators, Mr. Sandson attempted to show that Mr. Brown had a bias against the petitioners. Mr. Brown did the investigations as to the Melni Company and Starr, the petitioners' bank accounts with Atlantic National Bank, and certain bills paid by one of the petitioners which allegedly were the personal bills of Mr. Nowick.

In P-52(a) there is an LGS which is dated December 14. Mr. Meltzer represented and Yetta Smith, an employee of Lucky, affirmed that the original greeter sheet does not have a date. Mr. Brown denied that he wrote in "Dec 14" on this LGS. When this LGS was compared to Starr's records for December 14, there appeared to be an

overbilling; however, Mr. Meltzer stated that this LGS was for December 15, and that it was consistent with the Starr records for that date.

Also, in P-52(a) there is an LGS which is dated Monday, December 6, 1980, and it does not concur with Starr's records for December 6, 1980. However, December 6, 1980, was a Saturday and according to Mr. Meltzer, if this greeter sheet had been checked against the Starr records for Monday, December 8, 1980, there would have been no allegation of overbilling. Mr. Brown admitted that he did not compare this LGS with the Starr records for December 8, 1980.

As to the November 1, 1980 LGS contained in P-50(a) (Melni Company), Mr. Brown admitted that he wrote on this LGS, next to "Bus 118 - 43 [passengers]" the words "Ghost - as per call to Melni."

All three of the above-mentioned bus trips are not in dispute and were part of Ms. Quinn's stipulations.

I **FIND** that the additional pertinent facts relative to the overbilling objection are:

1. Casino greeters were responsible both for counting the number of buses and passengers and for distributing the giveaways, and they were in a position to overstate the number of buses or passengers so that they might keep some of the giveaways for their own use.

2. There is nothing wrong with greeters working together unless this is done for illegal purposes, such as overstating the number of buses or passengers so that both greeters can share the extra giveaways.

3. There was no proof that Mr. Meltzer or any of the other corporate officers of Happy or Lucky requested any greeter employed by them or by any casino to incorrectly report the number of buses or passengers.

4. A bus driver, employed by any of the involved bus companies, was in the position during a line run to pick up additional passengers, not report the additional passengers and pocket the bus fees.

5. As to the Asbury bus trips (P-47a and b), there were discrepancies as to the passenger count for five bus trips and no reasonable explanation was presented by Mr. Meltzer.

6. As to the super bus program, the casinos paid a higher compensation to the petitioners and other companies since the passengers on such buses were people with a propensity to gamble.

7. Since the casino's main goal was to get such people to the casino, it would appear likely that Brighton would have compensated Happy if it was shown that the passengers scheduled for a super bus arrived by an alternative superior means of transportation.

8. As to the P and L super bus trips, there was no showing that the passengers did not arrive at Brighton.

9. Either through a lack of proper instructions or because of laxity, the greeters failed to note that the passengers scheduled for the two P and L super bus trips arrived by an alternative means of transportation.

10. As to three of the Safety bus trips, the greeters failed to note the correct bus number or the correct bus company.

11. There was no testimony to show whether the greeters employed by the casino or by the petitioners were specifically instructed to note such changes or whether they failed to do so because of some laxity on their part. It is clear that the most important fact for the petitioners and the casinos was whether or not the anticipated bus arrived rather than the designation on said bus.

12. As to the Safety bus trip (Bus 30) on November 8, 1980, Mr. Meltzer has shown that Lucky did not bill Brighton for this bus and that a Brighton official added this bus to the greeter sheet and to the bill.

13. As to the Domenico bus trip (Bus 512) on November 30, 1980, Happy improperly billed Brighton for two buses instead of one bus for that date.

There was a confusion because of a bus substitution and the error in the billing could have been prevented by a more careful checking procedure.

14. As to the Domenico bus trips, neither Happy nor Domenico took the necessary precautions to make sure that the greeters would distinguish between Happy bus trips using Domenico buses and Domenico Travel, Inc., using Domenico buses. There was a recognition of the confusion and Brighton adjusted some of Happy's bills and there was an out-of-court settlement which provided Brighton with a further credit for the overbillings.

15. Happy and Lucky based their billings to the casinos on their greeter sheets. As shown by the documents presented, greeters did add buses to the sheets, and there should have been an internal system of checking the greeter sheets against the in-house records as to the number of buses expected on that date. The lack of such an in-house procedure resulted in the Domenico overbilling; however, there was no proof that the procedure was used intentionally to overbill any casino.

16. The settlement between Happy and Brighton as to the Domenico overbilling was acceptable to both parties.

17. As to the Starr bus trips, Mr. Meltzer submitted convincing evidence that there were no overbillings as to any of the bus trips, except for Bus 50 on October 10, 1980.

18. As to Bus 50 on October 10, 1980, there was no reliable evidence to show that this bus arrived at Caesars on that day. Lucky stated that 14 Starr buses arrived on that day; however, Mr. Meltzer presented only 13 Starr vouchers and the Starr records showed that Bus 50 did not go to Caesars.

19. As to the Talmage bus trips, there is no reason to give greater credibility to the bus company records than to the records of Lucky and Caesars, since all the records involved were based on reports of employees who had the opportunity to cheat.

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20. The Division improperly compared Talmage's day trip records to records for night trips. Either the Division should have alleged that these night bus trips did not take place or it should have admitted that it could not make any conclusions since the Talmage records were incomplete.

21. The Talmage bus trips in issue were not within the period of time identified by the Division in its letter of April 20, 1982.

22. There was no proof that Mr. Brown placed the date of "Dec 14" on the LGS in P-52(a).

23. By his testimony, Mr. Brown showed that he had a strong opinion as to the Division's allegations against the petitioners.

24. The decision of the Division to recommend the denial of licensure was based on the documentation assembled during the investigation and not on the opinion of any one investigator.

In closing, Ms. Quinn admitted that the amount of overbilling, as a result of the stipulations, was reduced to approximately $7,300, of which about $1,120 involved Talmage bus trips which were not within the period of time in issue. By my count, the number of buses that remained in issue is 63, and of that number 21 bus trips were not within the three-month period set forth in the April 20, 1982 letter.

Based on the facts, I **CONCLUDE** that the alleged overbilling as to the Domenico bus trips should not be considered since Brighton and Happy reached a settlement prior to the conclusion of the Division's investigation and since there was no showing of intentional overbilling by Happy. Also, I **CONCLUDE** that the allegation of overbilling for the Talmage bus trips should not be considered since the bus trips were not within the period of time brought into issue by the Division in its letter of April 20, 1982. This reduces the allegation of overbilling to approximately $5,200, and involves 19 bus trips.

Lastly, I **CONCLUDE** that Mr. Meltzer offered reasonable explanations as to all but six bus trips, which involved less than $1,000, and that this amount is de minimus in comparison with the high volume of business during the period of time in issue.

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D. FIELD AGENTS

In its supplemental letter of June 7, 1982, the Division alleged that V.I.P. gave improper information to Caesars as to the name of the field agent who solicited patrons for certain trips. Caesars used this information to prepare its marketing activity reports for filing with the Commission and Division.

V.I.P. had a number of field agents in various parts of the country who solicited patrons with a propensity to gamble for junket trips to the Atlantic City casinos. Prior to October 1982, V.I.P.'s field agent in the Albany area was Francesca Longo. Ms. Longo at that time was registered with the Commission as a field agent. In order to be registered, a person had to fill out and file a PHD-4 form.

Francesca A. Kolodziej, who was Francesca Longo prior to her recent marriage, testified that she had organized groups for V.I.P. from the Albany area and that after January 1982, she had limited her activities to the Schenectady area. At the hearing, Ms. Kolodziej was shown four marketing activity reports filed by Caesars which identified Francesca Longo as the field agent (R-1, R-2, R-3, R-4). Ms. Kolodziej could not recall whether or not she organized the trip on January 28, 1982 (R-4); however, she stated that the other three trips, March 24, 1982 (R-1), April 22, 1982 (R-2), and February 18, 1982 (R-3) were organized by Michael White. At that time, Michael White was associated with Ms. Kolodziej but was not registered as a field agent with the Commission. Ms. Kolodziej never informed Mr. Meltzer or any other representative of V.I.P. that she was no longer handling the trips from the Albany area, nor was she ever contacted by V.I.P. to verify whether or not she handled a specific junket trip.

According to Mr. Meltzer, he thought that only the prime person responsible for the junket trip had to be registered as a field agent and he assumed that the Commissioner did not want everyone involved to file as a field agent. Sometime during the investigation of the petitioners' applications, Mr. Meltzer was told by a representative of the Division that all persons who participated in the soliciting of passengers for a trip had to file a PHD-4 form with the Commission. Mr. Meltzer then sent a letter to all his field agents asking them to have all of their employees who were involved with junket trips to fill out a PHD-4 form and indicated that he would have the forms filed with the Commission (P-41, P-42). Thereafter, a number of PHD-4 forms were filed with the Commission including one for Michael White (P-45).

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It is clear from his testimony that Mr. Meltzer did not consider the filing of the PHD-4 form to be a substantive requirement since the form required very little information and was not subject to review and approval by the Commission. He recognized that the PHD-4 form said that all persons involved should file.

I **FIND** that the facts as stated above are not in dispute and are pertinent to this issue.

Mr. Sandson argued that the failure of Mr. Meltzer to identify everyone involved with a junket trip and to make sure that they were all registered is an honest mistake, and was not intended to deceive the casino or the Commission. Ms. Quinn argued that the PHD-4 form and the regulations in effect at the time (P-46) made it clear that anyone involved should be registered and that the failure of Mr. Meltzer and V.I.P. to operate a field agent program with properly registered people is an indication of the poor business judgment and responsibility of Mr. Meltzer and V.I.P.

Although I recognize that there may have been some confusion as to the extent to which all persons, including secretaries, file clerks, etc., had to be registered, as to the trips in issue, I **FIND** no basis for confusion. Mr. White, and not Ms. Longo (Kolodziej), was the prime person who organized the three trips (R-1, R-2 and R-3), and I **CONCLUDE** that he should have been registered as a field agent and his name should have been given to Caesars.

Based on my review, I have no doubt that a prudent business man, especially one who knew that his applications for licensure were under review, would be anxious to make sure that he complied with all requirements and would have given more thought to the PHD-4 form requirement. In this matter, I **CONCLUDE** that neither Mr. Meltzer nor anyone on behalf of V.I.P. carefully considered the field agent requirements before V.I.P. initiated the program. There was no procedure established to check each junket trip so that the information given to the Commission through the casino's report would be completely accurate. This sloppiness on the part of the V.I.P. was not intended to deceive the casino or Commission but was based on Mr. Meltzer's personal evaluation of the importance of the PHD-4 requirement and his failure to assign adequate staff resources to make sure that V.I.P. complied.

E. CONCLUSIONS

Initially, Happy filed an application for licensure pursuant to N.J.S.A. 5:12-92(a) and (c), and Lucky and V.I.P. filed application for licensure pursuant to N.J.S.A. 5:12-92(a). Pursuant to N.J.S.A. 5:12-92, an applicant, as well as its owner, management and supervisory personnel, applying for licensure pursuant to subsection (a) must meet the standards established for a casino key employee. N.J.S.A. 5:12-89, which relates to casino key employees, requires an applicant to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, its business ability, and the applicant's reputation for good character, honesty and integrity.

According to N.J.S.A. 5:12-92, an applicant for licensure pursuant to subsection (c) will be denied a license if he is disqualified in accordance with the criteria set forth in N.J.S.A. 5:12-86, which primarily deals with criminal convictions.

As of January 27, 1983, the law relating to casino junket activities was revised, chapter 41, Public Law 1983, and a junket operation is now required to be licensed prior to conducting any business with a casino, and the applicant, as well as its owner, management, supervisory personnel and other principal employees, must meet the qualifications set forth for a casino employee except for residency, N.J.S.A. 5:12-102, as amended. According to N.J.S.A. 5:12-90, an applicant for licensure as a casino employee must meet the qualification criteria set forth in N.J.S.A. 5:12-89.

All three petitioners amended their applications to also request licensure pursuant to N.J.S.A. 5:12-102, as amended.

Therefore, the issue is whether Happy, Lucky, V.I.P. and Allan Meltzer have established by clear and convincing evidence their financial stability, integrity and responsibility, their business ability, as well as their reputation for good character, honesty and integrity.

In summary, Ms. Quinn argued that the allegations as to overbilling, the business association with Mr. Nowick and the use of undisclosed agents have shown that the petitioners and Mr. Meltzer have not met the criteria set forth in N.J.S.A. 5:12-89.

Regarding the financial integrity standard in N.J.S.A. 5:12-89(b), the Commission stated: "by its terms, this standard encompasses financial aspects of the Applicant the holding company and the other qualifiers. In addition to basic financial solvency or soundness, this standard relates to honesty and forthrightness in business dealings. Further, it concludes the care and prudence exercised by the entity or individual in managing, preserving and enhancing the assests entrusted to such entity or individual," In the Matter of the Application of Resorts International Hotel, Inc. for a casino license, 79 CL-1, decided on February 26, 1979.

In this matter, I have concluded that Mr. Meltzer's business dealings with Mr. Nowick raises a substantial question as to his business ability, and financial stability, integrity and responsibility.

Based on the facts, I **CONCLUDE** that the Nowick allegation is not an isolated incident but represents a course of action and non-action taken over a one-year period, June 1979 through June 1980. It is also clear from the facts that Mr. Meltzer considered and operated Happy, Lucky and V.I.P. as his alter egos and, therefore, my conclusions are equally applicable to the three petitioners. Therefore, I **CONCLUDE** that the Nowick allegation, standing alone, justifies the recommendation that the applications for licensure be denied on the bases that the petitioners have not shown by clear and convincing proof that they meet the qualification criteria set forth in N.J.S.A. 5:12-89.

Based on the facts, I **CONCLUDE** that the overbilling and use of an undisclosed agent by V.I.P. are not sufficient, standing alone, to disqualify Mr. Meltzer or the petitioners pursuant to N.J.S.A. 5:12-89; however, they do add further credence to the Division's recommendation that the applications for licensure be denied.

PART IV - DISPOSITION

It is **ORDERED** that the applications of Happy, Lucky and V.I.P. be **DENIED** and, further, it is **ORDERED** that the petitioners not be required to pay $62,217.93 in fees to the Commission.

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

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

June 6, 1983
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

June 6, 1983
DATE

Bernadette P. Fricker
CASINO CONTROL COMMISSION

Mailed to Parties:

June 9, 1983
DATE

Gabriel Rogers
OFFICE OF ADMINISTRATIVE LAW

plb/E

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EXHIBITS

FOR THE PETITIONER:

P-1 Certificate of Incorporation of V.I.P. Executive Tours, Inc., filed with the Secretary of State on June 25, 1981

P-2 Certificate of Incorporation of Happy Day Tours, Inc., filed with the Secretary of State on December 8, 1978

P-3 Certificate of Incorporation of Lucky Tours, Inc., filed with the Secretary of State on October 11, 1979

P-4 Complaint filed in Happy Day Tours, Inc. v. Greate Bay Hotel and Casino, Inc., dated May 4, 1981

P-5a Check from Greate Bay Hotel and Casino, Inc., to Happy Day Tours, dated May 14, 1981

P-5b Check from Greate Bay Hotel and Casino, Inc., to Happy Day Tours, dated May 28, 1981

P-5c Check from Greate Bay Hotel and Casino, Inc., to Happy Day Tours, dated June 11, 1982

P-6 Stipulation of Dismissal with Prejudice in Happy Day Tours, Inc. v. Greate Bay Hotel and Casino, Inc., dated August 14, 1981

P-7 Financial Statements for Happy Day Tours, Inc., as of November 30, 1980

P-8 Atlantic National Bank Statements for the checking account of Lucky Tours, Inc., issued during the 1980 calendar year

P-9 Marked for identification only

P-10a U.S. Corporation Income Tax Return for Lucky Tours, Inc., for 1979

P-10b U.S. Corporation Income Tax Return for Lucky Tours, Inc., for 1980

P-10c U.S. Corporation Income Tax Return for Lucky Tours, Inc., for 1981

P-10d Federal Form 1139, Corporation Application for Tentative Refund for Lucky Tours, Inc., for 1981

P-11 V.I.P. Executive Tours, Inc., 1981 Federal Tax filings

P-12a Federal Tax Forms for Happy Day Tours, Inc., for the year ending November 30, 1979

P-12b U.S. Corporation Income Tax Return for Happy Day Tours, Inc., for the period ending November 30, 1979

P-12c U.S. Corporation Income Tax Return for Happy Day Tours, Inc., for the period ending November 30, 1980

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P-12d Federal Tax Forms for Happy Day Tours, Inc., for the year ending November 30, 1981

P-12e U.S. Corporation Income Tax Return of Happy Day Tours, Inc., for the year ending November 30, 1981

P-12f U.S. Corporation Income Tax Return of Happy Day Tours, Inc., for the year ending November 30, 1982

P-13a U.S. Income Tax Return for Allan and Dorothea Meltzer for 1975

P-13b U.S. Income Tax Return for Allan and Dorothea Meltzer for 1976

P-13c U.S. Income Tax Return for Allan and Dorothea Meltzer for 1977

P-13d U.S. Income Tax Return for Allan and Dorothea Meltzer for 1978

P-13e U.S. Income Tax Return for Allan and Dorothea Meltzer for 1979

P-13f U.S. Income Tax Return for Allan and Dorothea Meltzer for 1980

P-13g U.S. Income Tax Return for Allan and Dorothea Meltzer for 1981

P-14 Minutes and Bylaws of Happy Day Tours, Inc., commencing on December 8, 1979

P-15 Agreement for the holding in trust of certain shares of stock in Happy Day Tours, Inc., dated June 11, 1979

P-16 Resolution adopted by the Board of Directors of Happy Day Tours, Inc., dated June 11, 1979

P-17 Revocation of trust agreement and release of trustee, dated April 7, 1980

P-18 Agreement between Lucky Tours, Inc., Manhattan Travel Bureau, Inc., and Allan Meltzer, dated September 23, 1980

P-19 Agreement between Happy Day Tours, Inc., Lucky Tours, Inc., Peter Pan World Travels, Inc., and Allan and Dorothea Meltzer, dated March 18, 1981

P-20 Letter from Stephen Hankin to Irwin Nowick, dated February 25, 1981

P-21 A relinquishment of all interests in Lucky Tours, Inc., by Irwin Nowick, dated June 12, 1980

P-22 Agreement whereby Irwin Nowick acknowledges a debt to Lucky Tours, Inc., and an attached one-year Promissory Note, both dated July 22, 1980

P-23 Lucky Tours, Inc. Shareholders Agreement, dated October 15, 1979

P-24 Agreement between Irwin Nowick and Allan Meltzer regarding their shares in Happy Day Tours, Inc., dated November 10, 1978

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P-25 Draft of the agreement between Manhattan Travel Bureau, Inc., Lucky Tours, Inc., and Allan and Dorothea Meltzer prepared by Perskie & Perskie with proposed changes by Stephen Hankin

P-26a Letter from Stephen Hankin to Philip Perskie, dated September 3, 1980

P-26b Letter from Philip Perskie to Stephen Hankin, dated September 9, 1980

P-26c Letter from Stephen Hankin to Philip Perskie, dated September 16, 1980

P-26d Letter from Philip Perskie to Stephen Hankin, dated September 19, 1980

P-26e Letter from Stephen Hankin to Philip Perskie, dated September 23, 1980

P-26f Letter from Philip Perskie to Stephen Hankin, dated October 1, 1980

P-27 Atlantic National Bank Check Authorization Card for Lucky Tours, Inc., dated October 4, 1979

P-28 Atlantic National Bank Change of Signature Card for Lucky Tours, Inc., dated April 11, 1980

P-29 Atlantic National Bank Change of Signature Card for Lucky Tours, Inc., dated May 14, 1980

P-30 Atlantic National Bank Check Authorization Card for Happy Day Tours, Inc., dated October 15, 1978

P-31 Atlantic National Bank New Signature Card for Happy Day Tours, Inc., dated January 23, 1980

P-32 Atlantic National Bank Change of Signature Card for Happy Day Tours, Inc., dated April 11, 1980

P-33 Atlantic National Bank Change of Signature Card for Happy Day Tours, Inc., dated May 14, 1980

P-34 Resolution authorizing check signatures at Atlantic National Bank for Lucky Tours, Inc., dated October 4, 1979

P-35 Resolution authorizing check signatures at Atlantic National Bank for Lucky Tours, Inc., dated May 14, 1980

P-36 Resolution authorizing check signatures at Atlantic National Bank for Happy Day Tours, Inc., dated October 13, 1978 (same as P-43)

P-37 Resolution authorizing check signatures at Atlantic National Bank for Happy Day Tours, Inc., dated June 5, 1979 (same as P-44)

P-38 Resolution authorizing check signatures at Atlantic National Bank for Happy Day Tours, Inc., dated May 13, 1980

P-39 Twenty Lucky Tour, Inc. checks signed by Irwin Nowick between January 17, 1980 and May 5, 1980

P-40 Cash Receipt Ledgers for Lucky Tours, Inc., for January through June 1980

P-41 Form instruction letter to field agents from V.I.P. Executive Tours, Inc.

P-42 Form letter to field agents from V.I.P. Executive Tours, Inc., dated October 25, 1982

P-43 Resolution authorizing check signatures at Atlantic National Bank for Happy Day Tours, Inc., dated October 13, 1978 (same as P-36)

P-44 Resolution authorizing check signatures at Atlantic National Bank for Happy Day Tours, Inc., dated June 5, 1979 (same as P-37)

P-45 List of field agents and the filing date of their PHD-4 forms

P-46 Interim Casino Marketing Procedures, effective as of August 26, 1981

P-47a Documentation prepared by the Division of Gaming Enforcement to show alleged overbilling and involving Asbury Transit (Rollo)

P-47b Same as P-47a with the rebutting documentation of the petitioners

P-48a Documentation prepared by the Division of Gaming Enforcement showing alleged overbilling and involving P and L Enterprises

P-48b Same as P-48a with the rebutting documentation of the petitioners

P-49a Documentation prepared by the Division of Gaming Enforcement showing alleged overbilling and involving Safety Bus Service

P-49b Same as P-49a with the rebutting documentation of the petitioners

P-50a Documentation prepared by the Division of Gaming Enforcement showing alleged overbilling and involving Melni Company

P-50b Same as P-50a with the rebutting documentation of the petitioners

P-51a Documentation prepared by the Division of Gaming Enforcement showing alleged overbilling and involving Domenico Bus Service, Inc.

P-51b Same as P-51a with the rebutting documentation of the petitioners

P-52a Documentation prepared by the Division of Gaming Enforcement showing alleged overbilling and involving Starr Transit Company

P-52b Same as P-52a with the rebutting documentation of the petitioners

P-53a Documentation prepared by the Division of Gaming Enforcement showing alleged overbilling and involving Talmage Company

P-53b Same as P-53a with the rebutting documentation of the petitioners

P-54 Marked for identification only

P-55 Marked for identification only

P-56 Application for Brokerage License filed with the Interstate Commerce Commission by Lucky Tours, Inc., dated April 18, 1980

P-57 Statement of Steven J. Batzer, Chairman of Bayly, Martin & Fay, Inc., of New Jersey

FOR THE RESPONDENTS:

R-1 Marketing activity report filed with the Division of Gaming Enforcement and the Casino Control Commission, dated March 24, 1982

R-2 Marketing activity report filed with the Division of Gaming Enforcement and the Casino Control Commission, dated April 22, 1982

P-3 Marketing activity report filed with the Division of Gaming Enforcement and the Casino Control Commission, dated February 12, 1982

R-4 Marketing activity report filed with the Division of Gaming Enforcement and the Casino Control Commission, dated January 7, 1982

R-5 Marked for identification only

R-6 Marked for identification only

R-7 Ten invoices addressed to Irving Nowick from Scientific Environmentals, Inc.

R-8 Marked for identification only

R-9 Marked for identification only

R-10 Supplemental documentation regarding P-52a

R-11 Supplemental documentation regarding P-51a

WITNESSES

FOR THE PETITIONER:

Allan Meltzer
Richard Boyle
Victor A. Bressler
Rabbi Arron Krauss
Samuel J. Kligerman
Jerry Greenberg
Albert B. Stern
Mildred Fox
Bernard A. Capaldi
George A. Barbetto
Louis J. DiGregorio
Guy A. Deninger
John A. Skoglund, Jr.
Lee A. Levine
Peter Picknelly
Yetta Smith

FOR THE RESPONDENT:

Francesca A. Kolodziej
Joseph A. Casser
Michael Brown
James Niwinski
Peter F. Scofide
Jerome E. Palma
Charles Muller

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-46
OAL DOCKET NO. CCC 2526-83
REGISTRATION NO. 44918-40

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

Complainant,

v.

WILLIAM HAUCK,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on October 7, 1983, recommending that the complaint filed by the Division of Gaming Enforcement seeking revocation of the casino hotel employee registration held by William Hauck be dismissed; and no exceptions or objections having been filed by either party; and the Commission having considered the entire record in this matter had having resolved at its public meeting of November 2, 1983, for good cause shown, to affirm and adopt the initial decision and dismiss the complaint filed against William Hauck,

IT IS on this 10th day of November 1983, ORDERED that the initial decision filed by the Office of Administrative Law be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement be and hereby is 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 Final Order be served upon William Hauck and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 10, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2526-83
AGENCY DKT. NO. 83-46

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner
v.
WILLIAM HAUCK,
Respondent.

APPEARANCES:

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

William Hauck, Pro Se

Record Closed: September 29, 1983 **Decided:** October 6, 1983

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

William E. Hauck is employed at the Tropicana Hotel/Casino as a crew leader in the public areas department. He holds a casino hotel employee registration, no. 44918-40.

On or about February 23, 1983, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking revocation of Mr. Hauck's casino hotel employee registration. The complaint charged that Hauck had been convicted in

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Bucks County, Pennsylvania Criminal Court of various offenses including burglary, theft by unlawful taking, criminal trespass and receiving stolen property. The Division contended that these convictions required revocation of the registration because they indicated that Mr. Hauck's continued registration would be inimical to the policies of the Casino Control Act, N.J.S.A. 5:12-1 et seq. and to casino operations.

Mr. Hauck requested a hearing on the proposed revocation and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on August 2, 1983 and a Prehearing Order was issued on August 11, 1983. A hearing was held before Judge Masin at the Hammonton Municipal Court on September 29, 1983.

CONCLUSION

For the reasons set forth below, I **CONCLUDE** that although Mr. Hauck has in the past committed crimes of a serious nature, his continued registration as a casino hotel employee will not be inimical to the policies of the Casino Control Act or the interests of the casino industry. Therefore, I **CONCLUDE** that the complaint should be dismissed.

THE EVIDENCE

The respondent does not dispute the contentions of the complaint that he was convicted of a number of criminal offenses. According to the police reports submitted in evidence by the Division, the incidents which led to the conviction involved a burglary of the home of Mr. Hauck's former girlfriend. The burglaries occurred on May 14, 1980. Mr. Hauck, who had previously been a guest staying in the home of the girlfriend's parents, entered the home via a ladder and stole a number of items, including, by his own admission, $250 to $300 in cash, a check and a camera. On July 9, 1980, a criminal complaint was issued out of the District Court in Penndel, Pennsylvania. Mr. Hauck, who was 19 years old at the time, skipped bail and was not arrested until December of 1982 when he was charged as a fugitive from justice by the New Jersey State Police. Thereafter, Mr. Hauck returned to Pennsylvania and entered pleas of guilty to all the charges pending against him. He was put on probation for three years and ordered to pay restitution. He advises that he has paid the restitution.

According to the respondent between December of 1980 and December of 1982 while he was fugitive from the Pennsylvania charge, he worked for Amusements of America, a carnival operation which travels throughout the East Coast. Hauck was employed as hydraulic engineer and also ran a ride. This employment lasted until September 1982. Mr. Hauck became heavily involved with drugs while traveling with the carnival, although he had begun to use drugs shortly before his May 1980 arrest in Bucks County. Hauck testified that his drug use included marijuana, occasional cocaine, and speed. He has been drug-free since June or July 1982 and does not drink. During the time when he was with the carnival and it was located in the New York area Hauck, who was a high school graduate, attended Hofstra University and between his attendance at that institution and correspondence work he has completed two years of college. He paid his own way and was self-supporting from his employment with the carnival. He initially started out to become a hydraulic engineer, but changed his major to photography.

Mr. Hauck is now 23 years old and has been married since December 16, 1982. He and his wife had a baby two weeks prior to the hearing..

Mr. Hauck is employed at the Tropicana Hotel/Casino. He was hired as a parking valet, but was promoted to a public area attendant and finally to a crew leader. The public area department is responsible for cleaning any non-casino areas of the public sections of the hotel complex, including the glass, brass, stainless steel and other special projects. They do not clean hotel rooms, except in special circumstances.

In addition to Mr. Hauck's involvement in the burglary incident which led to his conviction, police reports submitted in evidence indicate that in September 1979 he was arrested for possession of a stolen automobile tag. The police reports indicate that Hauck claimed that he had found the tag on the road and had placed it on a van, knowing that this was improper. Apparently, Hauck was never convicted of this charge.

Additionally, the Westampton Township New Jersey police arrested Hauck in July of 1980 while he was operating a stolen motor vehicle. The charge was administratively dismissed by the Burlington County Prosecutor's Office.

Mr. Hauck testified that he was abandoned by his parents and lived in various foster homes from the age of 11.

DISCUSSION

As is frequently the case in this type of proceeding, the Division seeks to revoke a registration of a casino hotel employee who has not committed any criminal offense since the time of his employment in the casino industry. Here, although Mr. Hauck was a fugitive from justice until his arrest in Atlantic City on December 3, 1982, the actual events for which he was ultimately convicted occurred in May 1980 and other events mentioned for which charges were brought in Bucks County occurred in 1979. The New Jersey offense which was ultimately dismissed also occurred in July 1980. Therefore, for the past three years Mr. Hauck has not committed any offenses, other than his continuing absence from the jurisdiction of Pennsylvania. Following his conviction, Hauck was placed on probation and a letter from his probation officer indicates that he has been performing satisfactorily. The probation will expire on January 4, 1986.

Given the nature of Mr. Hauck's employment, in which he has no access whatsoever to the casino operations at the hotel and very limited, if any, access to the rooms of guests, I feel that there would be no threat to the integrity of the Casino Control Act or the casino industry in permitting Mr. Hauck to retain his registration. It appears that although he has had problems in the past he has gotten himself on track and is straightening out. Although he had a drug problem for awhile, his undisputed testimony indicates that he has been drug-free for over a year. He has now married and has the responsibilities of parenthood. Given these factors, I believe that there is no reason for removing Mr. Hauck's registration. He will be under the supervision of the probation authorities until January 1986 and his continued employment in the limited function in which he serves would appear to be a healthy adjunct to the probationary supervision. I believe that Mr. Hauck is now a more mature, responsibile person and that his criminal experiences will not be repeated. Of course, should he have any difficulties with his probation, the Division might be fully justified in bringing a new complaint seeking some sanction. However, in the present status of the matter, I believe that the Division's complaint seeking revocation should be **DISMISSED.** It is so **ORDERED.**

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

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

October 6, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

10/7/83
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

October 12, 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

ks

EVIDENCE LIST

On behalf of petitioner:

P-1 Police reports from Abington Township, Pennsylvania Police Department, dated September 25, 1979

P-2 Report of overdose of drugs, dated May 12, 1980

P-3 Criminal Complaint, dated May 19, 1980, District Court 07-1-07, Penndel, Pennsylvania

P-4 Bensalem police reports, dated May 18, 1980, 2 pages

P-5 Criminal Complaint, dated July 9, 1980, District Court 07-1-07, Penndel, Pennsylvania

P-6 Westampton Township Police Department Arrest Report and Investigation Reports with attached Property Report and disposition report

P-7 New Jersey State Police Investigation Report and Arrest Report with attached Atlantic City Municipal Court Complaint, dated December 3, 1982

P-8 Criminal Court Sheet and Sentence Sheet, 6 pages, all reference Commonwealth of Pennsylvania v. William Hauck

On behalf of respondent:

R-1 Letter of September 12, 1983 from Virginia B. James, Probation Officer, Gloucester County Probation Department

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-102
OAL DOCKET NO. CCC 8070-82
APP. NO. 29775-21

IN THE MATTER OF THE APPLICATION:
OF VICKIE LYNN HUDGINS FOR : FINAL ORDER
LICENSURE AS A CASINO EMPLOYEE :

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law filed on May 27, 1983, recommending that the casino employee license application of Vickie Lynn Hudgins be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on July 20, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Vickie Lynn Hudgins,

IT IS on this 21st day of July 1983, 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 Vickie Lynn Hudgins 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 Vickie Lynn Hudgins and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 21, 1983

FILED
NEW JERSEY
JUN 8 - 1983
CASINO CONTROL COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8070-82
AGENCY DKT. NO. 82-EA-102

VICKIE LYNN HUDGINS,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

John H. Fitzgerald, Esq., for petitioner (Cape-Atlantic Legal Services, attorneys)

William J. Walsh, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: April 14, 1983 Decided: May 27, 1983

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Vickie Lynn Hudgins to the Casino Control Commission for a casino employee license permitting her to work in a casino as a teller. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner, with specific reference to her 1981 conviction for welfare fraud, contrary to N.J.S.A. 2A:111-2, has been convicted of

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an offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c(2) of the Casino Control Act.

2. Whether the petitioner, with specific reference to her arrest in 1973 for possession of stolen property, has failed to reveal any fact material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the act.

3. Whether the petitioner has established, by clear and convincing evidence, her reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the act, as incorporated in section 90 of the act.

4. Whether the petitioner, notwithstanding any possible disqualification which may exist, pursuant to section 86c of the act, has demonstrated her rehabilitation, within the meaning of section 90h of the act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated April 26, 1982. The petitioner requested a hearing on her license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 28-year-old lifelong resident of Atlantic City, New Jersey. She is the single parent of three children, the youngest of whom suffers from a chronic respiratory problem. The petitioner, who is presently unemployed, receives a welfare grant of $373 per month for herself and her children. In the past, she has been employed as a chambermaid at various hotels in the Atlantic City area. It is undisputed that the petitioner successfully completed a course for slot booth cashiers at the Casino Career

Institute. The Division of Gaming Enforcement has raised no objection concerning the sufficiency of the petitioner's casino employment ability.

From April 1975 until October 1978, the petitioner was employed as a chambermaid at the Seaside Hotel. While earning approximately three dollars per hour from this employment, the petitioner also collected a full welfare grant for herself and her children. The petitioner testified with candor and sincerity that she did not report her employment to the county welfare agency because her welfare grant simply was not enough money to decently provide for her children, and she was afraid that her grant would be reduced or terminated if she reported her earnings. On April 22, 1980, the petitioner was indicted by the Atlantic County Grand Jury on one count of welfare fraud, contrary to N.J.S.A. 2A:111-2 (Exhibit R-4).

On October 21, 1981, the petitioner entered a plea of guilty to the indictment for welfare fraud. On November 6, 1981, the petitioner was sentenced to probation for a period of two years on the condition that she volunteer 100 hours each year to community service. She was also sentenced to obtain and maintain full time employment and to seek a support order against the father of her children (Exhibit R-4). According to the petitioner, the county welfare agency is presently recouping the overpaid welfare benefits from the petitioner at a rate of $41 per month.

It was the testimony of the petitioner that she regrets collecting the welfare benefits to which she was not entitled. She knew that it was wrong to do so, but at the time of the fraud, she felt it was necessary to provide for her children. Senior Probation Officer Rosemary Pisano testified on the petitioner's behalf. According to Ms. Pisano, she supervises the petitioner's compliance with her sentence of probation. The petitioner has attempted to perform her required hours of community service, but has not been able to complete the requirement because of her child's chronic illness. The petitioner has also attempted to find employment, but has not been successful. It was the opinion of Ms. Pisano that the petitioner wants to comply with the law and is attempting to improve her life. Ms. Pisano feels that the petitioner has good character and that the petitioner has rehabilitated herself since her commission of welfare fraud.

In 1973, the petitioner was arrested in Atlantic City on a charge of possession of stolen property. According to the petitioner, this arrest occurred after her sister's boyfriend had stolen an object and had hidden it in the petitioner's apartment, without her

knowledge. Since the petitioner was not actually involved in the incident, the charge against her was dismissed. The petitioner did not disclose her 1973 arrest in response to question No. 46 of her Personal History Disclosure Form (Exhibit R-3), which requires complete disclosure of an applicant's arrest and conviction record. However, she did disclose her conviction for welfare fraud. It was the testimony of the petitioner that she thought she had listed her arrest for possession of stolen property on the disclosure form. According to the petitioner, the only reason that the 1973 arrest was not listed was because she must have forgotten to put it down. The petitioner's testimony was straightforward and sincere, and entirely worthy of credit.

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 also incorporates the disqualification criteria set forth in section 86 of the act.

Pursuant to section 86c of the Casino Control Act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. The petitioner's 1981 conviction upon a plea of guilty to the charge of welfare fraud, in violation of N.J.S.A. 2A:111-2, is such an automatic disqualifier from licensure under section 86c(2) of the act. Pursuant to section 90h of the act, however, the petitioner shall not be denied a casino employee license on the basis of her conviction of a disqualifying offense, provided that she has affirmatively demonstrated her rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

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

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

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

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

Aside from her conviction for welfare fraud in 1981, the petitioner's only record of criminal involvement was an arrest in 1973 for possession of stolen property. The petitioner was not involved in the incident which led to the charge of possession of stolen property entered against her, and the charge was subsequently dismissed. Although the petitioner's conviction for welfare fraud occurred in 1981, the actual conduct for which she was convicted occurred between May 1975 and October 1978. Thus, nearly five years have passed since the occurrence of her illegal activity. The conduct itself involved her receipt of welfare benefits to which she and her family were not entitled, when she failed to report her employment as a chambermaid to the county welfare agency. The petitioner was only 21 years old when this conduct commenced, and she accepted the welfare benefits while failing to report her employment because she felt it was necessary in order to properly care for her children.

The petitioner has attempted to comply with the terms of her probationary sentence, but has been unable to secure employment. She has had difficulty completing her required hours of community service because of the chronic ill health of her youngest child. She is repaying the overissuance of welfare benefits which she received, and she is very desirous of obtaining employment and no longer requiring welfare assistance.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has been convicted of an offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c(2) of

the Casino Control Act. However, I further **CONCLUDE** that the petitioner has overcome her disqualification from licensure on the basis of her conviction of an offense enumerated under section 86c(2) of the act, by demonstrating her rehabilitation, within the meaning of section 90h of the Casino Control Act, by clear and convincing evidence.

Pursuant to section 86b of the act, licensure shall be denied to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the disqualification criteria. However, disqualification will not ensue when it has been demonstrated that the applicant's failure to provide requested information was inadvertent, ignorant or absent bad faith. In the matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Dkt. No. 79-CL-1 (1979).

It is undisputed that the petitioner failed to reveal her 1973 arrest for possession of stolen property on her Personal History Disclosure Form. However, the petitioner did reveal her 1981 conviction for welfare fraud. The petitioner testified credibly that she thought that she had listed her 1973 arrest on her disclosure form and that the only reason the arrest did not appear on the form was that she had forgotten it. It is clear from the petitioner's credible testimony that she had no intention of hiding this information. Thus, since the petitioner's failure to disclose was absent bad faith, I **CONCLUDE** that the petitioner is not disqualified from licensure based upon her failure to disclose facts material to her qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

Finally, in light of the petitioner's establishment of her rehabilitation, I further **CONCLUDE** that she has sustained her affirmative burden of establishing, by clear and convincing evidence, her good character, honesty and integrity, within the meaning of sections 89 and 90 of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Vickie Lynn Hudgins 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.

May 27, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

May 31 1983
DATE

Tina Rothwell
CASINO CONTROL COMMISSION

Mailed to Parties:

June 3, 1983
DATE

Ronald L. Parker/sb
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

R-1 Indictment
R-2 F.B.I. Record of Arrests and Convictions
R-3 Personal History Disclosure Form
R-4 Indictment and Certified Judgment of Conviction

WITNESSES

FOR THE PETITIONER:

Rosemary Pisano
Vicki Lynn Hudgins

FOR THE RESPONDENT:

Ronald E. Rauer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 81-EA-436
OAL DOCKET NO. CCC 130-83
LICENSE NO. 03809-21

IN THE MATTER OF THE APPLICATION
OF LOUIS A. JANELLI FOR RENEWAL
OF HIS CASINO EMPLOYEE LICENSE

This matter having been brought before the Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on September 1, 1983, recommending that the application of Louis A. Janelli for renewal of his casino employee license be denied; and no written exceptions or objections thereto having been filed; and the Commission having carefully considered the entire record of the proceedings, resolved at its public meeting of October 5, 1983, to reject certain findings and conclusions in the initial decision and to grant the renewal application,

IT IS ON THIS 9th day of November 1983, ORDERED that the following findings and conclusions of law reached by the Office of Administrative Law be and hereby are rejected by the Commission:

(1) That portion of the Initial Decision which concludes that, in response to question 12 of the renewal application Mr. Janelli intentionally failed to disclose a 1980 arrest for assault and battery in violation of N.J.S.A. 2C:12-1(b)(1) and robbery in violation of N.J.S.A. 2C:19-1 and is disqualified

from licensure pursuant to N.J.S.A. 5:12-86(b);

(2) That portion of the Initial Decision which concludes that, due to Mr. Janelli's misrepresentations regarding his arrest, he has failed to establish by clear and convincing evidence that he possesses the requisite good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) [and 90(b)]; and

(3) That portion of the Initial Decision which orders that the application of Louis A. Janelli for renewal of his casino employee license be denied.

IT IS FURTHER ORDERED that the application of Louis A. Janelli for renewal of his casino employee license be and hereby is granted based upon the following Commission findings:

(1) Mr. Janelli's explanations for his failure to disclose his 1980 arrest were credible;

(2) Mr. Janelli did not with intent or conscious disregard of the regulatory process fail to disclose information pertaining to his arrest record;

(3) There being no other bases for objection other than the nondisclosures which have not been found to warrant disqualification, Mr. Janelli has by clear and convincing evidence satisfactorily demonstrated his good character, honesty and integrity and has demonstrated his qualifications for licensure; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 9, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0130-83

(On Remand OAL DKT. NO. CCC 7560-81)

AGENCY DKT. NO. 81-EA-436

LOUIS A. JANELLI,

Applicant

v.

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

Respondent.

APPEARANCES:

Gerald F. Miksis, Esq., for the applicant (Wm. Goddard Lashman, attorney)

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

Record Closed: July 18, 1983 Decided: August 31, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Louis A. Janelli, applicant, to the Casino Control Commission (Commission) for renewal of his casino employee licenses (slot attendant and blackjack dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal.

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PROCEDURAL HISTORY

The applicant filed his renewal application, dated October 30, 1980, with the Commission. By letter dated October 13, 1981, the applicant was advised by the Commission that, based upon information received in a report dated August 19, 1981, from the Division, there was a "substantial possibility" that it would deny his application and that he had a right to a hearing. By letter filed on October 22, 1981, Mr. Janelli requested a hearing. On October 23, 1981, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

Because Mr. Janelli failed to appear for a prehearing conference scheduled on August 16, 1982, an initial decision, denying his application, dated November 10, 1982, was issued. However, by an order, dated January 5, 1983, the Commission determined to retransmit the matter to the Office of Administrative Law for hearing. A prehearing conference was conducted on April 12, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Janelli is 33 years of age (J-1). He has been a resident of Atlantic County since 1976. The applicant is a 1968 graduate of Holy Spirit High School, in Absecon, New Jersey (J-1). The applicant was married in 1968 and later divorced. He is the father of one child.

From 1968 to 1979, the applicant was variously employed as a motel manager, as a limousine driver and as a salesman (J-1). These employments appear to have been satisfactory.

On October 10, 1972, the applicant was involved in an incident with his wife. As a result, his wife filed charges against him for uttering threats and molesting and interfering (R-1). On October 19, 1972, the applicant was found guilty in the Atlantic City Municipal Court and was fined $100. Mr. Janelli acknowledged that he knew that he had been charged with criminal offenses but denied that he had been arrested.

From 1975 to mid-1980, the applicant lived with Mary Ann Grilletti. Although they never married, Ms. Grilletti used the surname Janelli, and they held themselves out as husband and wife.

On May 11, 1978, the applicant was involved in an incident with Ms. Grilletti, which led her to make a complaint (R-2). Ms. Grilletti charged the applicant with a violation of N.J.S.A. 2A:170-29, molesting and interfering. On January 9, 1979, the Ventnor City Municipal Court dismissed the charges because the parties had reconciled; however, it imposed court costs of $25.00. The applicant stated that he was not arrested on this occasion, but that he had turned himself into the police.

On March 12, 1979, Mr. Janelli applied to the Commission for licensure as a casino employee (J-1). The applicant completed his Personal History Disclosure Form - 2 (PHDF-2) by himself, and knew that he was required to disclose the truth. In the PHDF-2, the applicant stated that he was married to Ms. Grilletti, although he was not (J-1). In response to question number 46, the applicant disclosed that Ms. Grilletti had a conviction for possession of marijuana, but he did not disclose either of the two occasions on which he had been charged or his conviction (J-1). During June 1979, a Division investigator conducted a telephone interview of the applicant. The applicant disclosed the May 11, 1978 incident during the interview. During July 1979, a Division investigator conducted a second telephonic interview and questioned the applicant regarding his failure to disclose the 1972 incident and conviction. The applicant stated that he had not understood the question and did not believe that a misdemeanor needed to be disclosed. On October 31, 1979, the Division issued its report concerning Mr. Janelli's application (J-2). The applicant received a copy of the report. Although the Division did not object to licensure, it did note the applicant's failure to disclose the 1972 charge. In December 1979, the Commission issued a casino employee license to the applicant.

During November 1979, the applicant became employed by the Boardwalk Regency Corporation (BRC) as a bellperson. Subsequently, he became a slot attendant. Although the circumstances were in dispute, the applicant ceased employment with BRC during March 1980.

On March 12, 1980, the applicant was involved in an incident with Ms. Grilletti, as a result of which she filed charges. Ms. Grilletti charged the applicant with violations of N.J.S.A. 2C:12-1b(1), assault and battery, and N.J.S.A. 2C:19-1, robbery (J-3). On March 13, 1980, after a telephonic communication with the Ventnor City Police Department, the applicant turned himself into the police (J-3). The applicant was fingerprinted, had his picture taken and received a copy of the complaint made by Ms. Grilletti, upon which the charges were stated (J-3). The applicant was also advised of the date for his court appearance. On June 3, 1980, the applicant appeared before the Ventnor City Municipal Court, which dismissed the charges with the concurrence of Ms. Grilletti.

From June 1980 to April 1981, the applicant was employed by Bally's Park Place Casino Hotel as a dealer. He resigned this position as a result of spinal problems.

On October 30, 1980, Mr. Janelli submitted his renewal application to the Commission (J-4). In response to question number 10, the applicant stated that he had not "been reprimanded, suspended, terminated or asked to leave for any reason by any employer." Also, in response to question number 12, the applicant stated that he had not "been indicted, charged or detained, held, taken into custody or arrested by any police or law enforcement authority in order to answer for the alleged commission of a crime including a high misdemeanor, felony, misdemeanor or disorderly persons offense." At the time the applicant completed his renewal application, he knew that arrests and charges were important in regard to licensure as a casino employee.

From June to July 1981, the applicant was employed by Resorts International Hotel, Inc. This was the last occasion that the applicant was employed in the casino industry.

In the summer of 1981, Mr. Janelli applied to the Sands Hotel and Casino (Sands) for employment. Following communications with the Sands personnel office, the applicant was hired as a dealer and completed pertinent paperwork. However, the applicant never reported for work and was never paid by the Sands. The circumstances of this employment were in dispute.

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

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(B) DISPUTED FACTS

In dispute was whether Mr. Janelli was arrested on March 13, 1980, the circumstances under which he ceased working for BRC in March 1980 and the circumstances of his failure to report for employment with the Sands.

Mr. Janelli denied that he had been placed under arrest on March 13, 1980; rather, he stated that he voluntarily appeared at the police station after he was advised by Ms. Grilletti that she had filed a complaint against him and after he had a telephone discussion with someone from the police department. At the station the applicant spoke with the police officers in the hallway and in a casual manner. Further, although he was fingerprinted and had his picture taken, the applicant was not placed in a cell, was not handcuffed, was not told that he was placed under arrest, was not given the Miranda warnings, was not detained and was not required to post bail. Although the applicant received a copy of the complaint and was aware that he had to appear in court, the fact the he was allowed to go home without any difficulty led him to believe that he had not been arrested. In addition, the informal manner in which the applicant had been treated, which was similar to his treatment in 1972 and 1978, led the applicant to believe that he had not been placed under arrest. The applicant further testified that he did not know what constituted an arrest.

Given the circumstances described by the applicant, I am persuaded that he did not believe that he had been placed under arrest. Although there is an arrest report, it was not given to the applicant, and it supports the applicant's testimony in that it reveals that he was not given any Miranda warnings, that he voluntarily appeared at the police station and that he was released on his own recognizance (J-3). The mere existence of an arrest report is not sufficient to offset the applicant's testimony.

The applicant described the circumstances leading up to the cessation of his employment at BRC in March 1980. At that time, the applicant and Ms. Grilletti were having domestic difficulties. The applicant assisted Ms. Grilletti in the management of a motel. The applicant secured a two-week leave of absence from BRC in order to straighten out his problems. He reported to his supervisor at the end of his leave and requested additional leave. However, his supervisor denied this request. Therefore, the applicant and his supervisor mutually agreed that the applicant would resign his position.

The applicant contended that he could have returned to work, but he chose not to do so. The applicant never received any documentation to indicate that he was terminated for cause. Absent any proofs to the contrary from the Division, I am persuaded to accept the applicant's version of the incident.

The applicant also explained the circumstances concerning his employment by the Sands. Although hired, the applicant merely never showed up for work. He realized that his failure to appear meant that he was not employed by the Sands. Again, absent any proofs from the Division to establish that the applicant was dismissed for cause, I am persauded to accept his version of the incident.

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

1. When the applicant appeared at the Ventnor City Police Department on March 13, 1980, he was not placed in a cell, was not handcuffed, was not advised that he was under arrest, was not detained, was not given the Miranda warnings and was not required to post bail.

2. The applicant's communications with the police officers were conducted in a casual manner in the hallway of the police station.

3. The applicant was permitted to leave the police station without difficulty.

4. The applicant's belief that he had not been arrested on March 13, 1980, was reasonable.

5. The applicant's cessation of employment at the BRC in March 1980, was accomplished by means of his resignation, which was a result of a mutual agreement with his supervisor.

6. The applicant was not fired or asked to resign his position.

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7. With regard to prospective employment at the Sands in the summer of 1981, the applicant forfeited his employment by reason of his failure to appear for work.

8. The applicant had no reason to believe that he had been fired or that he had been asked to leave his position with Sands.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

> So that fully informed decision may be made regarding whether applicants for licensure have satisifed the qualification criteria set forth in the Act, the [L] egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(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 (Jan. 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission (June 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes as well as employment discharges are facts material to qualification. Here the Division contends that Mr. Janelli's failure to correctly answer questions 10 and 12 on his renewal application establishes a violation of section 86b of the Act.

Question 10 inquired whether the applicant had "been reprimanded, suspended, terminated or asked to leave for any reason by an employer," since the filing of his initial application. The applicant responded in the negative. However, the Division did not offer any proofs to establish the nature of the cessation of the applicant's employment with BRC or his failure to report for work at the Sands. Further, the applicant testified regarding the circumstances of each. Without commenting upon the applicant's credibility, the explanations appeared to be plausible and believable. The applicant resigned in good standing from his employment at BRC, and, in the mind of the applicant, no employment relationship ever materialized with the Sands. Therefore, in neither case did the applicant have any basis to believe that he had been fired or asked to resign.

Question 12 inquired whether the applicant had "been indicted, charges or detained, held, taken into custody or arrested by any police or law enforcement authority in order to answer for the alleged commission of a crime including a high misdemeanor, felony, misdemeanor or disorderly persons offense." Again, the applicant responded in the negative. Absent any proof that the applicant knew that he had been placed under arrest and given the finding of fact that the applicant's belief that he was not arrested was believable, his nondisclosure of an arrest was understandable. However, there was no dispute that the applicant had been charged and knew that he had been charged with the commission of a criminal offense on March 13, 1980, and that he had not disclosed the charge on his renewal application. At issue is the significance of this nondisclosure.

Most significant are the circumstances surrounding the filing of Mr. Janelli's original application for licensure. In response to question no. 46 on his PHDF-2, the applicant did not disclose his prior charges or conviction regarding alleged abuse of his former wife and Ms. Grilletti, charges which are substantially similar to the charges filed against him in March 1980. Further, approximately one and one-half years before he filed his application for renewal of his license, the applicant was the subject of two telephonic interviews by a Division representative regarding his failure to disclose the prior charges. Also, approximately one year before he filed for renewal, the applicant received a copy of the Division's letter report regarding his application, which, although not objecting to licensure, clearly identified the applicant's failure to disclose as a concern and as a potential impediment to licensure. In addition, the applicant testified that at the time he completed his renewal application he knew that arrests and charges were important regarding continued licensure. Therefore, the Division clearly established that the applicant knew of his obligation to disclose any and all charges made against him.

The applicant's explanation for the nondisclosure, i.e., that he was not required to make disclosure because he had not been arrested and because the charges were dismissed, is virtually the same excuse he gave in response to inquiries regarding his initial application. However, given the background of his earlier application, the applicant should well have known that this excuse, i.e., ignorance of his obligations to disclose, was no longer available to him. Under these circumstances, the applicant's explanation was not believable or persuasive.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b, in regard to his failure to properly answer question no. 12 on his renewal application.

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

Under section 89b(2) of the Act, Mr. Janelli was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of the Resorts International Hotel, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's failure to disclose information on his renewal application, his conduct underlying the incident of May 12, 1980, in conjunction with the incidents of October 1972 and May 1978, the circumstances underlying his employment with BRC and the circumstances underlying his apparent employment with the Sands.

The Commission has held that the disqualification criterion found in section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). William Gonzales, supra at 8. Therefore, the conclusion that Mr. Janelli failed to disclose the charges made against him, in violation of section 86b, automatically precludes the applicant from meeting his burden under section 89b(2) of the Act.

294.

It was established that the charges filed against the applicant between 1972 and 1980, were substantially similiar in nature and concerned apparently violent reactions by the applicant to domestic disharmony. Such behavior is obviously disturbing. However, there were insufficient proofs to accurately establish the nature of the applicant's behavior. Therefore, no negative inferences can be drawn from the mere nature of the charges filed against the applicant.

Similiarly, no negative inferences can be drawn from Mr. Janelli's employment record in the casino industry. Absent any proofs that his work performance was other than as described, the applicant's employment record appears to be satisfactory.

I **CONCLUDE** that the applicant has failed to establish, by clear and convincing evidence, his good character, honesty and integrity under Section 89b(2) of the Act.

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

Under Section 89b(3) of the Act, Mr. Janelli was required to establish, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency as a casino employee. The Division has raised issue with the applicant's employment with BRC and his apparent employment with the Sands.

As previously stated, absent any proofs to establish that the applicant was terminated from any employment in the casino industry for cause, there was no indication that the applicant's employment record was anything other than satisfactory.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency as a casino employee under Section 89 (3) of the Act.

DISPOSITION

It is **ORDERED** that the application of Louis A. Janelli for renewal of his casino employee license be **DENIED.**

295.

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, 1983
DATE

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

Receipt Acknowledged:

September 1, 1983
DATE

Bernadette M. Fricon
CASINO CONTROL COMMISSION

Mailed to Parties:

Sept. 2, 1983
DATE

Ronald L. Lankenau
OFFICE OF ADMINISTRATIVE LAW

ij/ee

296.

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-2, Louis A. Janelli, filed March 12, 1979 (31 pages)

J-2 Letter to Honorable Joseph P. Lordi, Chairman, from Fredric E. Gushin, Deputy Attorney General, October 31, 1979 (2 pages)

J-3 Ventnor City Police Department — Arrest Report, Louis A. Janelli, May 13, 1980; Ventnor City Police Department-Investigation Report, Louis A. Janelli, May 12, 1980; State of New Jersey v. Louis A. Janelli, Ventnor City Municipal Court, Complaint, May 12, 1980; Ventnor City Police Department -- Voluntary statement made by Mary Ann Janelli, May 12, 1980 (4 pages)

J-4 Application for Casino Key and Casino Employee License Renewal, Louis A. Janelli, October 13, 1980 (2 pages)

J-5 Letter to Mark B. Danziger, Vice Chairman, from Robert J. Melillo, Deputy Attorney General, August 19, 1981 (3 pages)

R-1 Atlantic City Police Department — Investigation Report, Louis Janelli, October 10, 1972; Atlantic City Police Department -- Arrest Report, Louis A. Janelli, October 10, 1972 (2 pages)

R-2 Ventnor City Police Department — Investigation Report, Louis A. Janelli, May 11, 1978

LIST OF WITNESSES

Applicant:

Louis A. Janelli

For the Respondent:

Steven Mihalow

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-206
OAL DOCKET NO. CCC 1356-83
REG. NO. 37407-40

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

Complainant,

v.

KEVIN T. JEFFRIES,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law filed with the Commission on June 29, 1983, recommending that the complaint of the Division of Gaming Enforcement be dismissed and Mr. Jeffries should be permitted to retain his registration; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on August 17, 1983, to modify the said Initial Decision and to dismiss the complaint of the Division of Gaming Enforcement,

IT IS on this 25th day of August 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) Respondent has been convicted of disqualifying offenses pursuant to N.J.S.A. 5:12-86(c)(1) rather than N.J.S.A. 5:12-86(c)(3), from which he has demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-91(d) rather than N.J.S.A. 5:12-91(b). [Initial Decision at 2].

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: August 25, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1356-83

AGENCY DKT. NO. 82-206

STATE OF NEW JERSEY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner

v.

KEVIN JEFFRIES,
Respondent.

APPEARANCES:

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

John H. Fitzgerald, Esq., for respondent (Cape-Atlantic Legal Services, attorneys)

Record Closed: June 14, 1983 Decided: June 29, 1983

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

The Division of Gaming Enforcement seeks an order from the Casino Control Commission revoking the casino hotel registration of Kevin Jeffries, who is currently employed by Bally's Park Place Casino-Hotel as a heavy porter. The Division alleges that Mr. Jeffries' prior criminal record, which includes convictions for burglary and theft by unlawful taking of goods valued in excess of $500, as well as a conviction for receiving stolen property, contains enumerated disqualifiers which bar Jeffries from being registered as a casino hotel employee. The Division in addition questions whether Mr. Jeffries has the requisite good character, honesty and integrity which it believes is

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required for licensure under the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Jeffries, while not disputing the criminal convictions, argues that he has rehabilitated himself from the adverse affects of these convictions and that therefore, pursuant to N.J.S.A. 5:12-91(b), the conviction should not serve to bar him from registration.

Following the filing of the Division's complaint with the Casino Control Commission, the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on April 15, 1983, and a Prehearing Order was issued on April 21, 1983. A hearing was held at the Longport Municipal Court on June 14, 1983.

Having considered the testimony and documentary evidence presented at the hearing, I **FIND** that the Division of Gaming Enforcement has established that Mr. Jeffries did commit offenses and received convictions for violations of the criminal law which constitute enumerated disqualifiers from registration, pursuant to N.J.S.A. 5:12-86c(3). However, I **FIND** that Mr. Jeffries has rehabilitated himself from the adverse affects of those convictions and that he should be permitted to retain his registration and continue his employment in the casino-hotel industry as a casino hotel employee.

As noted, the criminal convictions received by Jeffries are not in dispute. The Division's entire case consisted of the presentation of the indictments and judgments of conviction which constitute Jeffries' criminal record. The respondent was charged in indictment I-821-79-J-3 with conspiracy, burglary and theft by unlawful taking. Ultimately, he pled guilty to the burglary and theft by unlawful taking charges, violations of N.J.S.A. 2C:18-2 and 2C:20-3, respectively. Honorable Paul R. Porreca sentenced Jeffries on October 31, 1980, to a term at the Prison Reception and Classification Center, Youth Correctional Institution at Yardville, for an indeterminate term on each count, to run concurrently, with credit for one day served in the County Jail.

In addition to the above conviction, Jeffries was also charged in indictment I-196-80-S-3 with conspiracy, burglary, theft by unlawful taking, possession of controlled dangerous substance, and theft by receiving stolen property. With respect to this indictment, Jeffries entered a plea on November 17, 1980, to the charge of receiving stolen property in excess of $500, in violation of N.J.S.A. 2C:20-7. Judge Porreca sentenced Jeffries to an indeterminate term at the Youth Correctional Institution at

Yardville, to run concurrently with the sentence Jeffries was then serving with respect to the prior indictment noted above. Jeffries was given credit for 18 days served in the County Jail in connection with this indictment.

The remainder of the Division's evidence consisted of police investigation reports which dealt with the investigation of the cases which led to the charges contained in the indictments to which Jeffries ultimately entered pleas of guilty. Some reference will be made to information contained in these reports in connection with the discussion of Mr. Jeffries' testimony.

In support of his claim that he had rehabilitated himself, the respondent presented the testimony of Ray Troiano, Assistant Manager of the limousine service for Bally's Park Place Hotel. Mr. Troiano was formerly a police officer in Atlantic City for 16 years, serving as a detective in the Juvenile Division and then with the Narcotics Division. He has known Mr. Jeffries for about eight years, originally through his police work. He was aware of Mr. Troiano's arrests through that work. He testified that Troiano, who lived at the time on Sovereign Avenue in Atlantic City, was growing up in a bad neighborhood. Troiano observed Jeffries on several occasions when the respondent was under the influence of narcotics. Troiano left the Atlantic City Police Department in June 1980. After that time, he had occasion to come in contact with Jeffries again and observed that he had changed his appearance considerably. He had lost weight and his appearance was almost unrecognizable to Troiano. The witness learned that Jeffries had a child and was married (in fact, the evidence indicates that Jeffries has been in a longstanding relationship with a woman who is the mother of the child and with whom he still resides. They have not yet married but intend to do so shortly). Troiano observed that Jeffries was alert and showed no signs of being involved with narcotics. The witness described the Jeffries that he had known while involved with the police as a follower who went along with his peer group and got in trouble as a result. Troiano noted that he had heard good things about Jeffries from police officers with whom he maintains acquaintances and that he knows that the respondent is a trusted employee of Bally's, who is liked at his work. Troiano indicated that he fully trusts the respondent and had intended to ask him if he would drive for the limousine service.

Harry McIntyre, a senior mechanic and former security officer at Resorts International Casino-Hotel and a former police officer with the Ocean City Police Department, testified that he has known Jeffries since the end of October 1982. They

originally met in a coffee shop which they both frequented. Since then, McIntyre and Jeffries have driven to work together on a regular basis. McIntyre is familiar with Jeffries' criminal record, including his convictions, having learned this information from Jeffries.

McIntyre is involved with a commercial refrigeration business and Jeffries has done work for him. The respondent has always been a concerned hard worker, who has been reliable and trustworthy. He has had access to McIntyre's equipment and his truck and the witness has no concern whatsoever in trusting Jeffries with valuable equipment. McIntyre has many police acquaintances and believes that if any thing negative was to be said about Jeffries he would have heard about it. He has heard good things about the respondent, who he finds is very well liked. McIntyre asserted that Jeffries stays away from his old friends and appears to be a different person than the man who got into trouble some years ago. McIntyre described a recent incident which he observed in which a man in the neighborhood in which McIntyre and Jeffries reside became quite abusive to Jeffries' wife. According to McIntyre, the man appeared to be trying to get Jeffries' wife into a fist fight. Jeffries handled the matter very well, in an extremely calm fashion, and convinced the gentlemen to have the police mediate the problem.

Kevin Jeffries testified in his own defense. He now resides in Ocean City. He works as a heavy porter at Bally's, running linen to the floors and bringing trash and linen down from the floors. He has been so employed since October of 1981, the time of his release from Yardville. He makes $6.25 an hour and his pay will go up to $7.25 an hour on September 15. He likes his job, considers himself as making good money and has no particular interest in changing his position. He is 26 years old and is getting married on July 25. He has been living with his girlfriend since September 30, 1981, and is the father of a five-month-old child. His wife-to-be is not employed.

Jeffries testified that he grew up in Camden and moved to Atlantic City in 1976. He has eight brothers and sisters. His two brothers have criminal records involving serious offenses, including weapons charges. Jeffries readily admitted his involvement in burglaries and in drug use. He testified that at the time that he was involved in these matters in 1978 and 1979 he was living on South Sovereign Avenue in Atlantic City, a neighborhood which he described as being "bad." The court indicated to the parties that it was familiar with the neighborhood and its run-down condition. Jeffries testified that during 1978 and 1979 the general life style on the street was to sleep during the day and

stay out all night, hanging on the street corner doing whatever everyone else was doing. This included using various types of drugs and getting involved in criminal activities to finance the drug use. Jeffries was not employed at the time, but he did have an automobile and other individuals approached him about helping them to commit burglaries. According to Jeffries, his role in these matters consisted of driving the car to the scene of the burglary, waiting nearby with the motor running and being prepared to leave instantly upon the return of the burglars. Jeffries denied that he had actually entered the premises during the burglary in Egg Harbor Township of property at 1508 Bay Drive, this being the location of the crime for which Jeffries was charged in indictment I-821-79-J-3 and for which he plead guilty to the burglary and theft by unlawful taking charges. However, he did readily admit that he was present near the burglarized property and was part of the group engaged in the criminal activity.[1]

With respect to the burglary of the property at Jim Leeds and Pitney Roads in Galloway Township, which property was the site of the criminal actions charged in Indictment I-196-80-S-3, Jeffries admitted pleading guilty to the charge of receiving stolen property. He denied that he had had any involvement in this criminal offense, but testified that he plead guilty because he was then serving time in Yardville and the continued existence of the pending criminal charge might have delayed his release from the institution. He testified that he discussed the matter with his attorney, who advised him that the judge would run the sentence concurrently with the sentence then being served and that there would be no particular harm in entering the plea of guilty. Jeffries proceeded to enter the plea of guilty.

The respondent testified that during his incarceration at Yardville he went to school. He raised his educational level from 5th grade up to a 10th grade level. He attended group therapy sessions at the Wharton Tract, the facility to which he was assigned after his initial stay at Yardville. The facility was a drug rehabilitation center. He received intensive counseling and also was employed by the surrounding township on its golf course. He attended school during the morning. He was scheduled to take his GED exam, but was paroled prior to the exam date.

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[1]The police report prepared at the time states that Jeffries admitted he entered the premises. The officer who prepared the report was not presented as a witness by either party.

According to the witness, he now is doing quite well. He has moved to Ocean City and is no longer involved in the same life style as before. He goes to work at Bally's on a regular basis and has done so almost since the time of his release from prison. He has not used drugs since his parole and stays away from his old friends. He described Ocean City as a quite community, far different from the neighborhood in which he previously resided. He is in a stable relationship with his girlfriend of the past five to six years. Although at one point he was charged by the Probation Department with having violated his parole because of his failure to pay his fine, when the matter was brought before Judge Porreca, the court determined to dismiss the charge, vacate the balance of the fine and terminate probation with improvement. Mr. Jeffries presented a letter signed by the chief probation officer and senior probation officer of Atlantic County in which they asserted that based on the information available to them Jeffries appeared to be making "a sincere effort to become a productive and law abiding member of the community." Jeffries reports to his parole officer once a week.

The witness was questioned concerning the nature of his work. He has no contact with the casino floor and is not permitted to enter hotel rooms unless the room is checked out and not occupied. He works in an area of the hotel facility which is removed from the casino.

DISCUSSION

Although Mr. Jeffries' criminal involvement is relatively recent, having occurred in 1979 and 1980, it is the opinion of this judge that his past criminal activities should not lead to the revocation of the respondent's casino hotel registration. It seems apparent that Mr. Jeffries was, at the time of his criminal involvement, a prime candidate for difficulties with the law. He was young, unemployed, living in a bad neighborhood, unskilled, with a poor educational background (he left school at 14) and minimal prospects. Although the blame for his problems is certainly placed properly on his shoulders, I believe it is fair to say that his environment aided his downfall. Surrounded by others who were equally prone to becoming involved in trouble, he also became involved.

It is perhaps fortunate that Mr. Jeffries was caught and convicted when he was. His removal from the streets and his incarceration at Yardville and ultimately at the Wharton Tract may have come just in time to prevent him from becoming involved in more serious activity. It appears that the combination of the treatment which he

received, the sobering affects of incarceration, and perhaps some maturation have lead Jeffries to change his life. No doubt the fact that he was able to obtain employment upon his release was a factor which helped to set him on the right path. He has removed himself from his prior bad surroundings and taken himself and his family to a totally different environment. I am convinced that since his release from incarceration, a period of over a year and a half, the respondent has established himself as a changed person. While there is no way to ever be entirely sure that one is totally rehabilitated, I believe that, given all of the circumstances, and with consideration for the type of position that Jeffries holds in the casino-hotel industry, that he can be said to have sufficiently established his rehabilitated state and can be permitted to continue to hold his registration and his employment.

The court is aware of the possibility that a lengthier period of time should be permitted to pass before allowing Mr. Jeffries to qualify as rehabilitated. However, it is this judge's view that it is not necessary to wait longer to so conclude given the nature of the position held and the evidence that Jeffries has for the past year and a half lived as a model citizen and made a sincere and clean break with his past. I **CONCLUDE** that enough time has passed. To hold otherwise would probably be the worst thing that could be done for Jeffries as it would totally disrupt the new life which he has created. I see no threat whatsoever that Mr. Jeffries' continued employment in the casino-hotel industry as a casino hotel employee is likely to be inimical to the operations of the casino industry or to the policies of the Casino Control Act and I see no basis for concluding that he should suffer the revocation required of one who has enumerated convictions and has not shown his rehabilitation. Therefore, under all the circumstances, I **CONCLUDE** that the Division's complaint should be **DISMISSED** and Mr. Jeffries should be permitted to retain his registration.

It should be noted that during the hearing some reference was made to a possible change in the status of the license required for Jeffries to hold his position. This issue, should there be any truth to Mr. Jeffries' concerns expressed at the hearing, was not raised in the Prehearing Order and was not something which either the attorney general or the respondent's counsel were aware of. Therefore, the court has not considered any recent change which may have occurred and passes on this case in connection with the requirements for licensure for a casino hotel employee, effective at the time of the prehearing and, to the knowledge of the court and counsel, at the time of the hearing itself.

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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 29, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

July 1, 1983
DATE

Ronald L. Lakewood
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of the Petitioner:

P-1 Package containing indictment I-821-79-J-3, Judgment of Conviction and Order for Commitment on indictment 821-79; indictment I-196-80-S-3; Judgment of Conviction and Order for Commitment on indictment 196-80; certification of Clerk of the County of Atlantic

P-2 Egg Harbor Township Police Department, Investigation Report, dated March 15, 1980, 2 pages

P-3 Egg Harbor Township Police Department, Supplementary Investigation Report, dated March 17, 1980, 2 pages

P-4 Egg Harbor Township Police Department, Supplementary Investigation Report, dated March 17, 1980, 1 page

P-5 Egg Harbor Township Police Department, Property Report, dated March 8, 1980, 1 page

P-6 Egg Harbor Township Police Department, Property Report, dated March 18, 1980, 2 pages

P-7 Egg Harbor Township Police Department, Supplementary Investigation Report, dated March 27, 1980, 1 page

P-8 Galloway Township Police Department, Arrest Report, dated September 20, 1980

P-9 Galloway Township Police Department, Investigation Report, dated December 20, 1981, 1 page

On behalf of Respondent:

R-1 Letter of January 26, 1983, from Probation Officers

R-2 Letter of March 4, 1983, from Probation Officers

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-252
OAL DOCKET NO. CCC 10715-82
APP. NO. 24598-21

IN THE MATTER OF THE APPLICATION
OF MARK S. KAPLAN FOR
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on June 21, 1983, recommending that the casino employee license application of Mark S. Kaplan be granted; and neither party having filed exceptions to the Initial Decision; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on July 27, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Mark S. Kaplan,

IT IS on this 29th day of July 1983, 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 Mark S. Kaplan 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 Mark S. Kaplan and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 29, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 10715-82

AGENCY DKT. NO. 82-EA-252

MARK S. KAPLAN,

Applicant

v.

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

Respondent.

APPEARANCES:

Nathan W. Davis, Jr., Esq., for the applicant

Edward P. Busichio, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: May 6, 1983 Decided: June 20, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Mark S. Kaplan, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had committed a disqualifying offense and that the applicant lacked the requisite good character, honesty and integrity.

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PROCEDURAL HISTORY

Mr. Kaplan filed his Personal History Disclosure Form-2 (PHDF-2), dated November 3, 1980, with the Commission. By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated October 6, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter, dated November 22, 1982, the applicant requested a hearing. On December 1, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 22, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Kaplan is 28 years of age (J-1). He relocated to New Jersey from Pennsylvania in July 1979 and currently resides in Margate. The applicant completed the 11th grade. During the spring of 1980, the applicant successfully completed a blackjack dealer's course at the Atlantic Casino Training Academy. He was second in his class.

From February 1974 to February 1975, the applicant was employed as a truck driver by Uhler Chevrolet in Paoli, Pennsylvania. The company went out of business.

From February 1975 to May 1979, the applicant was employed by Maria Kaye Designs of Paoli, Pennsylvania. This company was owned and operated by the applicant's mother. During the last seven months of his employment, the applicant assisted his mother in the uniform department of Resorts International Hotel, Inc.

From July 1979 to December 1979, the applicant was employed by Resorts as a laundry and linen uniform attendant. He was laid off because of the abolition of his position.

From December 1979 to January 1980, the applicant was employed by Wells Fargo Security Agency in West Alantic City as a kennel master. The applicant's

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employment was terminated because as an ex-offender he was denied permission to work for a security agency.

From June to July 1980, the applicant was employed by Resorts as a game room attendant. His employment was terminated because he fell asleep on the job. The applicant stated that he fell asleep because he was taking cortisone for his hay fever.

From September to October 1980, the applicant was employed by Sir/Plus, a men's clothing store, as a salesman. This work was seasonal.

The applicant has also been employed by Giro Chemical Company in a maintenance capacity. The company went out of business.

The applicant was last employed by the Ginsburg Bakery during March 1983. He quit that job because of the atmosphere, the hours and the lack of transportation.

The applicant now does odd jobs when available. He maintains a constant search for employment, although finding employment is difficult for an ex-offender.

The parties stipulated the applicant's criminal record as follows.

On April 3, 1974, the applicant was arrested by the Easttown Township Police Department, Berwyn, Pennsylvania, and was charged with burglary (equivalent to N.J.S.A. 2C:18-2) and theft (equivalent to N.J.S.A. 2C:20-3). The applicant was convicted of burglary and conspiracy (equivalent to N.J.S.A. 2C:5-2), the charge of theft was nolle prossed. The applicant was sentenced to one to three years for burglary and two years for conspiracy, the sentences to run concurrently. The sentences were suspended, the applicant was placed on probation for three years and two years respectively, was fined $100 and was ordered to pay $750 in restitution.

On July 13, 1976, the applicant was arrested by the Lower Merion Township Police Department, Ardmore, Pennsylvania, and was charged with burglary (equivalent to N.J.S.A. 2C:18-2), theft (equivalent to N.J.S.A. 2C:20-2) and receiving stolen property (equivalent to N.J.S.A. 2C:20-7). The charges were dismissed.

On August 3, 1976, the applicant was arrested by the Williamstown Township Police Department, Paoli, Pennsylvania, and was charged with theft (equivalent to N.J.S.A. 2C:20-2), receiving stolen property (equivalent to N.J.S.A. 2C:20-7), conspiracy (equivalent to N.J.S.A. 2C:5-2) and criminal attempt (equivalent to N.J.S.A. 2C:5-1). The applicant was sentenced to 8 to 23 months in the Chester County Farm Prison and was fined $100. The applicant's conduct, if prosecuted in New Jersey, would constitute theft in the third degree.

The applicant was incarcerated from December 8, 1976 to July 7, 1977, at the Chester County Farm Prison.

The applicant described the circumstances underlying his criminal misconduct. He attributed his actions to heavy alcohol abuse and association with the wrong kind of people. Nevertheless, the applicant conceded that he knew at the time that his conduct was wrong. With regard to the 1976 incident, the applicant stated that he was the driver of the getaway vehicle.

While incarcerated, the applicant successfully completed a drug and alcohol rehabilitation program offered by the prison. The applicant completed his parole prior to 1979.

During 1979, the applicant was found guilty of driving while under the influence of alcohol in Chester County, Pennsylvania (J-1). He was placed on one year of probation, which was transferred to Atlantic County for administration and which the applicant completed successfully.

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

(B) DISPUTED FACTS

In dispute was the applicant's character, honesty and integrity.

The applicant testified that he has not had an alcohol problem since he successfully completed the prison program in July 1977. During cross-examination, the

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applicant testified that he has not had any incidents of alcohol abuse, nor has he been charged with any alcohol related offense since July 1977. However, the applicant subsequently conceded that he had been charged with driving while under the influence of alcohol in 1979, as he had disclosed in response to Question No. 45 on his PHDF-2 (J-1). The applicant further stated that he does drink "a couple of beers here and there."

The applicant testified that he was remorseful for his prior misconduct.

The applicant called two witnesses to testify on his behalf. The first was John Maniatis of Brooklyn, New York. The witness is self-employed in the printing business. Mr. Maniatis has a close business and personal relationship with the applicant's mother and has known the applicant for approximately five years. He is aware of the 1974 and 1976 incidents. Mr. Maniatis is in Brigantine approximately three to four days per week. The witness was of the opinion that the applicant is a fine man because he is respectful, has always been truthful and he is trying to find work. Mr. Maniatis was also of the opinion that the applicant does not now have an alcohol problem, although he does occasionally take a social drink.

The applicant's second witness was Maria Mendicino, his mother. Ms. Mendicino attributed the applicant's misconduct during the period from 1974 to 1976 to alcohol abuse. The witness stated that the applicant most often did not remember his actions and was always remorseful and ashamed when he realized what he had done. Ms. Mendicino further tesified that the applicant was truthful with her. Also, the witness has never heard any complaints from the applicant's employers. Ms. Mendicino stated that the applicant does not now have an alcohol problem.

The applicant also offered a statement by Michael D. Dixon, a former police officer in Berwyn, Pennsylvania. Mr. Dixon stated that Mr. Kaplan's prior difficulties were related to alcohol abuse. Mr. Dixon also was of the opinion that the applicant's best chance at avoiding his prior difficulties was through steady employment (P-1).

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

1. During the period from 1974 to 1976, the applicant was a substantial abuser of alcohol.

2. The applicant's alcohol abuse contributed to his criminal misconduct, although the applicant knew at the time that his actions were unlawful.

3. Since his completion of an alcohol rehabilitation program in 1977, the applicant has been involved in one incident of alcohol abuse in 1979, and he continues to consume alcoholic beverages on a social basis.

4. The applicant does not now have an alcohol problem.

5. The applicant enjoys a favorable reputation for good character, honesty and integrity among close relatives, friends and associates.

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) of the Casino Control Act (Act) mandates that a person who has been convicted of any offense, which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. It was stipulated that the applicant's convictions for theft offenses in Pennsylvania would constitute theft offenses of the third degree under Title 2C.

I **CONCLUDE** that the applicant's convictions mandate that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5;12-90h

An applicant faced with the existence of a section 86 disqualifier has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

First, Mr. Kaplan has applied for licensure to be employed as a dealer. He would have regular responsibilities for gaming activities and would have direct contact with patrons in the casino.

Second, the applicant's conduct in 1974 and 1976 constitutes violations of N.J.S.A. 2C:18-2, burglary; N.J.S.A. 2C:20-2, theft; N.J.S.A. 2C:20-7, receiving stolen property; and N.J.S.A. 2C:5-2, conspiracy. Under section 86c(1) of the Act, these are statutory disqualifiers. The applicant knew at the time he committed the offenses that his actions were unlawful. The offenses are serious.

Third, at the time he committed the offenses, the applicant knew that his conduct was criminal. There were no pressures which contributed to his misconduct. The applicant has accepted responsibility for his actions; nevertheless, it was evident that the applicant's misconduct was related to alcohol abuse. However, the nature of the alcohol abuse problem was not described in detail.

Fourth, the applicant's misconduct occurred in mid-1974 and again in mid-1976, the most recent of which was seven years ago.

Fifth, in 1974 the applicant was 19 years of age, and in 1976 he was 21 years of age. There was no attempt to attribute his conduct to immaturity.

Sixth, the applicant's misconduct occurred during the period from 1974 to 1976. His criminal conduct was not isolated. The applicant has not committed any violations of the criminal laws subsequent to his release from prison in 1977.

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

Eighth, it is evident that the applicant has made rehabilitative efforts. The applicant acknowledges his wrongdoing and has made a sincere expression of remorse. He served his time in prison. During his incarceration, the applicant successfully participated in an alcohol and drug rehabilitation program. The applicant completed successfully his parole. The applicant has not established a positive employment record. Of greatest concern is the applicant's prior abuse of alcohol. Although he successfully completed a rehabilitation program, the applicant does not now abstain from all use of alcohol. Of course, the applicant did not state that he was an alcoholic, but only an abuser. Of the greatest significance are the facts that the applicant has abstained from abusing alcohol and has not repeated his criminal misconduct. This indicates strongly that the applicant has overcome his prior problems. Further, the testimonies of Ms. Mendicino and Mr. Maniatis indicate that the applicant is capable of and does avoid alcohol abuse. The passage of time in this regard is significant. With respect to the incident in 1979, wherein the applicant was found guilty of having operated a motor vehicle while under the influence of alcohol, although not a positive sign, does indicate that the applicant no longer involves himself in criminal conduct under such circumstances.

I am persuaded that the applicant has met his statutory burden to establish his rehabilitation. There is little likelihood, if any, that the applicant's misconduct will recur.

I **CONCLUDE** that the applicant has established by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under the section 89b(2) of the Act, Mr. Kaplan was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held

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that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conduct between 1974 and 1976.

The applicant's presentation of himself portrayed a basically positive picture. Essentially, I am convinced that the applicant no longer has a problem with alcohol abuse, which apparently contributed to his criminal misconduct. It was evident that the applicant has rehabilitated himself from his prior misconduct and there is little likelihood of the repetition of any unlawful acts in the future. Therefore, the applicant presents little, if any, risk to the public or to the integrity of casino gaming in this State. Further, the applicant has taken the initiative to qualify himself for licensure in regard to acquiring business skills. On the other hand, the applicant has not avoided all consumption of alcoholic beverages. Also, the applicant has a poor work history both in and outside of the casino industry and has exhibited an inability to hold permanent employment. However, the positive elements in the applicant's presentation outweighed the negative factors. I am persuaded that the applicant has made a minimally sufficient showing of his qualifications for licensure.

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

DISPOSITION

It is **ORDERED** that the application of Mark S. Kaplan for licensure as a casino employee be **GRANTED.**

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

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

June 20, 1983
DATE

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

Receipt Acknowledged:

June 21, 1983
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

June 23, 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

fms/ee

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-2, Mark Sheldon Kaplan, November 3, 1980 (28 pages)

P-1 Telegram to Nathan Davis, Jr., Esq., from Michael D. Dixon, March 20, 1983 (2 pages)

R-1 Letter to Nathan W. Davis, Jr., Esq., from Edward P. Busichio, May 3, 1983, and letter to Don M. Thomas, Acting Chairman, from Edward P. Busichio, October 6, 1982 (4 pages)

WITNESS LIST

FOR THE PETITIONER:

Mark S. Kaplan

John Maniatis

Maria Mendicino

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-82
OAL DOCKET NO. CCC 7529-82
LIC. NO. 13514-21

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

Complainant,

v.

ANTHONY W. LAFTY,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on July 21, 1983, recommending that the casino employee license held by Respondent be revoked and that he be permitted to reapply for licensure two (2) years from the final decision in this matter; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on August 24, 1983, to modify the said Initial Decision and to revoke the casino employee license held by Anthony W. Lafty,

IT IS on this 20th day of September 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) In view of the fact that Respondent has been convicted of unlawful possession of gambling records, contrary to N.J.S.A. 2C:37-3, a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1), that portion of the Initial Decision which concludes that Respondent's

conviction of a statutory disqualifying is inimical to the policy of the Casino Control Act is rejected as unnecessary.

(2) That portion of the Initial Decision which orders that Respondent "...be permitted to reapply for licensure two years from the date of the final decision in this matter..." is rejected as inconsistent with the construction of N.J.A.C. 19:41-8.8. Upon the issuance of an order of revocation, the Commission regulation on reapplication by natural persons after denial or revocation, N.J.A.C. 19:41-8.8, establishes the consequences of the order, the nature of which varies dependent upon the bases for the revocation. As applied to the facts of this case, N.J.A.C. 19:41-8.8 essentially provides that the respondent is not eligible to apply for or obtain any license (except a casino key employee license), registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of the final order, unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g). The respondent is ineligible to apply for a casino key employee license until ten (10) years from the date of his conviction for a disqualifying offense absent early reapplication under N.J.A.C. 19:41-8.8(g).

IT IS FURTHER ORDERED that the casino employee license held by Anthony W. Lafty be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Anthony W. Lafty is not eligible to apply for or obtain any license (except a casino key employee license), registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this order, pursuant to N.J.A.C. 19:41-8.8(a), unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g), and the Respondent is ineligible to apply for a casino key employee license until ten (10) years from the date of his conviction for a disqualifying offense absent early reapplication under N.J.A.C. 19:41-8.8(g); and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon Anthony W. Lafty, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 20, 1983

FILED
NEW JERSEY
JUL 27 1983
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7529-82
AGENCY DKT. NO. 81-82

ANTHONY W. LAFTY,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Respondent.

APPEARANCES:

Anthony W. Lafty, petitioner, Pro Se

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

Record Closed: June 6, 1983 Decided: July 21, 1983

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

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on December 14, 1982, seeking the revocation of the petitioner's casino employee license, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Lafty requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination on August 6, 1982, as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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The matter was initially scheduled for a prehearing conference on October 12, 1982; however, the petitioner did not appear. Mr. Lafty's explanation for his nonappearance was accepted, and the matter was rescheduled. The prehearing conference was held on February 9, 1983, and the hearing was held on May 27, 1983. At the hearing Mr. Lafty stated that his witness, Joseph A. Inverso, Jr., a National Service Officer, Veterans Administration, American Veterans of World War II, Korea and Vietnam, had not appeared. Mr. Inverso was to testify for the petitioner and to bring a copy of Mr. Lafty's evaluation by his current employer, Blue Cross and Blue Shield of Delaware. I gave Mr. Lafty ten days within which to submit a written statement from Mr. Inverso and the job evaluation. I did not receive anything from Mr. Lafty, and the record in this matter closed on June 6, 1983.

At the prehearing conference held on February 9, 1983, the parties agreed that the issues in this matter are:

(a) Whether the petitioner's conviction would disqualify him from licensure, pursuant to N.J.S.A. 5:12-86c(1).

(b) Whether the conduct of the petitioner underlying his conviction would render licensure inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

(c) What sanctions, pursuant to N.J.S.A. 5:12-129, if any, should be imposed in this matter.

Based on the testimony and exhibits presented at the hearing, I **FIND** that the undisputed facts are:

(1) Mr. Lafty's father abandoned his wife and three children when the petitioner, the eldest, was seven years old, and his mother had to apply for welfare in order to support herself and her children.

(2) Mr. Lafty attended high school in Philadelphia and had a full-time job in order to help support his family.

(3) Mr. Lafty graduated from high school in June 1978, and obtained a position with the Philadelphia National Bank.

(4) While employed by the Philadelphia National Bank, the petitioner was paid a net salary of $127 a week and took computer courses at Pierce Junior College.

(5) In the hopes of obtaining a better position, Mr. Lafty moved to the Atlantic City area in September 1979.

(6) Mr. Lafty was initially employed by Caesar's Boardwalk Regency as a parking lot attendant and received a net pay of about $170 a week, including tips. While working there, the petitioner took the blackjack course. Thereafter, Mr. Lafty took a busboy position at Bally's Park Place, and his salary was about $200 a week, including tips.

(7) Mr. Lafty received his casino license in March 1980. In April 1980, Mr. Lafty got a job as a blackjack dealer at Bally's Park Place with a salary of $17,000 per annum. While employed in that position, Mr. Lafty took the baccarat course.

(8) When the Golden Nugget opened in December 1980, Mr. Lafty got a job as a baccarat dealer and made between $250 and $290 a week.

(9) In July 1981, Mr. Lafty was promoted to the position of floor person and his net salary was $459 a week. At that time he was 21 years old.

(10) While he worked in Atlantic City, Mr. Lafty sent about 30% of his pay home to his mother to help support the family.

(11) Mr. Lafty admitted that he bet on football games and during the 1980-81 football season, he lost between $1300 and $2000.

(12) In September 1981, Mr. Lafty started a football pool and during the first weekend, he accepted ten to fifteen bets totaling to $1300. He had a profit of $150. Mr. Lafty indicated that the average bet he accepted was between $25 and $50 and that he had arranged for the lay-off of any large bets with a person in Philadelphia. During the second weekend he ran the football pool, he was raided by the State Police.

(13) In October 1981, Mr. Lafty was indicted for promoting gambling and was charged with conducting a bookmaking operation, in violation of N.J.S.A. 2C:37-2, and with the unlawful possession of gambling records, in violation of N.J.S.A. 2C:37-3 (R-1).

(14) On October 28, 1981, Mr. Lafty's employment at Golden Nugget was terminated because of the criminal indictment brought against him, and he was assured by a Golden Nugget representative that "if things would work out" he would be rehired.

(15) On December 16, 1981, Mr. Lafty pled guilty to unlawful possession of gambling records and on February 5, 1982, he was sentenced to two years of probation, was fined the sum of $2,500 and was assessed a penalty of $25 (R-2).

(16) Mr. Lafty is currently employed by Blue Cross and Blue Shield of Delaware as a computer operator.

(17) By letter dated May 26, 1983, Stuart A. Greenberg on behalf of C. Pandolfo, a parole agent employed by the Pennsylvania Board of Probation and Parole, stated that Mr. Lafty has been under probation supervision for 15 months and that his conduct and behavior has been exemplary. He further stated that Mr. Lafty has maintained a high degree of stability and that he has met his financial obligations promptly. Mr. Greenberg concluded that these facts, combined with the absence of a previous criminal history, are strong indications that Mr. Lafty has been successfully rehabilitated (P-3).

(18) By letter dated May 24, 1983, John P. D'Ortona, Deputy Court Administrator of the Court of Common Pleas in Philadelphia, stated that he has known Mr. Lafty for approximately ten years and that he is convinced that Mr. Lafty's criminal action was due, in part, to a lack of maturity. He further stated that Mr. Lafty has shown a very deep feeling of remorse. Mr. D'Ortona recommended that the petitioner be given another chance and that his license not be revoked (P-4).

(19) By letter dated May 26, 1983, Anibal Pereda, Pit Manager for Golden Nugget, stated that he has known and worked with Mr. Lafty for three years and that Mr. Lafty was one of the casino's better employees, that he was reliable and that he had displayed the highest level of professionalism in his work (P-2).

(20) By letter dated May 26, 1983, Al Pearlman, a Philadelphia Councilman, stated that Mr. Lafty was rehabilitated, that he had conquered his gambling habit and that he should be given a second chance for casino employment (P-1).

On his own behalf, Mr. Lafty testified that he had made a mistake which was both stupid and immature and that he was asking for a second chance. Mr. Lafty represented that he had had an impoverished childhood and when he started to earn a substantial salary, he didn't know how to handle it. The petitioner stated that he had learned his lesson and that he would never again engage in any illegal gambling activities.

On cross-examination, Mr. Lafty stated that he was aware that the State Police investigation report indicates that he admitted having a football pool for two football seasons (R-4). However, the petitioner stated that September 1981 was the first time he had a pool, and that during the 1980-81 football season, he placed bets for himself and his friends with a person who ran a pool.

I **FIND** that the additional pertinent facts are:

(1) As a result of his employment with the casino industry, Mr. Lafty's income substantially increased in a short period of time.

(2) In 1980, Mr. Lafty bet on football games and also placed bets for his friends on football games, and in 1981, Mr. Lafty decided ran his own pool.

In closing, Mr. Mountford argued that the petitioner's conviction was an automatic disqualifier pursuant to N.J.S.A. 5:12-90e and 5:12-86c(1), and that his continued licensure would be inimical to the policy of the Casino Control Commission, N.J.S.A. 5:12-86c(4). According to Mr. Mountford, the facts clearly show that the

petitioner did not engage in an isolated illegal gambling incident but that he had carefully organized a football pool and even went so far as to provide for a setoff if he received too many bets.

I agree with Mr. Mountford and **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing grounds for the revocation of Mr. Lafty's casino employee license by a preponderance of relevant and credible evidence, based on the fact that he was convicted of a statutory disqualifier and on the fact that the nature of this conviction is inimical to the policy of the Casino Control Commission.

By his testimony, Mr. Lafty has made an affirmative showing of rehabilitation. His conviction was an isolated incident which took place when he was 21 years old, and he is successfully completing his probation period. Mr. Lafty had an impoverished childhood and within a short period of time his salary almost tripled. The petitioner has a strong sense of family responsibility and has shown remorse about his criminal misconduct, and there is no indication that a repetition of his illegal gambling activities will occur in the future.

The Casino Control Act provides that a person can overcome the prohibitions against licensure by affirmatively demonstrating his/her rehabilitation, pursuant to N.J.S.A. 5:12-90b. This section sets forth the following eight specific criteria to be evaluated in order to reach a determination as to rehabilitation:

(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;.

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

Although I **CONCLUDE** that Mr. Lafty has taken sufficient steps toward complete rehabilitation, he has not, at this time, established, by clear and convincing evidence, his rehabilitation pursuant to N.J.S.A. 5:12-90h. Mr. Lafty's conviction occurred approximately two years ago. He had intentionally planned and operated an illegal football pool, and he has held responsible positions in the gambling industry.

Therefore, I **ORDER,** pursuant to N.J.S.A. 5:12-129, that the casino employee license of Anthony W. Lafty be revoked and that Mr. Lafty be permitted to reapply for licensure two years from the date of the final decision in this matter, pursuant to N.J.A.C. 19:41-8.8(g).

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

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

July 21, 1983
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

July 21, 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

July 25, 1983
DATE

Ronald L. Lanker/pkw
OFFICE OF ADMINISTRATIVE LAW

ks

APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE:

For Petitioner

P-1 Letter from Al Pearlman, dated May 26, 1983

P-2 Letter from Anibal Pereda, dated May 26, 1983

P-3 Letter from Stuart Greenberg for C. Pandolfo, dated May 26, 1983

P-4 Letter from John D'Ortona, dated May 24, 1983

For Respondent

R-1 Indictment brought against Anthony W. Lafty, dated October 27, 1981

R-2 Record of judgment of conviction of Anthony W. Lafty

R-3 New Jersey State Police Investigation Report regarding the arrest of Anthony W. Lafty, dated September 29, 1981

R-4 New Jersey State Police Supplementary Investigation Report regarding the arrest of Anthony W. Lafty, dated October 29, 1981

WITNESS LIST

Anthony W. Lafty

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-EA-51
OAL DOCKET NO. CCC 3815-83
APP. NO. 43193-21

APPLICATION OF WOLF LICHTEN :	
FOR A CASINO EMPLOYEE :	FINAL ORDER
LICENSE :	

This matter having been opened to the New Jersey Casino Control Commission upon the initial decision of the Office of Administrative Law filed with the Commission on November 1, 1983, recommending that the application of Wolf Lichten (Applicant) for a casino employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the initial decision with the Commission on November 18, 1983; and the Applicant having filed a reply thereto on November 23, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of December 7, 1983, to modify the initial decision and grant the casino employee license application of Wolf Lichten,

IT IS on this 12th day of December 1983 ORDERED that the initial decision of the Office of Administrative Law be and hereby is modified as follows:

1. Insofar as the initial decision can be read to find as fact that the applicant is not a "compulsive gambler", it is rejected. The Commission determined that the applicant demonstrated his qualifications for licensure without reaching the issue of whether or not he is a "compulsive gambler."

IT IS FURTHER ORDERED that the casino employee license application of Wolf Lichten be and hereby is granted based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: December 12, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3815-83

AGENCY DKT. NO. 83-EA-51

WOLF LICHTEN,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Peter R. Richards, Esq., for petitioner (Richards, Martinez and Mullaney, attorneys)

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

Record Closed: September 14, 1983 Decided: October 31, 1983

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

STATEMENT OF THE CASE

In this matter, the petitioner seeks licensure as a casino employee, permitting him to work in a casino as a baccarat, craps, roulette and blackjack dealer and as a casino host. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issue to be resolved in this matter is as follows:

> Whether the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity, and his financial stability, integrity and responsibility, within the meaning of sections 89b(1) and (2) of the Casino Control Act, as

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incorporated in section 90 of the act, with specific reference to his business failure and default on a $326,000 commercial loan, his compulsive gambling and indebtedness to Atlantic City casinos in the amount of approximately $80,000, the forced divestiture of substantial assets in order to reduce some of his outstanding indebtedness, and his involvement in irregularities as a floor trader in an investment group, which resulted in his suspension from the Philadelphia Stock Exchange for a period of seven months.

PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated April 14, 1983, the Division of Gaming Enforcement interposed its objection to the licensure of the petitioner. The petitioner requested a hearing and the matter was thereafter transmitted by the Casino Contol Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 40-year-old, naturalized, United States citizen who resides in Margate, New Jersey, with his wife and two children. The child of Polish Nationals who had fled the German invasion in World War II, the petitioner was born in Siberia in 1943. From 1946 until 1948, the petitioner and his parents were in a refugee camp in Germany. Then, the petitioner and his family were able to immigrate to Israel. In 1952, the petitioner's family attempted to immigrate to Canada, but were unsuccessful, and from 1953 until 1956, the petitioner and his family remained in another refugee camp in Germany. In 1956, the petitioner's family was given permission to enter the United States and they first resided in Cleveland. In 1957, when the petitioner was 13 years old, his family moved to Philadelphia and his father obtained employment as a meat cutter.

The petitioner learned to speak English after being enrolled in public school in Philadelphia. He completed the 12th grade, but did not receive his diploma. The petitioner's father purchased a shoe store and the petitioner worked for his father after school and on weekends. When his father suffered a heart attack, the petitioner ran the shoe store business for approximately one year. When his father regained his health, the petitioner worked for a variety of businesses, as a salesperson and as a manager.

The petitioner was married in 1963 and his first child was born in 1965. When his father died, the petitioner assisted his mother in selling the family shoe store business. Subsequently, the petitioner's mother married a man who owned a retail textile business in Vineland, New Jersey. In 1969, the petitioner, with the assistance of his stepfather, went into the retail textile business by opening a store named Fabrics, Etc., Inc. on Frankford Avenue in Philadelphia. He and his wife operated the store successfully as partners from November 1969 until May 1981.

It was the testimony of the petitioner that he and his wife obtained financing to start the retail textile store and that the loan was repaid, in due course, in four years. The store was essentially a husband and wife operation, with only enough of the proceeds being taken out to live on, and the remainder put back into the business or used to purchase investment properties. The petitioner was able to obtain financing to purchase the property next door to his fabric store and this loan was repaid in a timely manner. According to the petitioner, he purchased approximately four more properties on Frankford Avenue. In addition, it was the testimony of the petitioner that his fabric suppliers in New York regularly extended him credit on their goods.

In 1975, the petitioner began to sell some fabric as a wholesaler. He had been dealing with Gross-Brody Textiles, a wholesaler, and he subsequently merged his wholesale business with Gross-Brody Textiles. The petitioner's forte was to purchase excess fabric that a clothing manufacturer could not use and then resell it to other clothing manufacturers who would be able to use smaller lots of the fabric. In so doing, the petitioner greatly increased the wholesale business. During this time, the business had a $200,000 line of credit with Fidelity Bank, which was always paid in a timely manner.

The petitioner's wholesale business began to suffer in 1980 when Japanese goods came into the market. In 1981, interest rates skyrocketed and the excess goods which the petitioner had based his business upon became difficult to locate. The financial problems which Gross-Brody Textiles began to experience were aggravated by gambling debts which were being accumulated by both the petitioner and his partner, Sam Brody.

In August 1981, the petitioner and Sam Brody decided that it would be best for the petitioner to buy out Brody's share of the business. On August 31, 1981, the petitioner and his wife guaranteed repayment of a $300,000 commercial loan from Industrial Valley Bank and Trust Company to Gross-Brody Textiles (Exhibits J-3 and J-4). The proceeds of

this loan were used by the petitioner to pay off a personal loan and a business loan from Fidelity Bank and to buy out Sam Brody's share of the business. The repayment terms were $5,000 a month principal and interest for a period of 60 months at an interest rate of 1 1/2 times the prime. Several of the petitioner's properties were specifically used as collateral for the loan, including his homes in Huntington Valley, Pennsylvania, and Margate, New Jersey.

The financial problems affecting the petitioner's business were aggravated by the petitioner's gambling debts. The petitioner's first experience with gambling occurred in 1972 when he and his family vacationed for three days on Paradise Island. At that time, the petitioner wagered only approximately $200. His next gambling occurred in January 1976, when he wagered approximately $500 during the course of a seven-day vacation on the Island of Saint Maartin. In December 1976, the petitioner spent four days with his family at Lake Tahoe, at which time he wagered approximately $2,000. In October 1977 and March 1978, the petitioner vacationed in the Carribean, but he did not gamble. In June 1978, the petitioner went on his first gambling junket, which was a seven-day vacation in the Carribean. He was required to gamble three hours per day, at a minimum bet of $25. After seven days, the petitioner broke even. In September 1978, the petitioner went on a junket to Monte Carlo, putting up $7,500 in advance. On this trip, the petitioner won $11,000.

In December 1978, the petitioner and his family vacationed on a gambling junket to the Carribean. In seven days, the petitioner lost a total of $20,000. In May 1979, the petitioner spent four days in Las Vegas on a gambling junket and again lost a total of $20,000. According to the petitioner, he could afford his gambling between 1972 and 1979 and the loss of $20,000 on two occasions did not affect his family or its lifestyle. It was his testimony that these gambling debts were promptly paid. The petitioner testified credibly that he never bets on horses, sports or with bookmakers and that the foregoing constitutes all of his gambling except for the gambling which he pursued in Atlantic City between 1979 and 1981.

Beginning in 1979, the casinos located in Atlantic City solicited the petitioner's patronage. The petitioner accepted a $10,000 line of credit at Caesar's Boardwalk Regency and a $20,000 line of credit at Bally's Park Place. These credit lines were subsequently raised to $20,000 and $50,000, respectively. The petitioner subsequently accepted a $20,000 line of credit at the Sands Casino Hotel and a $25,000

line of credit at the Playboy Casino Hotel. According to the petitioner, he gambled approximately five nights per week, losing a total of approximately $700,000 between 1979 and September 1981. The petitioner primarily wagered at blackjack and the majority of the debt which he incurred was paid by liquidating his business, Fabrics Etc., Inc., and by selling off goods from Gross-Brody Textiles. In September 1981, the pressures from his failing wholesale business and his accumulated gambling debts became intolerable. In October 1981, the petitioner apparently fell into an amnesiac condition for approximately one week. He was apparently conscious of his actions during this period, but he has no recollection of them. On October 30, 1981, the petitioner entered the Philadelphia Psychiatric Center (Exhibit J-26). According to the petitioner, this period marked the lowest ebb of his life. It was his desire to work out his personal and business problems, but he did not have the strength to do it. With the assistance of Dr. Farber at the Psychiatric Center, the petitioner was treated for his acute depression while learning why he had suffered from his gambling problem. The petitioner determined that his gambling problem was related to his relationship with his father and with his son. In essence, the petitioner was psychologically troubled by the fact that his father had died before the petitioner had been able to demonstrate to his father that he had become successful in business. Also, the petitioner's expectations concerning his son had not been fulfilled. The psychological difficulty which the petitioner experienced manifested itself in the self-destructive act of excessive gambling (Exhibit J-32).

The petitioner has not gambled since his discharge from the Psychiatric Center in November 1981. According to the sincere and straightforward testimony of the petitioner, he has learned that gambling is not an activity in which he can engage and he has no desire to gamble. On his own accord, the petitioner attended gamblers anonymous meetings for approximately two or three months. At first, his attendance was a confidence builder for him, but after a few months, he realized that many members of the group were simply using the group as a confessional for their continued gambling. The petitioner had determined to conquer his gambling problem by his strength of will and he found that it was counterproductive to continue to attend the gamblers anonymous meetings.

While the petitioner was hospitalized, his wife handled the liquidation of Gross-Brody Textiles, paying all trade creditors and taxes in full. However, the petitioner and his wife defaulted on the loan from Industrial Valley Bank and a Complaint in Confession of Judgment was filed (Exhibit J-5). In addition to this debt, the petitioner

also owed nearly $80,000 to four Atlantic City casinos. These casino debts remain outstanding. However, it is the intention of the petitioner to pay off each of the debts. Although his accountant and his attorney had advised him to file for bankruptcy the petitioner refused, since he desired to pay all of his debts. After conferring with officials of the Industrial Valley Bank, a plan was arranged which would permit the petitioner to satisfy his debt. The petitioner then proceeded to sell some stock and to sell his primary residence in Huntington Valley. These proceeds were paid directly to the Industrial Valley Bank, along with the proceeds of another investment property which the petitioner sold in January 1983. The petitioner is presently attempting to sell two more investment properties (Exhibits J-6 and J-7), and the proceeds from these properties will also be applied to pay off the Industrial Valley Bank loan. According to the petitioner, if he had paid the loan on schedule, he would have paid slightly less to the bank than he has paid by the arrangements which he made upon the default.

In January 1982, the petitioner had recovered his strength following his psychiatric hospitalization and he contacted business acquaintances to seek a business opportunity. For an investment of $17,500, the petitioner was permitted to become the working partner of Apollo Group, which was a business venture owned by investors buying and selling at the Philadelphia Stock Exchange for their own account. The petitioner had no experience in the stock exchange and it was necessary for him to receive his fundamental training from investors in the group. While involved with Apollo Group, the petitioner was charged by the Philadelphia Stock Exchange with two technical violations of exchange regulations. These complaints (Exhibits J-19 and J-21) alleged that the petitioner had conducted business for Apollo Group prior to his admission to the stock exchange and that he had conducted business for the Apollo Group when the group's trading balance fell below the minimum requirement. The petitioner believed that he had meritorious defenses to these charges and answers were filed after consulting with his attorney (Exhibits J-20 and J-22). In August 1982, the petitioner sold his home in Huntington Valley and moved to Margate, determining that he no longer intended to deal in securities. He would have contested the stock exchange charges if he had intended to continue in the business, but since he did not, an offer of settlement was made to the stock exchange (Exhibit J-23). The stock exchange accepted the petitioner's offer (Exhibit J-24) and the petitioner was suspended from the stock exchange for a period of seven months, with no fine being imposed. The Apollo Group was liquidated and all of its debts were paid in full. A $12,000 loan which the petitioner had made to the group was returned to him and the petitioner then paid this amount to the Industrial Valley Bank to reduce his debt.

Following the liquidation of the Apollo Group, the petitioner was unemployed. He was unable to seek employment because of cataract operations on both eyes. On July 16, 1983, the petitioner was released from treatment and he was hired by the Playboy Casino on July 28, 1983, as a limousine driver. Pursuant to this employment, the petitioner holds a casino hotel employee registration. The petitioner's wife is employed as a casino host and his son is employed as a dealer. Both hold casino employee licenses.

Prior to being hired at the Playboy Casino, the petitioner would frequently go to the casinos to pick up his wife from work. Thus, he has had ample opportunity to gamble if he had wished to. The petitioner's family has been very helpful to him in his determination to overcome his gambling problem and to restore his financial stability. The petitioner believes that he has faced his problem and tested himself by moving to the Atlantic City area and that the test has been successful. Dr. Robert Sadoff of Jenkintown, Pennsylvania, examined the petitioner and determined that the petitioner's gambling was not done out of a compulsive need as is typical, but rather, was done in a self-destructive manner, when the petitioner was successful and could not handle his own success (Exhibit J-32). Dr. Sadoff projected that the petitioner would not attempt to pay his debts through gambling, but would pay his debts through hard work and building himself up as he did before in a successful business.

Testifying on the petitioner's behalf, his wife, Bonnie Lichten, stated that a new bond has formed between herself and her husband as a result of their mutual experience. Since his hospitalization, their communication has improved dramatically and the petitioner is now able to discuss his feelings and motivations. It is the firm belief of Bonnie Lichten that her husband will never gamble again. Allen Flexer, President of Spectacor Management, a company which manages stadiums and arenas, testified that he has known the petitioner for approximately 18 years. During this time, the petitioner has enjoyed a very high reputation in the business community. Since the petitioner's discharge from the psychiatric center, Mr. Flexer has marveled at the care and love which the petitioner's family expresses. It is clear to Mr. Flexer that the petitioner has overcome his psychological barrier which manifested itself in excessive gambling.

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

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CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), which incorporates the licensing criteria set forth in section 89, an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. By the same standard, an applicant must establish his financial stability, integrity and responsibility. The Division of Gaming Enforcement does not intend that the petitioner is not a man of good character, honesty and integrity. In addition, the relevant and credible evidence in the record in this matter amply demonstrates that the petitioner possesses these attributes to the degree necessary for licensure. Therefore, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his reputation for good character, honesty and integrity.

The Division of Gaming Enforcement does question the petitioner's financial stability, integrity and responsibility, as a result of his episode of pathological gambling between 1979 and 1981. However, the Division of Gaming Enforcement suggests that it would not object to the petitioner's licensure as a casino employee in a nongaming capacity. The petitioner's gambling problem is undisputed. It is also undisputed that he has not gambled since 1981. Absent the effects of his gambling problem, the petitioner would have no difficulty showing his financial stability and responsibility. In fact, he intends to pay all of his remaining debts and is proceeding to do so as he is able.

That the petitioner has suffered a financial reverse as a result of a gambling problem does not dictate the conclusion that he lacks financial responsibility, especially since he has stabilized his financial situation by understanding and controlling his gambling problem. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner has demonstrated, by clear and convincing evidence, his financial stability, integrity and responsibility, within the meaning of sections 89b(1) and 90 of the Casino Control Act. I further **CONCLUDE** that the petitioner has demonstrated his suitability for licensure as a casino employee in either a nongaming or gaming capacity.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, Wolf Lichten, for a casino employee license, permitting him to work in a casino as a baccarat, craps, roulette and blackjack dealer and as a casino host, 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.

October 31, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 1, 1983
DATE

Bernadette T. Fegan
CASINO CONTROL COMMISSION

Mailed to Parties:

November 7, 1983
DATE

Ronald L. Tarkenton
OFFICE OF ADMINISTRATIVE LAW

bm

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INVENTORY OF EXHIBITS

JOINT EXHIBITS:

J-1 Letter, dated June 28, 1983, to "To Whom It May Concern" from Sandra Hursy, Commonwealth Federal Savings and Loan

J-2 Letter, dated June 30, 1983, to "To Whom It May Concern" from Philip F. Panzer, St. Edmund's Savings and Loan Association

J-3 Letter, dated August 5, 1983, to Peter R. Richards from Robert J. McCullough, Industrial Valley Bank

J-4 Letter, dated August 1, 1983, to Peter R. Richards from Shulman, Kurtz, Turer & Topaz, Certified Public Accountants

J-5 Complaint in Confession of Judgment, dated May 7, 1982, Industrial Valley Bank and Trust Company v. Gross-Brody Textile Co., Inc., et al.

J-6 Listing Agreement Ferraro Realty, dated April 25, 1983, re: 7252 Frankford Avenue

J-7 Listing Agreement, dated April 25, 1983, re: 7254-56 Frankford Avenue, Ferraro Realty

J-8 Letter to Playboy Hotel & Casino, dated November 9, 1981, from S. Allen Needleman

J-9 Letter, dated December 22, 1981, to Daniel L. Watson, Playboy Hotel & Casino, from S. Allen Needleman

J-10 Letter, dated January 27, 1983, to Wolf Lichten from Playboy Hotel & Casino

J-11 Letter, dated February 22, 1982, to Playboy Hotel & Casino from S. Allen Needleman

J-12 Shareholder's Agreement, Apollo Group, Ltd., January 1982

J-13 Subordinated Loan Agreement between Wolf Lichten and Apollo Group, Ltd., January 21, 1982

J-14 Letter, dated March 3, 1982, to Wolf Lichten from Geri Greene, Philadelphia Stock Exchange

J-15 Letter, dated March 10, 1982, to Ms. Jeri Green, Philadelphia Stock Exchange, from Wolf Lichten

J-16 Letter, dated March 10, 1982 to Ms. Jeri Greene, Philadelphia Stock Exchange, from Joseph Bianco, Jr.

J-17 Letter, dated March 16, 1982, to Philip H. Becker, Esq., Philadelphia Stock Exchange, from Jon M. Adelstein

J-18 Letter, dated March 16, 1982, to Wolf Lichten from Edward A. Nagin, Philadelphia Stock Exchange

J-19 Statement of Charges, dated May 4, 1982, Philadelphia Stock Exchange, Business Conduct Committee v. Apollo Group, Ltd., et al.

J-20 Answer of Wolf Lichten, undated, Philadelphia Stock Exchange, Business Conduct Committee v. Apollo Group, Ltd., et al.

J-21 Statement of Charges, dated May 18, 1982, Philadelphia Stock Exchange, Business Conduct Committee v. Apollo Group, Ltd., et al.

J-22 Answer of Wolf Lichten, undated, Philadelphia Stock Exchange, Business Conduct Committee v. Apollo Group, Ltd., et al.

J-23 Consolidated Offer of Settlement, dated September 14, 1982, Philadelphia Stock Exchange, Business Conduct Committee v. Wolf Lichten

J-24 Decision and Order of Acceptance of Consolidated Offer of Settlement, dated September 29, 1982, Philadelphia Stock Exchange, Business Conduct Committee v. Wolf Lichten

J-25 Letter, dated June 28, 1983, to Peter R. Richards from Douglas Block, Philadelphia Stock Exchange, with attached Stock Exchange Rules

J-26 Discharge Summary, dated November 19, 1981, Philadelphia Psychiatric Center, re: Wolf Lichten

J-27 Letter, dated August 3, 1983, to Peter R. Richards from Donald A. Wadsworth

J-28 PHD Form No. 2, dated October 15, 1982

J-29 Form 101, dated January 7, 1983

J-30 Letter, dated April 14, 1983, from Division of Gaming Enforcement to the Casino Control Commission

J-31 Curriculum Vita of Dr. Robert L. Sadoff

J-32 Transcript of Deposition of Dr. Robert L. Sadoff, dated August 19, 1983

WITNESSES

FOR THE PETITIONER:

Wolf Lichten

Bonnie Lichten

Allen Flexer

S. Allen Needleman

Charles Kurtz

FOR THE RESPONDENT:

Alexander Love

348.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-180
OAL DOCKET NO. CCC 8678-82
APP. NO. 04089-21

IN THE MATTER OF THE APPLICATION
OF BRUCE D. LITMAN FOR RENEWAL
OF HIS CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on March 22, 1983, recommending that the application of Bruce D. Litman for renewal of his casino employee license be denied; and Bruce D. Litman having filed exceptions to the Initial Decision on March 31, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on June 1, 1983, to reject the said Initial Decision and to grant the renewal application of Bruce D. Litman,

IT IS on this 7th day of July 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the application of Bruce D. Litman for renewal of his casino employee license be and hereby is granted based upon the following Commission findings:

(1) Bruce Litman's failure to disclose information pertaining to an arrest which occurred on January 6, 1981, for theft in violation of N.J.S.A. 2C:20-3(a) in response to question 46 on his personal history disclosure form was not intentional or in conscious disregard of the regulatory process.

(2) Bruce Litman's arrest for theft is presumptively inimical as it occurred on the premises of Boardwalk Regency Corporation while he was employed as a countroom employee, and requires a compelling demonstration that, under all the circumstances, the offense does not render Mr. Litman's continued licensure inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86(c)(4).

However, the Commission finds that Mr. Litman has sufficiently demonstrated his present qualification for licensure considering: (a) two years have elapsed since the date of the offense without any further involvement with the criminal justice system; (b) his gainful employment in various capacities subsequent to his arrest; (c) his intellectual limitations as described by the treating psychologist who testified as an expert witness; and (d) the ongoing psychological therapy which he has undergone subsequent to the offense.

(3) There being no other basis for objection other than the nondisclosure which has been found to be unintentional and the offense from which we found Mr. Litman rehabilitated, he has established by clear and convincing evidence his good character, honesty and integrity.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 7, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8678-82

AGENCY DKT. NO. 82-EA-180

IN THE MATTER OF THE APPLICATION OF BRUCE D. LITMAN FOR RENEWAL OF HIS CASINO EMPLOYEE LICENSE (COUNT ROOM)

APPEARANCES:

Joseph Sayegh, Esq., for the applicant, Bruce D. Litman (Goldenberg, Mackler, Feinberg & Sayegh, attorneys)

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

Record Closed: February 4, 1983 Decided: March 21, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Bruce D. Litman, applicant, for renewal of his casino employee (count room) license, number 04089-21, pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal of the license on the basis that the applicant had failed to disclose information material to licensure, that he had committed a disqualifying criminal offense, that he lacked the requisite good character, honesty and integrity, and that he lacked sufficient business ability and casino experience for licensure.

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PROCEDURAL HISTORY

Mr. Litman filed his renewal application with the Commission during mid-1981. By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated June 11, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter dated September 9, 1982, the applicant requested a hearing. On September 14, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq., and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 14, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Litman is 29 years of age. He resides in Somers Point with his wife, to whom he has been married for the past four years. The applicant is a graduate of Atlantic City High School and a graduate of Cape May Vocational Technical School, where he learned upholstery. The applicant is a person of limited intelligence. The applicant's wife suffers from cerebral palsey.

During May 1980 the applicant was first issued a casino employee (count room) license. Since that time, he has also been registered as a hotel employee. These proceedings are not intended to have any affect upon the applicant's hotel employee registration.

From summer 1978 to May 1979, the applicant was employed as a dishwasher by Resorts International Hotel, Inc. (Resorts).

From May 1, 1979, to January 6, 1981, the applicant was employed as a hard count attendant by Boardwalk Regency Corporation (BRC). The applicant's duties and responsibilities included sorting out coins and transporting buckets of coins. On January 6, 1981, the applicant was fired from his position because he committed a theft

from the casino, which will be discussed in greater detail, infra. Prior to his dismissal, the applicant had no disciplinary problems. Also, he was told that he did a good job, but that he should try to work harder because he sometimes was too slow. During the time the applicant was employed by BRC, he also was employed as a dishwasher by the Jade Empress Restaurant on a part-time basis.

On January 6, 1981, the applicant took a $20 roll of silver dollars from the money in his possession before it was counted. The applicant took the coins to a cashier and requested that they be exchanged for paper currency. The applicant claimed that the coins belonged to his wife. However, the coins had been placed in marked wrappers (R-2). The applicant was taken to security and was fired. He was also placed under arrest by the New Jersey State Police and was charged with a violation of N.J.S.A. 2C:20-3a, theft by unlawful taking. He was released on his own recognizance (R-2).

The applicant testified that prior to the commision of the theft he had observed other count room employees take money and had reported these observations to the assistant superintendent. However, the assistant superintendent told the applicant that he did not believe him.

Commencing on January 15, 1981, and for a period of approximately one year, the applicant was employed as a pot washer by the Golden Nugget of Atlantic City. At the same time, the was also employed as a dishwasher by the Crab Tree Resaurant on a part-time basis.

On May 6, 1981, the applicant appeared before the Atlantic City Municipal Court. At that time, his attorney made a motion to cease adjudication (R-4). The motion was based upon a Psychological Assessment made by Helene C. Robbins, M.Ed., M.A., a Staff Psychologist with the Atlantic City Mental Health Center, Inc. Dr. Robbins assessed the applicant to be a person within the dull-normal range of intelligence, with verbal skills which were borderline retarded and with physical performance skills that were within the average range of intelligence. She reported that the applicant had an inadequate ability to formulate abstract thoughts, was unable to internalize on an abstract basis the significance of right and wrong acts and had an underdeveloped and immature moral sense. The prosecutor did not oppose the motion. Accordingly, the court dismissed the charges against the applicant on the finding that he was incapable of formulating the criminal intent necessary for the commission of the offense (R-3).

Mr. Litman testified that he did not know why he took the money. He expressed a great deal of remorse and professed that he would never commit such an act again, even if he saw other people commit wrongful acts.

On May 14, 1981, the applicant completed his renewal application (R-1). In response to question no. 10 the applicant first indicated that he had been terminated from his employment at the BRC. However, he then blacked out his response and answered in the negative. In response to question no. 12, the applicant indicated that he had not been charged with the commission of any offense.

During January 1982, the applicant was employed as a stock clerk by the Claridge Hotel and Casino for a period of appoximately three weeks. He was fired from this position because his work performance was too slow.

In October 1982, the applicant was employed as a dishwasher by Daniel's Cocktail Bar and Restaurant.

The applicant has also been employed as an assistant stock clerk, busboy and dishwasher by Kohr Brothers. The applicant remains employed as a dishwasher by the Jade Empress Restaurant.

Ms. Litman testified that the applicant's arrest had a severe impact upon their relationship. She stated that the applicant knew he was wrong and that he has made a sincere effort to regroup. The applicant and his wife frequently perform sales functions at science fiction conventions. The applicant has handled money alone without any difficulties since the time of his arrest.

Dr. Robert J. Pasahow testified on behalf of the applicant. Dr. Pasahow is a well-qualified clinical psychologist. The doctor first met with the applicant on January 10, 1983, in regard to an automobile accident in which the applicant was involved on July 20, 1982. At that time, the doctor learned of the subject proceedings. The doctor then met with the applicant on three occasions regarding his application for renewal of his license.

Dr. Pasahow prepared a psycho-social history of the applicant. Mr. Litman is the eldest of three children, each of whom is of limited intelligence. The applicant is the only child who has been able to leave the home. Early in his life Mr. Litman was informed that he was retarded, which he believed for many years. The applicant developed a fear that he did not have what other people had. The applicant internalizes his feelings, specifically in regard to his parents' apprehensions about his independence and his mother-in-law's concerns regarding his marriage. The applicant has been successfully employed, is financially independent from his parents and has a successful marriage. Dr. Pasahow attributed these successes to the applicant's motivation and desire to be like other persons. The witness described these accomplishments as substantial.

Dr. Pasahow also tested Mr. Litman. The witness was of the opinion that the applicant had a borderline intellectual function, which was lower then the assessment made by Dr. Robbins. The applicant's strengths are in the nonverbal areas. He has a slight speech impairment. The applicant is not capable of fine abstract thought.

Dr. Pasahow further testified that the applicant suffered depression and was very angry with himself as a result of the incident of January 6, 1981. The applicant has been very self-punitive for the past two years. The witness further testified that a person's IQ is not the equivalent of their moral sense; rather the question is the degree of sophistication of the moral sense. The applicant has the moral sense of a ten-year-old, i.e., he is immature. The witness was of the opinion that the applicant internally recognizes right from wrong. Nevertheless, the applicant is not capable of understanding the difference between right and wrong on an abstract level. Rather, he is capable of understanding right from wrong only on a concrete or observed basis. The applicant's experience from the theft incident has reinforced his understanding of right from wrong.

From the time of his appearance at municipal court, the applicant did not seek additional therapy, as recommended, until January 1983, when he met with Dr. Pasahow.

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

(B) DISPUTED FACTS

In dispute were the reasons why the applicant failed to disclose the criminal proceedings on his renewal application, his good character, honesty and integrity, and the extent of his business ability.

The applicant described the circumstances under which he completed his renewal application. The application was completed while he was at work at the GNAC. The application form was given to him by a female employee of the GNAC, who waited while he finished the form. In response to question no. 10, the applicant first checked the "yes" box, which indicated that he had been terminated from an employment for cause. However, his co-worker told the applicant to check the "no" box. The applicant objected; however, he was advised not to worry about it. Therefore, he checked the negative answer. Similarly, the applicant was told to check the "negative" response to question no. 12, which inquired of any charges of criminal offenses.

Alexander J. Love, an investigator with the Division, testified regarding a telephone interview he conducted with the applicant. The investigator repeated questions nos. 10 and 12 to the applicant, who responded in the negative. However, when confronted with the incident, the applicant admitted his actions and stated that he had not placed the information on the application form because he was acquitted in court. The applicant testified that he did not recall the telephone interview.

I am persuaded to believe the testimony of the applicant regarding the circumstances under which his renewal application was completed. The applicant appeared to be a credible and believable witness. Further, his affirmative response to question no. 10, although blacked out, was observable to any reader of the application. However, it was similarly evident that the applicant knew that he was providing false answers to the questions, and that he knew that the application form was for renewal of his casino employee license.

Similarly, I was persuaded to believe the testimony of Investigator Love. However, this matter, as all others where telephone interviews are conducted, presents unusual problems. Here, the applicant is a person of limited intelligence. This reduces

significantly the reliability of any telephonic communications. Further, by its very nature, a telephonic inquiry is likely to create communication difficulties between the participants and to be unreliable.

Dr. Pasahow testified concerning the applicant's good character, honesty and integrity, and his business ability. The witness held the opinion that Mr. Litman had undergone a substantial degree of self-rehabilitation. More specifically, the applicant has been depressed for most of the two years since the incident, has experienced how much he could lose by his misbehavior, and has felt like a failure. The applicant also has admitted his misconduct and has had to face the consequences. These factors were therapeutic in nature. Dr. Pasahow was of the opinion that the applicant was now able to cope with his feelings in the event that he observed others commit misconduct. Therefore, Dr. Pasahow was of the opinion that there was a low probability that the applicant would repeat his misconduct. Also, the witness was also of the opinion that the probability of repetitous conduct would be reduced if the applicant continued to get psychotherapy.

Dr. Pasahow also pointed to the applicant's history of accomplishments, including his employment and marriage, as the basis for his opinion that the applicant was a person of good character, honesty and integrity. In the face of substantial obstacles these achievements are clear indications of the person the applicant is. However, Dr. Pasahow modified his opinion upon learning of the nondisclosure on the renewal application and because the applicant had advised the doctor that he confessed to the theft and was then arrested, although the opposite was true. The witness believed that the applicant did not understand the significance of the form and that he always did important things with his wife. Although Dr. Pasahow did not withdraw his opinion, he stated these factors adversely affected his opinion of the applicant.

Dr. Pasahow also testified regarding the applicant's business ability. The witness held the opinion that the applicant possessed the requisite skill and ability to return to the same position, hard count employee, in which he had previously been employed. The basis for this opinion was that the applicant had memorized his job functions, which were nonverbal in nature. Nevertheless, the witness testified that the applicant was better suited for hotel work, where there would be less opportunity and less temptation.

In addition, the applicant offered 13 letters in support of his application. These letters were from former employers, other business associates and friends. All of his former employers held the opinion that the applicant was a conscientious, dependable, honest, hard-working and pleasant person (P-1, P-4, P-5, P-7, P-9, P-10 and P-11). Similarly, he was well-thought-of by the two authors for whom the applicant and his wife sell books (P-6 and P-8). Also, the applicant is well-respected by his co-workers and friends (P-2, P-3 and P-14). Unfortunately, many of these letters were written during 1981, at a time preceding the applicant's arrest.

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

1. A female employee of the GNAC provided the applicant with his renewal application and observed him complete the form.

2. The applicant first placed an affirmative response on the renewal application regarding question no. 10.

3. In response to a communication from his coworker, the applicant changed his affirmative response to question no. 10 to a negative response.

4. Also at the request of his coworker, the applicant answered question no. 12 in the negative.

5. The applicant knew that his answers to questions nos. 10 and 12 were false at the time he made them.

6. The applicant knew that the answers he was providing concerned his application for renewal of his casino employee license.

7. The applicant is respected and well-liked by his former employers, associates and friends.

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 reard 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 Resident Director License, Casino Control Commission, 78-EA-8 (Janaury 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 weight and signifigance 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.

On January 6, 1981, Mr. Litman was fired from his employment from BRC and was arrested. On May 6, 1981, the charges were dismissed by the Atlantic City Municipal Court. On May 14, 1981, the applicant submitted his renewal application (R-1). The applicant conceded that his answers to question nos. 10 and 12 were false and that he was aware that his answers were false at the time he completed the application. While he may not have recognized the significance of the individual questions, he did know that the renewal application was necessary for the continuation of his licensure.

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 who fail to disclose information material to licensure on their personal history disclosure forms will not be allowed to avoid disqualification form 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.

The applicant testified that he responded in the negative to question nos. 10 and 12 at the direction of a co-worker of GNAC. Although I am persuaded to believe that he might have been influenced by this person, there was no evidence which would

indicate that the applicant was unable to answer the questions truthfully. Further, it was evident that this co-worker did not exert any control or dominance over the applicant. In essence, the applicant did not make a claim of reliance upon the other person.

Although Mr. Litman is a person of limited intelligence, he is also a high school graduate and is not completely incapacitated intellectually. The applicant admitted that he knew at the time he completed his renewal application that certain of the answers provided were false. The fact that the application was completed within eight days of the applicant's appearance in municipal court serves only to demonstrate that his actions were not excusable.

I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b.

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

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

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7)

> state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

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

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

Even if Mr. Litman had been convicted of a violation of N.J.S.A. 2C:20-3(a), such would not have constituted a disqualifying offense. This is because the value of the property taken by the applicant was less than $500 and, under N.J.S.A. 2C:20-2b(3), his crime would have been a disorderly person's offense and would not have been a disqualifier. Nevertheless, the nature of the applicant's conduct remains the same as that for a disqualifying offense, but for the small amount of money taken. However, of the greatest significance is the nature of Mr. Litman's actions. They demonstrate a plan on his part, especially given his prepared excuse of claiming the money was his wife's. Also, the applicant committed the theft of casino revenues during the performance of his official duties for which he held a casino license. This is extremely disturbing and is an aggravating circumstance. The fact that the charges aginst the applicant were dismissed does not overcome the nature of his act. Under the Act, the fact that the applicant may not have been able to formulate the necessary intent and was unable to differentiate right from wrong cannot overcome the nature of his act.

I **CONCLUDE** that the potential licensure of Mr. Litman, in regard to the incident of January 6, 1981, has been established, by a preponderance of the credible evidence, to be inimical to the policies of the Act.

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-80h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any soical 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 recieved, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation or persons who have the applicant under their supervision.

Although I am persuaded to believe that the applicant established personal rehabilitation from the likelihood of repeated misconduct to a significant degree, an applicant can not rehabilitate himself or herself under section 90h from a section 86b disqualifier.

I **CONCLUDE** that the applicant has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(D) N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-89b(3)

Under section 89b(2) of the Act, Mr. Litman was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel., Inc. for a Casino License,

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Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has raised issue regarding the applicant's conduct during the incident of January 6, 1981.

Under section 89b(3) of the Act, Mr. Litman was required to establish, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency as a casino employee. The Division did not raise issue with the applicant's physical ability to perform; rather, objection was raised concerning the applicant's mental capacities to perform the job functions with integrity.

Sections 89b(2) and (3) will be discussed together because the same facts are determinative.

The Commission has held that the disqualification criterion found in section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). William Gonzales, supra, at 8. Therefore, the conclusion that Mr. Litman failed to disclose his arrest and charge in violation of section 86b, automatically precludes him from meeting his burden under section 89b (2) of the Act.

In any event, I was not persuaded, by clear and convincing evidence, that the applicant has established that he possesses the requisite good character, honesty and integrity and the intellectual capacity required for licensure as a casino employee. This

issue is primarily determined upon the testimony of Dr. Pasahow. The doctor initially gave a rather strong and broad based favorable opinion of the applicant. However, upon learning that the applicant did not respond truthfully on his renewal application form and had not been completely open and honest regarding his actions during the incident with the doctor, the doctor then further qualified his opinion. Although Dr. Pasahow's opinion of the applicant was still positive, it was less persuasive. I was persuaded to believe that the applicant has rehabilitated himself to the extent that it is more likely that he would not repeat his misconduct; however, I was not convinced to the high degree required for licensure that there was virtually no likelihood of a repetition. It was also evident that the applicant did have the physical and intellectual ability to do the work. Further, I am persuaded that the applicant is a person of good character, honesty and integrity. Unfortunately, by reason of his mental deficiencies and his prior conduct, the applicant is incapable of meeting the requisites for issuance of a casino employee license. Therefore, he is not qualified. It would not be fair to the gaming industry and it would be especially unfair to the applicant to place him in such a position. I have great compassion and sorrow for the applicant's misfortune. Further, I fear that this decision will be interpreted incorrectly as a total rejection of the applicant as a person of good character, honesty and integrity. Such is not the case. However, he has not sufficiently demonstrated his qualifications for licensure.

I **CONCLUDE** that the applicant has failed to establish, by clear and convincing evidence, his good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2), and that he has sufficient business ability, casino experience and business integrity to establish the reasonable likelihood of success and efficiency as a casino employee, pursuant to N.J.S.A. 5:12-89b(3).

ORDER OF DISPOSITION

It is **ORDERED** that the application of Bruce D. Litman for renewal of his casino employee license be **DENIED**.

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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 21, 1983
DATE

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

Receipt Acknowledged:

March 22, 1983
DATE

Nancy O. Kimball
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

March 24, 1983
DATE

Gabriel Lazzara, Cg
OFFICE OF ADMINISTRATIVE LAW

ij/e

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Letter from Christopher Antolini, January 26, 1983

P-2 Letter from Jule Malloy, February 3, 1983

P-3 Letter from David and Betsy Hartman, February 1, 1983

P-4 Letter from Brock E. Henning, January 19 , 1981.

P-5 Letter from Augusto Hamsen, February 11, 1981

P-6 Letter from Jean Lorrah, February 10, 1981

P-7 Letter from Paul E. Murphy, January 31, 1983

P-8 Letter from Jacqueline Lichtenberg, February 6, 1981 (2 pages)

P-9 Letter from Ralph Piccola, January 21, 1981

P-10 Letter from Chet Koch, January 23, 1981

P-11 Letter from Art Outterbridge, February 8, 1981

P-13 Letter from Michael J. Matthews, Mayor of the City of Atlantic City, January 31, 1983

P-14 Letter from Mary Mundy, January 25, 1981

R-1 Application for Casino Key and Casino Employee License Renewal, Bruce D. Litman, May 14, 1981 (2 pages)

R-2 New Jersey State Police Arrest Report, January 6, 1981; Investigation Report, January 6, 1981; Supplementary Investigation Report, May 8, 1981; Property Report, January 6, 1981; and Supplementary Investigation Report, May 22, 1981 (6 pages)

R-3 The State of New Jersey v. Bruce David Litman, Atlantic City Municipal Court, Docket No. C-0134, Complaint and Disposition

R-4 The State of New Jersey v. Bruce Litman, Atlantic City Municipal Court, Notice of Motion with attachments (7 pages)

WITNESS LIST

For the applicant:

Bruce D. Litman
Karen Litman
Dr. Robert J. Pasahow

For the respondent:

Alexander J. Love

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-486
OAL DOCKET NO. CCC 353-82
APP. NO. 19090-21

IN THE MATTER OF THE APPLICATION
OF JOSEPH W. MARTUCCI FOR
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on August 13, 1982, recommending that the application be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on September 3, 1982, and the Applicant having filed a reply to the exceptions on September 9, 1982; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting on September 28, 1982, to reject the Initial Decision, and to deny the application for licensure; and it appearing that an order reflecting the Commission's determination of September 28, 1982, not having heretofore been entered,

IT IS on this 21st day of October 1983, ORDERED that certain findings and conclusions contained in the Initial Decision be rejected as follows:

(1) That portion of the Initial Decision which orders that the application of Joseph W. Martucci be granted be and hereby is rejected. The Commission finds that Martucci's May 1978 conviction for theft by deception N.J.S.A. 2C:20-4 and conspiracy to commit theft by deception, contrary to N.J.S.A. 2C:5-4 equate to disqualifying offenses as contained in N.J.S.A. 5:12-86(c)(1). In view of this finding, the Commission finds it unnecessary to reach the issue that his 1978 conviction for commercial bribery, contrary to N.J.S.A. 2C:21-10, equates to a disqualifying offense.

(2) That portion of the Initial Decision which concludes that Martucci's licensure would not be inimical pursuant to N.J.S.A. 5:12-86(c)(4), be and hereby is rejected as unnecessary in view of the Commission's finding of disqualification.

(3) That portion of the Initial Decision concluding that Mr. Martucci has established by clear and convincing evidence his rehabilitation from the disqualifying offenses pursuant to N.J.S.A. 5:12-90(h) is rejected. The Commission finds on the evidence presented at the hearing, that Mr. Martucci has failed to demonstrate by clear and convincing evidence his rehabilitation from his disqualifying convictions.

(4) That portion of the Initial Decision concluding that Mr. Martucci has established by clear and convincing evidence his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b) is rejected. The Commission finds, consistent with its finding on rehabilitation,

that Mr. Martucci has failed to establish by clear and convincing evidence his good character, honesty and integrity. See, In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113, at 22 (1980); and

(5) That portion of the Initial Decision which orders that the casino employee license application of Joseph W. Martucci be granted be and hereby is rejected.

(6) The Initial Decision at 3 is corrected to reflect that the Applicant was terminated by Bally's Park Place Hotel and Casino in October 1981; and the citation to "N.J.S.A. 5:12-86(g)(1)" should read N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that the casino employee license application of Joseph W. Martucci be and hereby is denied; and

IT IS FURTHER ORDERED that Joseph W. Martucci is not eligible to apply for or obtain any license (except a casino key employee license), registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from September 28, 1982, pursuant to N.J.A.C. 19:41-8.8(a), unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g), and Joseph W. Martucci is not eligible to apply for a casino key employee license until ten (10) years have elapsed from the date of his conviction for the disqualifying offenses absent early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 21, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0353-82

AGENCY DKT. NO. 81-EA-486

IN THE MATTER OF THE APPLICATION OF JOSEPH W. MARTUCCI FOR LICENSURE AS A CASINO EMPLOYEE (Security Officer)

APPEARANCES:

Terrence P. Farley, Esq., for applicant, Joseph W. Martucci (Novins, Farley, Grossman and York, attorneys)

William E. Mountford, Jr., Deputy Attorney General, for respondent, Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney)

Record Closed July 3, 1982 Decided August 11, 1982

New Jersey Is An Equal Opportunity Employer

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

Joseph W. Martucci (applicant) filed an application with the Casino Control Commission (Commission) including a Personal History Disclosure Form (PHD) No. 2, for licensure as a casino employee in the position of security officer with the Casino Control Commission (Commission). The application was duly forwarded to the Division of Gaming Enforcement (Division), which conducted an investigation of the applicant. As a result of the investigation, the Division submitted a letter report dated December 1, 1981 to the Commission objecting to the licensure of the applicant. By letter dated December 30, 1981, the applicant was advised by the Commission 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 as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on June 7, 1982. The record closed on July 3, 1982.

UNDISPUTED FACTS

On May 15, 1978, the applicant was found guilty by a jury verdict of conspiracy to falsely personate the holder of United States Savings Bonds (18 U.S.C.A. 371), false impersonation of the holder of United States Savings Bonds (18 U.S.C. 914), and bribery of a bank officer (18 U.S.C.A. 215). The applicant posed as the owner of approximately 197 United States Savings Bonds registered to a John Joseph O'Shea and paid the branch manager of the Security National Bank $7,000 to secure his cooperation in the scheme. On June 21, 1978, the applicant was sentenced by the Honorable Herbert J. Stern to 18 months in a federal correctional institution. The applicant served six months in the Seagoville Federal Correctional Institute, Seagoville, Texas, and was then transferred to a half-way house in Fort Lauderdale, Florida, for approximately four months. On April 18, 1979 the applicant was released on parole. The applicant was supervised as a parolee from April 18, 1979 until December 19, 1979 without incident.

From May 1964 to May 1978 the applicant was employed as police officer with the Newark Police Department. The applicant was discharged from the Newark Police Department as a result of his federal conviction. The Division's background investigation

revealed that the applicant had two allegations of misconduct brought against him while he was a member of the Newark Police Department. Both complainants were drug dealers, and the Division's investigation revealed that these allegations were unfounded. From October 22, 1980 to the present the applicant has been employed with a temporary hotel employee license as an investigator in the surveillance department at Bally's Park Place Hotel and Casino. The Division stipulates that there has been no derogatory information regarding the applicant's casino employment, and that he meets the experiential requirements for the position of security officer.

DISPUTED FACTS

The Division initially points out that the applicant's conviction of various provisions of the United States Code constitutes corresponding statutory disqualifiers under N.J.S.A. 5:12-86g.

Furthermore, since the applicant violated a position of trust as a Newark police officer when he was indicted for and convicted of various violations of sections of the United States Code, he does not have the requisite good character, honesty and integrity necessary for licensure.

The applicant contends that he has clearly and convincingly demonstrated both his honesty, integrity and good character and his rehabilitation through the testimony of numerous witnesses whose testimony will be discussed below.

PER SE STATUTORY DISQUALIFIERS and INIMICAL CONDUCT N.J.S.A 5:12-86(g) and N.J.S.A 5:12-86(c)(4)

Theft by deception, a third-degree crime, and a violation of N.J.S.A 2C:20-4, and conspiracy, a third-degree crime, and a violation of N.J.S.A. 2C:5-4, constitute statutory disqualifiers pursuant N.J.S.A. 5:12-86(g)(1).

I CONCLUDE that the applicant has committed offenses which constitute statutory disqualifiers under the act.

Section 86c(4) of the Casino Control Act provides in pertinent part that:

> The Commission shall deny a casino license to any applicant who is disqualified on the basis of any . . . offense which indicates that the licensure of the applicant would be inimical to the policies of this Act and the casino operations . . . .

"Inimical conduct" requires considerations of the circumstances of each case, including the nature of the offense, the events surrounding it, evidence of any mitigating or aggravating factors, remoteness of the offense and the offender's conduct since the offense occurred. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 79-CL-1 at p. 15. There is an some obvious overlap between these factors and the rehabilitation criteria of the act which will be discussed in more detail below. Based upon the testimony of respected and responsible employees who have worked with the applicant at Bally's Park Place Hotel and Casino, **I FIND**, from their collective testimony, that the applicant's licensure will not undermine "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations."

I CONCLUDE that the applicant's licensure would not be inimical to the act under N.J.S.A. 5:12-86(c)(4).

GOOD CHARACTER, HONEST and INTEGRITY
N.J.S.A. 5:12-89(b)2 and N.J.S.A 5:12-90(b)

Unrebutted testimony concerning the applicant's honesty, integrity and good character in the community came from Newark police officers Robert Morris, former Captain of the Patrol Division and Narcotics Bureau; Robert J. Donald, Detective Sergeant in the Narcotics Bureau; Edmond Bimbo, a sergeant formerly assigned to the Narcotics Bureau, and Mario Genzone, an officer in the Narcotics Bureau.

Detective John D. Stolar, a member of the New Jersey State Police, assigned to the casino gaming bureau, and Nathan Horowitz, a police officer employed by the Seaside Heights police department, also spoke of the applicant's excellent reputation for honesty, integrity and good character in the community.

Finally, Jack Portock, Assistant Director of Surveillance and Chief of Investigations, Bally's Park Place Hotel and Casino, and Peter Bezzilli, a lieutenant in charge of the plainclothes unit at Bally's Park Place Hotel and Casino, stated that, if the applicant were licensed, he would be immediately offered a position at Bally's Park Place Hotel and Casino and also would be asked to fill the first open position available as sergeant.

I CONCLUDE that 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 and N.J.S.A. 5:12-90(b).

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

An applicant faced with one or more Section 86 per se statutory disqualifier may overcome the disqualification by establishing by clear and convincing evidence his rehabilitation. This rehabilitation section of the act sets forth eight specific criteria to be evaluated when a determination of rehabilitation is to be made.

1. Summation and duties of position applied for:
   The applicant seeks licensure as a security officer.

2. The nature and seriousness of the offense:
   The offense is serious. The applicant's conduct represents a serious breach of trust and integrity while he was employed as a member of the Newark Police Department.

3. The circumstances under which the offense occurred:
The applicant was convicted of violations of various sections of the United States Code and was involved with an unindicted co-conspirator in a somewhat elaborate scheme to defraud another person of 197 United States Saving Bonds worth approximately $42,500. The owner of the bonds was deceased.

4. The date of the offense:
The conspiracy between the applicant and unindicted co-conspirator took place on or about November 1972 while the applicant was employed as a police officer with the Newark Police Department. The applicant was arrested on March 20, 1978 for violation of various provisions of the United States Code. The applicant was found guilty of the charges on May 15, 1978 and was sentenced on June 21, 1978.

5. The age of the applicant when the offense was committed:
The applicant was an adult at the time of the offense. He was born on May 10, 1941.

6. Whether the offense was an isolated or repeated incident:
The offense was aberrational. The applicant has had no other criminal involvement while employed with the Newark Police Department or Bally's Park Place Hotel and Casino.

7. Any social conditions which may have contributed to the offense:
The applicant's motivation was greed rather than economic deprivation.

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

The applicant has conducted himself in a law-abiding manner since his release from prison. Numerous character and fact witnesses verified that the applicant has the requisite honesty, integrity and good character at the present time. The applicant made a contemporary expression of contrition regarding his past behaviour.

A letter from John L. Costley, Jr., Chief U.S. Probation Officer, reads that the applicant was supervised as a parolee from April 18 until December 19, 1979 without incident. Mr. Costley states that the applicant achieved a high degree of rehabilitation, indicating that his proposed employment as a security officer would not be incompatible with the welfare of society.

Applicant is well liked and well respected by his former supervisors and co-workers at Bally's Park Place Hotel and Casino. Jack Portock, Assistant Director of Surveillance and Chief of Investigations and Peter Bezzilli, a lieutenant in charge of the plainclothes unit at Bally's Park Place Hotel and Casino, placed their reputations on the line by asserting that the applicant is a reliable and responsible person and there is no likelihood of any criminal recidivism. The applicant has paid his debt and evidences no bitterness.

I **FIND** and **CONCLUDE** that the applicant has clearly and convincingly demonstrated his rehabilitation.

It is, therefore, **ORDERED** that the applicant, Joseph W. Martucci, be granted a casino employee license to work as a security officer.

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

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

Aug. 11, 1982 — R. Jackson Dwyer
DATE — **R. JACKSON DWYER, ALJ**

Receipt Acknowledged:

August 13, 1982 — Bernadette N. Fringer
DATE — CASINO CONTROL COMMISSION

Mailed To Parties:

August 18, 1982 — Ronald L. Parker/sm
DATE — FOR OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-CSI-2
OAL DOCKET NO. CCC 0736-83
(CONSOLIDATED)
APPLICATION NOS. 897-70;
43440-21

IN THE MATTER OF THE APPLICATION
OF WILLIE MAZER CASINO TRAVELS FOR
LICENSURE AS A JUNKET ENTERPRISE

AND

IN THE MATTER OF THE APPLICATION OF
WILLIAM MAZER FOR LICENSURE
AS A CASINO EMPLOYEE
(JUNKET REPRESENTATIVE)

AMENDED
FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on August 15, 1983, recommending that the junket enterprise license application of Willie Mazer Casino Travels and that the casino employee license (junket representative) application of William Mazer be granted; and neither party having filed exceptions; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 21, 1983, to affirm and adopt the said Initial Decision and to grant the aforementioned applications,

IT IS on this 13th day of October 1983, 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 junket enterprise license application of Willie Mazer Casino Travels and that the casino employee license application (junket representative) of William Mazer 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 Amended Final Order be served upon Willie Mazer Casino Travels, William Mazer and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 13, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-CSI-2
OAL DOCKET NO. CCC 0736-83
(CONSOLIDATED)
APPLICATION NOS. 897-70;
43440-21

IN THE MATTER OF THE APPLICATION
OF WILLIE MAZER CASINO TRAVELS FOR
LICENSURE AS A CASINO SERVICE INDUSTRY

AND

IN THE MATTER OF THE APPLICATION OF
WILLIAM MAZER FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on August 15, 1983, recommending that the application of Willie Mazer Casino Travels for a casino service industry license and that the application of William Mazer for a casino employee license be granted; and neither party having filed exceptions; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 21, 1983, to affirm and adopt the said Initial Decision and to grant the aforementioned applications,

IT IS on this 23rd day of September 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino service industry license application of Willie Mazer Casino Travels and that the casino employee license application of William Mazer 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 Willie Mazer Casino Travels, William Mazer and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 23, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0736-83

AGENCY DKT. NO. 83-CSI-2

WILLIE MAZER CASINO TRAVELS,

Applicant

v.

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

Respondent.

APPEARANCES:

Donald G. Targan, Esq., for the applicant (Targan & Higbee, P.C., attorneys)

Stephen D. Schrier, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: June 29, 1983 Decided: August 15, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Willie Mazer Casino Travels (WMCT) for licensure by the Casino Control Commission (Commission) as a casino service industry, pursuant to N.J.S.A. 5:12-92c. Further, by reason of the amendment to section 102 of the Casino Control Act (Act), this matter also concerns the qualifications of William J. Mazer for licensure as a junket representative, pursuant to section 102b of the Act, with an endorsement to do business as a junket enterprise, pursuant to section 102c of the Act.

New Jersey Is An Equal Opportunity Employer

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of its contention that Mr. Mazer did not possess the requisite degree of good character, honesty and integrity by reason of the failure to provide certain information to a Division investigator.

PROCEDURAL HISTORY

WMCT made an application to the Commission for licensure as a casino service industry. On August 9, 1982, the Division reported to the Commission that it had no objection to the application. However, the Commission requested the Division to further investigate the applicant. Thereafter, by letter dated January 28, 1983, the Commission advised the applicant that, based upon information received in a supplemental report from the Division, dated December 8, 1982, there was a "substantial possibility" that the Commission would deny the application and that the applicant had a right to a hearing. The applicant requested a hearing. On February 2, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 30, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Mazer is 66 years of age. He has been married to his wife, Dorothy, for the past 43 years. Together they reside at 60 Farmhouse Court Annen Woods, Baltimore, Maryland. The Mazers are the parents of two children, ages 41 and 39, who are emancipated. The couple has lived at their present residence since 1976.

Mr. Mazer is the owner and sole proprietor of WMCT. The business was established in January 1978. From 1978 to early 1982, the business was located at 3635 Old Court Road, Baltimore, Maryland. Since 1982, the business offices have been located at 1700 Reisterstown Road, Pomona Square, Maryland. From January 1978 to May 1980, WMCT primarily operated tours and junkets from the Baltimore area to casinos in Las Vegas, Nevada. Beginning in May 1980, WMCT began to conduct junkets and bus tours to Resorts International Hotel, Inc. (Resorts). WMCT no longer operates to Nevada.

WMCT currently operates to Resorts three days per week, Sundays, Wednesdays and Fridays. Occasionally, a special group is serviced. WMCT's operations consist of a luxury bus going from Baltimore to Resorts in the morning and returning to Baltimore the same evening. Mr. Mazer personally supervises each trip. His wife accompanies him on a regular basis. Mr. Mazer has missed approximately four trips in the past three years as a result of personal illness. In his absence, the customers were serviced by a hostess on the bus and by Resorts' employees. The customers of WMCT are very satisfied (P-24 and P-26).

As the chief executive officer of the business, Mr. Mazer is responsible for the management of the financial aspects. All obligations of the business have been paid in full and on time without difficulty. This includes office rental, bus leasing, caterer, payroll, etc. (P-16, P-17, P-21, P-28, P-29, P-30 and P-31). Since 1978, the business has incurred and satisfied expenses in excess of $500,000 and has never had a claim or an action filed against it for payment (P-16 and P-17). WMCT is well regarded by those with whom it does business.

In addition, Mr. Mazer has supported himself and his wife without difficulty. Mr. and Mrs. Mazer established that their lifestyle is expensive, but that all living expenses and all other obligations have been paid in full and on time. Further, Mr. Mazer has incurred approximately ten 90-day loans from banks and other institutions in the past three years, each in the amount of $10,000. He has made full payment in a timely manner on each obligation (P-22). Also, Mr. Mazer has incurred indebtedness to friends, relatives and others during this period, and in each instance he has made full restitution in a timely manner (P-25). Mr. Mazer has had no difficulty obtaining loans from any source. The Division did not attempt to rebut Mr. Mazer's testimony that he lived within his means.

There is no dispute that Mr. Mazer has a long history of gambling substantial amounts of monies on multiple occasions. Mr. Mazer considers himself to be a "top rated" player, and he customarily plays $100 chips and receives many comps from the casinos where he gambles. Mr. Mazer gambles on almost every trip he makes to Atlantic City. Although he primarily gambles at Resorts, he has gambled at other casino hotels. Mr. Mazer stated that gambling is his only form of recreation. Within a recent two-year

period he lost at least $60,000. In addition, Mr. Mazer has obtained credit at Resorts for gambling purposes (P-1). He has frequently used this credit and has a current limit of $25,000, which has been exhausted. On several other occasions, Mr. Mazer has exhausted his credit limit. During those periods, he has used his personal cash resources as well as the proceeds from personal loans in order to continue to gamble. Loans for gambling purposes were made by friends, relatives, banks and private investment groups (P-32 to P-40). Nevertheless, Mr. Mazer has repaid all gambling-related debts in full and in a timely manner. In order to repay a portion of his obligations, Mr. Mazer was compelled to cash in his Keough plan, in an amount of $55,000.

Following WMCT's application for licensure as a casino service industry, Mr. Mazer was interviewed by a representative of the Division. In August 1982, Mr. Mazer received a copy of a letter from the Division to the Commission, dated August 9, 1982, in which the Division stated that it had no objection to the application (P-18). However, the Commission apparently returned the matter to the Division with instructions to continue the investigation.

On September 20, 1982, Mr. Mazer was contacted by Michael Czyzyk, an employee of the Division. Mr. Czyzyk is assigned to the service industry license section and is a licensed certified public accountant. Mr. Czyzyk arranged to meet with Mr. Mazer in order to examine WMCT's financial records. Mr. Mazer questioned the need for further investigation because of the Division's letter of August 9, 1982 (P-18).

On October 4, 5 and 6, 1982, Mr. Czyzyk was present at WMCT's offices in Baltimore, Maryland. Mr. Mazer produced all business and personal financial records for inspection by Mr. Czyzyk as requested. Information which was unavailable was produced by Mr. Mazer upon request. Mr. Mazer was cooperative.

At the conclusion of Mr. Czyzyk's examination, he had a conversation with Mr. Mazer. Mr. Czyzyk posed questions to Mr. Mazer regarding various matters noted during his investigation, including certain financial transactions, disbursements of monies and documentary support for the transactions. Although there were discrepancies in the testimonies of Messrs. Czyzyk and Mazer regarding the conversation, their testimonies were generally consistent and compatible. The primary area of Mr. Czyzyk's inquiry concerned the disbursement from mid-1980 to August 1982 of approximately $40,000. Evidence of this disbursement appeared in the form of checks drawn on the Mazer's

personal checking account, checks made payable to casinos, checks drawn on the business accounts for cash and withdrawals from savings accounts (P-2 to P-12). Initially, Mr. Mazer was at a loss to explain the details of these transactions. Nevertheless, Mr. Mazer opined that they were gambling related and possibly involved the repayment of personal loans from friends and relatives, the proceeds of which had been used to pay off markers to casino hotels. When pressed by Mr. Czyzyk, Mr. Mazer was unable to recall the specifics of any of the transactions.

Upon Mr. Czyzyk's departure, he requested that Mr. Mazer search his records and provide a specific explanation for the $40,000 of disbursements, as well as other information (P-19).

On or about October 28, 1982, Mr. Czyzyk initiated a telephone discussion with Mr. Mazer. Again, Mr. Mazer was unable to recall with specificity the details of the disbursements. Mr. Czyzyk again requested Mr. Mazer to search his records for an answer.

On or about November 8, 1982, Mr. Mazer returned a call from Mr. Czyzyk. Mr. Mazer stated that the disbursements were made for gambling purposes and that he was unable to provide any precise details. At the hearing, Mr. Mazer testified that the disbursements were made in part to repay loans from friends and relatives as well as to obtain cash for gambling at times when his credit limit was exhausted. The Division offered no evidence to the contrary.

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

(B) DISPUTED FACTS

In dispute were the reasonableness and sufficiency of Mr. Mazer's explanation in response to Mr. Czyzyk's inquiries regarding the disbursement of the $40,000 and Mr. Mazer's good character, honesty and integrity. More specifically, the Division contended that Mr. Mazer's failure to provide complete details of the various disbursements established that he had not fully cooperated with the Division's investigation.

The Division's concerns resulted from Mr. Mazer's failure to provide specific details in response to Mr. Czyzyk's several inquiries. The dispute developed essentially because Mr. Mazer provided no further detail other than to confirm that the monies were used for gambling or for repaying loans, the proceeds of which were used to gamble. The Division offered no proofs that the monies were used for any other purpose. Simply stated, the Division was not satisfied with the lack of specificity of Mr. Mazer's explanation.

Mr. Mazer testified that he was not able to provide a detailed accounting as requested by the Division. He did not recall the details of each transaction. This he attributed to the lack of significance of the transactions with regard to his busy work schedule and in relationship to his other personal and business financial transactions.

In order to assess Mr. Mazer's testimony, it is necessary to evaluate his credibility. Initially, Mr. Mazer's position in this matter must be recognized. He is the applicant for licensure and the sole proprietor of his business, and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear during hearing, from my observations of Mr. Mazer's demeanor, from my examination of the documentary evidence and during my review of the record, that Mr. Mazer testified truthfully. His testimony was consistent, plausible, sincere, believable and persuasive. Further, the Division produced no evidence whatsoever to refute any portion of Mr. Mazer's testimony. Therefore, I am persuaded to accept his testimony in all respects.

The remaining issue concerns the reasonableness of Mr. Mazer's inability to provide detail as requested by the Division. I am satisfied that his explanation, although vague, was reasonable and sufficient. Mr. Mazer identified the general nature of the disbursement, i.e., for the purpose of gambling. This should have been sufficient for the Division, especially absent any proof to the contrary, to consider and evaluate thoroughly the significance thereof, if any, in respect to the application for licensure.

Also in dispute was Mr. Mazer's good character, honesty and integrity.

Dorothy Mazer testified on behalf of her husband. Mrs. Mazer corroborated that Mr. Mazer has paid all personal and business financial obligations in full and on time. Also, the witness corroborated that WMCT's customers are satisfied fully with the quality of service rendered.

In support of his application, Mr. Mazer also produced letters from several business colleagues, customers, friends and relatives, including some of those from whom he has borrowed substantial sums of money for gambling purposes (P-23, P-25, P-26 and P-27). The letters unanimously and emphatically endorsed Mr. Mazer in regard to the manner in which he conducts his personal and business affairs.

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

1. Other than to state that the disbursements questioned by the Division were made for gambling purposes, i.e., to repay loans made to cover gambling debts or to fund current gambling activities, Mr. Mazer was unable to provide a specific accounting thereof.

2. Mr. Mazer was unable to recall with any degree of specificity the details of each questioned transaction.

3. Mr. Mazer's inability to recall the details of each transaction was reasonable and did not reflect negatively upon his application.

4. Mr. Mazer's statement that the monies were used for gambling purposes was sufficient for the Division to consider and evaluate the significance thereof, if any, in regard to the application.

5. The Division produced no proofs whatsoever to indicate that the disbursements were made for any other purposes.

6. Mr. Mazer's testimony was credible, believable and persuasive in all respects.

7. Mr. Mazer enjoys a reputation for good character, honesty and integrity within the business and civic components of the communities in which he works and resides.

DISCUSSION OF LAW AND CONCLUSIONS

Mr. Mazer and WMCT have made application for licensure under Section 92c and Sections 102b and c of the Act. Under Section 92c and N.J.A.C. 19:41-1.3(c)1, each applicant is required to establish, by clear and convincing evidence, its reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c). Further, pursuant to N.J.A.C. 19:43-1.14(a)2, certain owners, officers and sales representatives of the applicant entities are required to establish their qualifications. It is well settled that the character and responsibility of a corporate entity can be judged only by that of its owners or managers, those that give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065, 92 S.Ct. 1500, 31 L.Ed. 2d 796 (1972). Therefore, the fitness of WMCT must be evaluated upon the qualifications of Mr. Mazer. Similarly, under Section 102b of the Act, a junket representative is required to establish his qualifications in accordance with the standards applied to a casino employee, pursuant to Sections 90 and 89 b (2) of the Act.

Under section 89b(2) of the Act, Mr. Mazer was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of the Resorts International Hotel, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, at 2. Here, the Division has

raised issue regarding Mr. Mazer's explanation concerning the questioned disbursements.

Generally, the facts were not in dispute. Given the findings that Mr. Mazer's inability to provide the detailed information requested by the Division was of no significance, his explanations are considered to be reasonable and sufficient. The absence of any indication that the monies were spent for any purpose other than gambling activities and the absence of any contention of unlawful activity prohibits any negative inference which may be drawn therefrom.

The Division expressed concern with the extent of Mr. Mazer's gambling activities and the debts which he frequently incurs to support those activities. However, gambling in this State is a lawful activity. Further, it is evident that Mr. Mazer's gambling has not impaired his ability to meet all of his personal and business financial obligations. Therefore, Mr. Mazer's gambling does not bear upon his application for licensure. Mr. and Mrs. Mazer have simply exercised their freedom of choice and selected a lifestyle which is expensive and risky.

It is abundantly clear that Mr. Mazer has established his qualifications for licensure. There are no allegations of wrongdoing of any kind. Mr. Mazer and WMCT present no risk to the public or to the integrity of casino gaming in this State. An examination of the "whole man" clearly and convincingly establishes that Mr. Mazer is a person of good character, honesty and integrity and is entirely suitable for licensure in this State. Boardwalk Regency Corp., at 51, 52. Accordingly, WMCT is similarly qualified for licensure.

I **CONCLUDE** that William J. Mazer and WMCT have established, by clear and convincing evidence, their good character, honesty and integrity under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Willie Mazer Casino Tours for licensure as a casino service industry and that the application of William J. Mazer for licensure as a junket representative with the endorsement that WMCT may operate as a junket enterprise be **GRANTED.**

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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 15, 1983
DATE

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

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Aug. 18, 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS ADMITTED INTO EVIDENCE

P-1 Resorts International Casino Hotel-Credit Records, William Mazer, July 7, 1979 to May 15, 1983 (42 pages)

P-2 Check No. 4715 drawn on the account of William J. Mazer at the Union Trust Company of Maryland, June 18, 1980

P-3 Check No. 4718 drawn on the account of William J. Mazer at the Union Trust Company of Maryland, dated June 25, 1980

P-4 Check No. 4719 drawn on the account of William J. Mazer at the Union Trust Company of Maryland, dated June 27, 1980

P-5 Check No. 1217 drawn on the account of Willie Mazer Casino Travels at the Union Trust Company of Maryland, November 3, 1980

P-6 Check No. 1232 drawn on the account of Willie Mazer Casino Travels at the Union Trust Company of Maryland, dated November 10, 1980

P-7 Check No. 1239 drawn on the account of Willie Mazer Casino Travels at the Union Trust Company of Maryland, dated November 12, 1980

P-8 Yorkridge Federal Savings and Loan Association - Savings Account Book (Second Book), account no. 4822-4, William J. Mazer and Dorothy M. Mazer

P-9 Yorkridge Federal Savings and Loan Association - Savings Account Book, account no. S-9651-2, William J. Mazer and Dorothy M. Mazer

P-10 Check number 2597 drawn on the account of Willie Mazer Casino Travels at the Maryland National Bank, July 22, 1982

P-11 Check number 2603 drawn on the account of Willie Mazer Casino Travels at the Maryland National Bank, July 26, 1982

P-12 Check number 2618 drawn on the account of Willie Mazer Casino Travels at the Maryland National Bank, August 11, 1982

P-13 Check number 4683 drawn on the account of William J. Mazer at the Union Trust Company of Maryland, June 30, 1980

P-14 Check number 1149 drawn on the account of Willie Mazer Casino Travels at the Union Trust Company of Maryland, November 9, 1980

P-15 Check number 1231 drawn on the account of Willie Mazer Casino Travels at the Union Trust Company of Maryland, November 12, 1980

P-16 1040 United States Individual Income Tax Return 1981, William J. and Dorothy M. Mazer; and 1981 Maryland Tax Return for William J. and Dorothy M. Mazer (16 pages)

P-17 Two-Year Comparison of Federal Tax Information for William J. and Dorothy M. Mazer; Two-Year Comparison of Business Profit and Loss for William J. Mazer

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doing business as William J. Mazer-Casino Travel; 1983 Estimated Tax Worksheet for William J. and Dorothy M. Mazer; 1040 United States Individual Income Tax Return 1982, for William J. and Dorothy M. Mazer; and 1982 Maryland Tax Return, William J. and Dorothy M. Mazer (25 pages)

P-18 Letter to the Honorable Don M. Thomas from Stephen D. Schrier, Deputy Attorney General, August 9, 1982 (3 pages)

P-19 Notes of Michael Czyzyk

P-20 Checkbook for the account of William J. Mazer at the Union Trust Company of Maryland, for the period from June 2, 1980 to January 5, 1982, Check Nos. 4703 to 4954

P-21 Letter from Florence Miller of Miller's Delicatessen, June 20, 1983

P-22 Letter from Elizabeth A. White, Assistant Manager of Union Trust Company of Maryland, June 24, 1983

P-23 Letter from Arthur H. Katz, President of White Coffee Pot Family Inns, Inc., June 20, 1983

P-24 Letter from Margaret and Howard Bockover, June 20, 1983

P-25 Letter from Jerry W. and Sylvia Terrell, June 16, 1983

P-26 Letter from Sebastian S. Sangiorgi, Esq., June 20, 1983

P-27 Letter from Anselm Sodaro, Esq., June 20, 1983

P-28 Letter from Eileen J. Turanchik, June 17, 1983

P-29 Letter from Beacham Square, Inc., June 17, 1983

P-30 Letter from Patricia D. Willis, Charter Manager of East Coast Parlour Car Tours, June 17, 1983

P-31 Letter from Nancy L. Bruce, Office Manager of Blue and White Travel, June 20, 1983

P-32 Check Number 4843 drawn on the account of William J. Mazer at the Union Trust Company of Maryland, March 17, 1981

P-33 Check Number 4886 drawn on the account of William J. Mazer at the Union Trust Company, August 1, 1981

P-34 Check Number 4911 drawn on the account of William J. Mazer at the Union Trust Company, September 8, 1981

P-35 Check Number 4912 drawn on the acount of William J. Mazer at the Union Trust Company, September 8, 1981

P-36 Check Number 4844 drawn on the acount of William J. Mazer at the Union Trust Company, March 17, 1981

P-37 Check Number 4854 drawn on the account of William J. Mazer at the Union Trust Company, April 20, 1981

P-38 Check number 4867 drawn on the account of William J. Mazer at the Union Trust Company, May 19, 1981

P-39 Check number 4874 drawn on the account of William J. Mazer at the Union Trust Company, June 19, 1981

P-40 Check number 4896 drawn on the account of William J. Mazer at the Union Trust Company, August 19, 1981

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WITNESS LIST

FOR THE PETITIONER:

Dorothy M. Mazer

William J. Mazer

FOR THE RESPONDENT:

Michael Czyzyk

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-165
OAL DOCKET NO. CCC 1749-83
REG. NO. 26376-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL ORDER
v.	:	
LAWRENCE H. MILLER,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision on October 11, 1983, recommending that the casino hotel registration held by Lawrence H. Miller be revoked; and no exceptions or objections having been filed by either party; and the Commission having considered the entire record in this matter and having resolved at its public meeting of November 23, 1983, for good cause shown, to affirm and adopt the initial decision and revoke the casino hotel employee registration held by Lawrence H. Miller,

IT IS on this 6th day of December 1983, ORDERED that the initial decision filed by the Office of Administrative Law be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the casino hotel employee registration held by Lawrence H. Miller be and hereby is revoked based upon the reasons set forth in the initial decision which is incorporated herein by reference and made a part hereof; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon Lawrence H. Miller, the Division of Gaming Enforcement and the authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: December 6, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1749-83

AGENCY DKT. NO. 82-165

DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

LAWRENCE H. MILLER, JR.,

Respondent.

APPEARANCES:

Patricia M. Wild, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Lawrence H. Miller, Jr., respondent, Pro Se

Record Closed: August 25, 1983 Decided: October 11, 1983

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

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on October 28, 1982, seeking judgment revoking the respondent's casino hotel employee registration, or some other appropriate sanction, pursuant to Sections 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based on the respondent's 1981 conviction upon a plea of guilty to two counts of robbery while armed, in violation of N.J.S.A. 2C:15-1. The issue to be determined in this matter is as follows:

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Whether the respondent, notwithstanding his 1981 conviction upon two counts of robbery while armed, which is a conviction of an automatic disqualifying offense under Section 86c(1) of the Casino Control Act, has demonstrated his rehabilitation, within the meaning of Section 91d, so as to avoid revocation of registration, or some other sanction, pursuant to Sections 91b and 129 of the Act.

PROCEDURAL HISTORY

On March 4, 1983, the respondent filed with the Casino Control Commission his request for a hearing on the complaint of the Division of Gaming Enforcement. On March 9, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The respondent is a 21-year-old resident of Pleasantville, New Jersey. For over one year, the respondent has been employed in a cleaning capacity with a maintenance company and a Mercedes Benz dealer. His hours of employment in these two jobs are from 8:30 a.m. until 6:00 p.m.

For approximately two months, beginning in May 1981, the respondent worked in the housekeeping department of the Caesar's Boardwalk Regency Casino Hotel. The respondent was permitted this employment pursuant to a casino hotel employee registration issued by the Casino Control Commission. He was terminated when his employer learned that he had been arrested in February 1981 for his involvement in an armed robbery of a Cumberland Farms store in Pleasantville.

On Feburary 20, 1981, the respondent and two associates entered the Cumberland Farms store with the intention of committing a robbery. One of the respondent's associates was armed with a revolver which he placed at the head of a female patron of the store. The respondent, who was armed with a set of nuchuku sticks, ordered the cashier to hand him the money from the cash register. After obtaining the money, the respondent and his associates left the store (Exhibit P-1).

On the day following the armed robbery, the respondent turned himself in to the police. In his testimony, the respondent explained that he had been unemployed and

was emotionally depressed at the time of the crime. He was persuaded by his friends to attempt the robbery. The respondent has no juvenile record and he has no other adult arrests. On April 9, 1981, the respondent was indicted for conspiracy to commit the crime of robbery while armed, unlawful possession and intention to use a handgun, unlawful possession and intention to use nuchuku sticks, pointing a handgun, and robbery while armed. On April 16, 1981, the respondent entered a plea of guilty to two counts of robbery while armed, in violation of N.J.S.A. 2C:15-1, and the remaining counts of the indictment were dismissed. The respondent was sentenced to probation for a period of three years on the condition he serve 12 hours per month in community service and pay a fine of $1,500 payable in weekly installments of $10 (Exhibit P-2).

According to the respondent, he performs approximately three hours of community service per week, at the Pleasantville Police Department and at a daycare center, performing cleaning and helping with the children. He also reports to his probation officer in a timely manner. He lives with his mother and he contributes to her support. Of the $1,500 fine imposed upon him at the time of his conviction, the respondent still owes approximately $1,200.

According to the respondent, he was terminated from the Caesar's Boardwalk Regency Casino Hotel on the day that he went to court for his sentencing upon the conviction. His work performance was good and his supervisor would have kept him on if she were able. The respondent sincerely regrets that he became involved in criminal conduct and he realizes that he made a mistake. The respondent believes that he is rehabilitated and that he should be able to keep his casino hotel employee registration.

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

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the act authorizes the revocation of registration of any person for the commission of any offense or violation under the act which would disqualify such person from holding his registration. Pursuant to sections 91b and 86c of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict

the registration of any registrant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for robbery while armed, in violation of N.J.S.A. 2C:15-1, is such an automatic disqualifier under section 86c(1) of the act. Therefore, I **CONCLUDE** that the respondent's conviction upon a plea of guilty to two counts of robbery while armed permits the revocation, suspension or limitation of his registration, pursuant to sections 86c, 91b and 129 of the Casino Control Act.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to section 86c, absent rehabilitation, pursuant to section 91d of the act, or waiver, pursuant to section 91e of the act, the appropriate sanction is revocation of the credential. See, State v. Wynette Harris, Dkt. No. 81-19, Commission decision 1983. Pursuant to section 91d of the act, no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in the act as disqualification criteria, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation, the Commission shall consider the following factors:

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

2. The nature and seriousness of the offenses;

3. The circumstances under which the offense occurred;

4. The date of the offense;

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

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in

correctional work release programs, or the recommendation of persons who have or have had the registrant under their supervision.

On April 16, 1981, the appellant pled guilty to two counts of robbery while armed, in violation of N.J.S.A. 2C:15-1. His criminal conduct resulting in this conviction occurred on February 20, 1981, when the respondent was 18 years old. The respondent is now 21 years old, and he has never been arrested for any other offense. The respondent's criminal conduct constituted a serious offense, involving his robbery of a convenience store with two associates, one of whom was armed with a revolver which the associate placed against the head of a store patron during the course of the robbery. The respondent was armed with nuchuku sticks and he gave the orders for the store cashier to hand him the money from the cash register.

The respondent did not complete high school. At the time of his criminal conduct, he was unemployed and in a depressed emotional state. As a result, he permitted his friends to talk him into committing the armed robbery. He recognizes now that he made a serious mistake. The respondent contributes to his mother's support and he is attempting to fulfill the terms of his probation. He presently performs approximately three hours of community service a week, and he reports to his probation officer in a timely manner. Of the $1,500 fine imposed upon him at the time of his conviction, the respondent presently owes approximately $1,200. He is attempting to pay the balance of his fine with earnings from his two jobs.

Based upon the credible evidence in the record, it is apparent that the respondent has great potential for rehabilitation, having realized that his sole episode of criminal conduct was a serious mistake. However, his commission of armed robbery occurred only two and one-half years ago, and the respondent has yet to completely satisfy the terms of his probation. As a result, I must **CONCLUDE** that the respondent has failed to meet his burden of affirmatively demonstrating his rehabilitation, pursuant to section 91d of the Casino Control Act. Therefore, I further **CONCLUDE** that the appropriate sanction to be imposed in this matter is revocation of the respondent's casino hotel employee registration.

ORDER OF DISPOSITION

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

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 11, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

October 11, 1983
DATE

Bernadette T. Finger
CASINO CONTROL COMMISSION

Mailed to Parties:

October 13, 1983
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

bm

407.

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Pleasantville Police Department Investigation and Arrest Reports

P-2 Indictment and Judgment of Conviction

FOR THE RESPONDENT:

None

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Lawrence H. Miller, Jr.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PETITION NO. 243203

IN THE MATTER OF THE PETITION	:	
OF RESORTS INTERNATIONAL HOTEL,	:	OPINION
INC. FOR A STATEMENT OF	:	
COMPLIANCE WITH $1 MILLION	:	
HOUSING CONDITION.	:	

NEW JERSEY CASINO CONTROL COMMISSION:

WALTER N. READ, CHAIRMAN
CARL ZEITZ, VICE-CHAIRMAN
JOEL R. JACOBSON, COMMISSIONER
E. KENNETH BURDGE, COMMISSIONER
DON M. THOMAS, COMMISSIONER

APPEARANCES:

For Resorts International Hotel, Inc.:

John M. Donnelly, Esq.
Peter J. Lynch, Esq.

For the Division of Gaming Enforcement:

John E. Adams, Jr., Deputy Attorney General

For the Department of the Public Advocate:

Richard A. Goldberg, Assistant Deputy Advocate
David G. Sciarra, Assistant Deputy Advocate

For the Casino Control Commission:

Robert J. Genatt, General Counsel
Steven M. Ingis, Assistant Counsel
Jack E. Wood, Jr., Director, Affirmative Action and Planning
Barbara Lampen, Chief, Planning & Development

I. NATURE OF THE PROCEEDING

This matter comes before the Commission as the result of a petition filed by Resorts International Hotel, Inc. (Resorts) for a statement of compliance with the housing condition of its casino license. That housing condition required Resorts to dedicate the sum of $1,000,000 to a realistic program for low and moderate income housing in Atlantic City. On April 13, May 10 and 11, 1983, the Commission conducted a hearing with respect to Resorts' petition with the Public Advocate and the Division of Gaming Enforcement (Division) participating in the proceedings.

II. PROCEDURAL HISTORY

At the first renewal of its casino license in February 1980, Resorts undertook to invest $5,000,000 in equity capital in residential housing in the Atlantic City region during the 1980-81 license year. This undertaking was embodied in a condition attached to its casino license and thus became an obligation mutually accepted by Resorts and demanded by the Commission.

This commitment was modified at Resorts' second license renewal hearing on February 19, 1981. At that hearing, Resorts indicated that approximately $4,000,000 had been committed to housing projects located outside of the City of Atlantic City. In response to Commission concerns over the perceived need for housing within the City of Atlantic City, Resorts agreed to

dedicate the remaining uncommitted funds, estimated to be $1,000,000, to a realistic program which would provide low and moderate income housing within the City of Atlantic City. Such a program would be subject to Commission approval.

This commitment was incorporated as a condition of Resorts' 1981 license renewal:

> That the licensee, during the license year but subject to the right to request an extension, shall take appropriate steps and use its best efforts to complete the fulfillment of the condition imposed on its 1980-81 casino license requiring it to invest a minimum of $5,000,000 in equity capital, debt financing and housing related expenditures in the Atlantic City region, and to periodically meet with the Commission staff to discuss its progress and seek advice. To the extent there remain uncommitted funds, which the licensee presently estimated to be approximately $1,000,000, such funds are to be dedicated to a realistic program for low and moderate income housing within the city limits of Atlantic City which shall be subject to Commission approval. (Resolution No. 81-145, paragraph 104).

At the license renewal hearing on February 16, 1982, the determination of Resorts' compliance with the housing related condition was deferred with the consent of Resorts and the Division. The condition that Resorts commit the sum of $1,000,000 to a realistic program for low and moderate income housing within the city limits of Atlantic City was again imposed for the 1982-83 license year. In addition, Resorts was required to file a petition for a declaratory ruling with the Commission requesting a determination of the extent to which

Resorts had fulfilled this housing condition and specifying the types and amounts of any investments or expenditures which Resorts claimed as satisfying the $1,000,000 obligation.

Pursuant to that directive, Resorts filed a petition on September 2, 1982, seeking a statement of compliance from the Commission that certain of its expenditures for housing projects in the City of Atlantic City, made from the date of commitment to September 1, 1982, complied with this condition. Resorts presented for approval as fulfillment of the housing condition payments totaling approximately $700,000 spent by Resorts on housing activities in Atlantic City including demolition, repairs, tenant relocation and rent subsidies associated with buildings it owns in Atlantic City and for a study of the South Inlet of Atlantic City.

On September 30, 1982, the Public Advocate moved to intervene as a party to this proceeding. The Commission granted the Public Advocate's application to intervene and, in addition, ruled that the proceedings were to be conducted as a "contested case" under the Administrative Procedure Act. N.J.S.A. 52:14B-1 et seq. as implemented by N.J.A.C. 1:1.

Thereafter, on December 3, 1982, Resorts filed an amended petition for a statement of compliance requesting that its financial commitment to purchase $1,000,000 worth of bonds from the Atlantic City Housing Authority and Redevelopment Agency [the Housing Authority] be considered as fulfillment of the housing condition of its license renewal. The proceeds of

these bonds would be used to reduce mortgage interest rates and other costs for potential developers and certain qualified purchasers. By this amended petition, Resorts withdrew from consideration its initial petition without prejudice to its right to later claim credit for these expenditures.

In its answer to the amended petition, the Public Advocate asserted that the $1,000,000 bond purchase was unacceptable because the petition failed to provide sufficient details with which to analyze the proposal. The Public Advocate further argued that the Commission should consider, pursuant to N.J.S.A. 5:12-84(e), the withdrawn expenditures totaling $700,000 and all of Resorts' housing-related activities in the Atlantic City region to determine whether Resorts had adversely affected housing resources in Atlantic City and, if so, whether new housing-related conditions should attach to Resorts' current or future casino licenses.

In its responsive pleading, the Division left Resorts to its proofs on the question of whether the proposed investment would be satisfactory. The Division interposed no objection to the withdrawal of the initial petition and the substitution of the amended petition. The Public Advocate also acknowledged that Resorts had the right to withdraw the request for Commission approval of those activities which had been set forth in its initial petition.

In an effort to expedite this hearing and to properly define the outstanding issues, the Commission conducted two prehearing conferences with the parties on January 21 and March 7, 1983. At that time, Resorts acknowledged that its legal obligation concerning the $1,000,000 housing commitment was still outstanding. (See Prehearing Conference Order, 1-31-83). In addition, the Commission formally heard argument on the proper scope of this proceeding and, at its meeting of March 1, 1983, ruled that the issue presented by Resorts' petition for a statement of compliance with the housing condition of its license renewal was a relatively narrow one, specifically, whether the proposed bond purchase and the program to be administered by the Housing Authority satisfied the commitment to dedicate $1,000,000 to a realistic program for low and moderate income housing within Atlantic City. In that regard, the Commission advised that a realistic program should be defined as a workable, feasible project, one with a likelihood for providing low and moderate income housing in Atlantic City. The Commission clearly indicated that the question of Resorts' overall impact upon the Atlantic City region in the housing area was not at issue at this particular time. Thus, an affirmative determination with respect to this petition would not absolve Resorts of any other obligation which it may have under section 84(e) of the Casino Control Act.

III. FACTS

Resorts and the Housing Authority entered into discussions in 1982 concerning Resorts' $1,000,000 housing commitment and the possible utilization of that money. Housing Authority Executive Director Oscar Harris approached Resorts' Counsel Charles Murphy and inquired whether Resorts would be interested in participating in a tri-party program that would provide below market rate mortgage financing for new housing construction in Atlantic City. Such a program had been considered by the Housing Authority for some time but it did not have the financial resources to put it into operation. Resorts agreed to participate in the Housing Authority's program and to purchase a $1,000,000 Housing Authority mortgage revenue bond to inaugurate the plan.

On January 27, 1983, Resorts established the Resorts International Foundation (Foundation), a charitable non-profit corporation. Following formation of the Foundation, Resorts made a $1,000,000 charitable contribution to the Foundation which then committed to the Housing Authority to purchase $1,000,000 worth of bonds. This commitment was not made contingent upon approval or review by the Commission of the underlying housing proposal. Indeed, on April 15, 1983, during the pendency of the hearing before the Commission, the Foundation proceeded to purchase the bonds setting the program in motion. The Housing Authority bonds are 25 years in duration and carry an interest rate of 5% per year ($50,000). Resorts may

not recoup the funds granted to the Foundation. It may, however, deduct so much of the $1,000,000 contribution from its corporate tax obligation as does not exceed 10% of taxable income. Assuming that the 10% amount is greater than $1,000,000 and that the applicable corporate tax rate is 46%, Resorts will realize a tax benefit of $460,000 from the contribution.

Of the $1,000,000 bond sale proceeds obtained by the Housing Authority, $900,000 is to be placed in a mortgage pool which, with the participation of the Federal National Mortgage Association (FNMA) and three local lending institutions, Collective Federal Savings and Loan, Anchor Savings and Guardian Savings and Loan, will eventually total $3,000,000. The remaining $100,000 will be placed in trust as security, for the repayment of the bonds, pursuant to the terms of the bond documents. The income from this trust fund will be utilized by the Housing Authority to fund various social service programs. FNMA will provide 60% of the mortgage pool, the local lenders 10% and the Housing Authority the remaining 30%. The mortgage-loans issued from the pool will be for terms of 20 years at an anticipated interest rate of approximately 8-1/2%, the interest being reduced well below existing market rates since the Housing Authority is to receive zero interest on its 30% contribution. The mortgage money provided by FNMA and by the local lenders will be at existing market rates. The success of the plan depends not only on the existence of relatively low interest

mortgage financing but on the conveyance of land at no cost from the City to the Housing Authority.

This program has been divided into two components: Phase I, due to begin in early summer and Phase II, scheduled for completion by year's end. The Housing Authority expects Phase I to produce 15 modular homes. Testimony revealed, however, that only ten housing units have been approved as part of the redevelopment plan. The redevelopment plan for the additional parcels of Phase I had not been approved by the City at the time of the hearing on this petition. John McAvaddy, Executive Vice President of the Housing Authority, testified that the supplemental plan for Phase I would be submitted to the governing body shortly and that he anticipated no problems in having the additional parcels approved. Phase II is presently only in the planning stage and has not been formalized in any fashion. The Housing Authority expects Phase II to produce an additional 60 homes for a total of 75 units in this project. No redevelopment plan was prepared for Phase II pending a determination concerning the success of Phase I. In the event that Phase I does not succeed, a restructuring of the program with the remaining funds is contemplated. The Housing Authority hopes that the eventual success of the entire program will generate similar projects throughout the city.

The homes will be located on city-owned parcels of property in an "infill program", a program designed to fill

vacant lots in stable neighborhoods with new housing. As noted, the land is being donated by the city, thereby reducing the purchase price for the individual units. The homes are to be constructed in the Monroe Park, Venice Park and Bungalow Park areas of Atlantic City. These particular locales were selected in conformance with the city's overall housing strategy designed in 1979.

Eligibility for Phase I will be limited to over-income residents of public subsidized housing in Atlantic City. Over income tenants are defined as those whose incomes exceed the maximum permitted by the Housing Authority. The Housing Authority has identified 140 over-income families, of which 95 have expressed an interest in participating in this program. Incomes in those families range from $22,000 to $45,000 per year. Selection of the participants will be through a lottery to be supervised by city officials.

The chosen families will select the home from prefabricated models manufactured by Poloran Homes, Inc., to be constructed on site for a fixed unit cost plus 10% profit by Holly Run Enterprises, Inc. These units will have a base price of $40,000. There will also be certain amenities and options available to individual homeowners at additional expense. Participating families will be required to make a down payment of 3% of the purchase price, and to receive professional counselling regarding home ownership. The purchasers of these

homes must reside in the units, and as an anti-speculation provision, must repay to the city a portion of the value of the land should they sell their home within five years of repurchase. The repayment obligation on the land will be reduced 20% for each year of actual residence by the purchaser.

The effect of the removal of these so-called over-income residents will be to open a corresponding number of units for eligible low and moderate income families on the Housing Authority's waiting list for public housing. According to Mr. McAvaddy, the homes created by Phase I would not be affordable to low income persons but were intended for families who could afford home ownership in Atlantic City in moderate to middle income ranges. In fact, the security agreement (P 22)[1] prepared for the bond offering originally stated that the program was intended for low income families but was modified prior to execution to delete any reference to such persons. Direct benefit to low and moderate income persons will, however, result from the vacant units available in public housing.

In the event that Phase I proves successful, the Housing Authority expects to proceed by early fall with Phase II which, it is hoped, will produce an additional 60 units. Eligibiity for Phase II will not be restricted to over-income residents of

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1. Exhibits introduced at the hearing were marked as follows: "P" for petitioner, "PA" for Public Advocate.

subsidized public housing but, in addition to that group, will also be available to over-income families in federally subsidized private housing and to employees and members of city authorities in Atlantic City who do not presently enjoy home ownership. Selection of these participants will again be through a lottery. Testimony disclosed that the incomes of city employees range from $8,000 to $69,000 per year with approximately 86% earning less than $30,000 per year (P 18).

During the hearing, there was some disagreement among the parties regarding whether the infill project as presently constituted would actually provide low and moderate income housing. This controversy was generated by disparate views and varied definitions as to what actually constitutes low and moderate income housing. In this context, housing affordability and income eligibility levels became the focal points for discussion by the respective expert witnesses.

John Lynch, a professional planner and housing consultant and presently the President of Quealen-Lynch, Inc., testified as an expert for Resorts that the program would definitely benefit low and moderate income families. He observed that, to the extent that the program vacated subsidized housing units, it would benefit low income families who would move from the Housing Authority's waiting list into these units. Moreover, according to Lynch, the housing units were affordable to families earning an income of $16,162.00 per year, an income

level within the moderate income range. Lynch defined moderate income as 50 to 80% of the median income for the Standard Metropolitan Statistical Area (SMSA), which, for Atlantic City was 50 to 80% of $26,500 or $13,250 to $21,200. Low income would be less than 50% or less than $13,250. He explained that, at a mortgage rate of 8-1/2%, a family of four earning $16,162.00 per year could afford to pay 25% of its income for the mortgage payments, principal and interest, and therefore reasonably afford these homes. The figure of $16,162.00 is 61% of the median SMSA amount, $26,500. Lynch did not believe that imposing income levels for eligibility was necessary or practical. He asserted that the Housing Authority lacked the power to evict over-income tenants unless comparable housing was available in the area and that such housing was not available in the City.

Testimony at the hearing disclosed that there are a number of definitions of low and moderate income housing. In the Department of Housing and Urban Development's (HUD) Section 8 housing subsidy program, very low income is defined as less than 50% of the median SMSA figure and lower income is deemed to be from 50 to 80% of the median. See 42 U.S.C. §1437(a)(b)(2) (1982 Supp.) Thus, HUD's definition coincides with that espoused by Mr. Lynch although the actual terminology is different. According to Mr. McAvaddy, the Housing Authority defines low income as 90% of the approved SMSA for Atlantic City, $23,800.00. The Housing Authority construes moderate

income to range from $23,800 to a ceiling of $41,000 and it calculates middle income as 140% of the $41,000 figure or approximately $56,000 per year. Another definition is that utilized by the Pinelands Commission, wherein low income is construed as less than 80% of the median ($21,200), moderate income as 80 to 100% of the median ($21,200 to $26,500), and middle income as 100 to 120% of the median ($26,500 to $31,800). Consequently, a family of four earning $23,000 per year could conceivably, depending upon the definition utilized, be a low income family (Housing Authority), a moderate income family (Pinelands), or a middle income family (HUD-Lynch).

Peter Abeles testified as an expert in planning and housing development for the Public Advocate. He differed from Lynch in his appraisal of affordability of the infill housing units, contending that a family income of $21,300 would be necessary to comfortably afford the homes being offered. Abeles explained that his calculations included total shelter costs such as mortgage, principal and interest payments, down payment, municipal taxes, utilities, water and sewer charges, and homeowner insurance costs. The total annual shelter cost of this infill housing project would be approximately $6,400.00, necessitating a household income of approximately $21,300 to $25,600. This income figure lies within the moderate income range for the Housing Authority and Pinelands definitions but exceeds "lower" or moderate income for HUD.

Abeles indicated that the program would only have a nominal affect on the housing needs of low income families in Atlantic City but, at the same time, he conceded that approximately 20 to 30 low income families would benefit by the opening of spaces in public housing. He maintained that subsidized housing programs generally contained income limits for eligibility, and he recommended income criteria for this program at $22,000 to $28,000. This criteria was necessary according to Abeles because a family earning more than $28,000 should be able to find housing without assistance. Abeles further testified that restrictions limiting resale of the infill housing units to low and moderate income purchasers were necessary to guarantee that the program would truly benefit low and moderate income families.

IV. CONCLUSIONS OF LAW

The Commission imposed an obligation upon Resorts with respect to its license renewal to dedicate $1,000,000 to a realistic program for low and moderate income housing within Atlantic City. As a result of the implementation of casino gaming, Atlantic City has encountered certain collateral problems resulting from the substantially increased economic growth in the region, among which is the current housing shortage. This housing condition reflects the Commission's growing concern over the housing crisis and its recognition of

the need to obtain the cooperation of the casino hotel industry to achieve a workable solution to that problem.

In seeking a commitment from Resorts and in codifying the commitment as a condition to the casino license, the Commission sought to further the express goals of the Casino Control Act. Section 1(b)(4) of the Act recognizes that legalized casino gaming was approved by the citizens of this State as a "unique tool of urban redevelopment for Atlantic City." That section further declares that the introduction of casino hotels was intended, among other things, to facilitate the redevelopment of blighted areas and to refurbish and expand existing tourist and convention facilities in the City.

The emergence of casino hotels has clearly helped to revitalize the tourist and resort industry of the City. It is equally clear, however, that the urban redevelopment of Atlantic City encompasses more than the mere construction of these various gaming establishments. Indeed, one of the basic objectives of the authorization of casino gaming in New Jersey was to alleviate the escalating problem of urban decay confronting Atlantic City. To that end, the Act addresses the matter of investments by the casinos to benefit the general welfare of the public and to provide a meaningful and permanent contribution to the economic viability of the resort, convention and tourist industry of New Jersey. The continued redevelopment of the City depends upon providing a practical solution to the

housing shortgage and, to this course, the cooperation and financial assistance of the casino industry is imperative. While the Act contains specific provisions to deal with adverse impact of a casino hotel project (N.J.S.A. 5:12-84(e)) and to spur investment by casinos in socially and economically beneficial programs (N.J.S.A. 5:12-144(b)), the Commission is not confined to those alternatives and may strive for industry cooperation to respond to the critical needs of the city such as affordable housing for lower income residents. By accepting the condition to its license, Resorts has transformed its moral pledge into a legal obligation.

As part of the condition of its license renewal, Resorts was required to file a petition seeking a declaratory ruling by the Commission as to whether it had satisfied this housing commitment. Accordingly, Resorts has the burden, in this proceeding, of establishing by clear and convincing evidence that it has satisfied its obligation to invest $1,000,000 in a realistic program for low and moderate income housing in Atlantic City. In analyzing whether Resorts has sustained that burden it is necessary to examine the various components of that commitment to better understand the nature of the housing obligation contained in Resorts' license renewal.

There are four elements to the commitment: (1) an investment of $1,000,000; (2) in a realistic program; (3) for low and moderate income housing, (4) in Atlantic City.

Initially, the amount dedicated to the program must be determined. We note that of the $1,000,000 contributed by Resorts, only $900,000 will actually be used for housing construction or financing. The remaining $100,000 is to be held in trust for the repayment of the bonds with the interest on that money going to finance various social service programs operated by the Housing Authority. This results in a reduction from the interest-free mortgage pool. If the full one million dollars had been contributed to the pool, an incremental reduction in the existing interest rate could have been realized. Nevertheless, although the Commission would have preferred the full $1,000,000 to be directly targeted for housing construction, we conclude that in light of the $3,000,000 of total funding it would be overly technical to reduce Resorts' credit by this $100,000 figure. The Commission is cognizant of the fact that the contribution by Resorts was the linchpin for this program going forward. One of the salutary aspects of Resorts' proposal is its tri-party nature with the interaction of local lenders and FNMA resulting in $3,000,000 in total funding and considerably reduced mortgage interest rates for prospective homeowners. If a minimum of one-third of the program's $3,000,000 is used for low and moderate income housing, Resorts will have accomplished its ultimate objective, notwithstanding the fact that "only" $900,000 of its money was used for that purpose. The Commission concludes, therefore, that Resorts' donation of the sum of

$1,000,000 to the Foundation for the purchase of Housing Authority bonds to be used for the construction of new housing in Atlantic City satisfies elements (1) and (4).

This expenditure does not, in and of itself, satisfy Resorts' obligation. Before a reasonable judgment can be made on that issue, we must ascertain how and for whose benefit this money is to be utilized. This is true despite the completion by Resorts of its role in funding and launching the housing program. Thus, although Resorts made the necessary monetary contribution and turned over the control of that money to the Housing Authority, the fulfillment of the condition still must be decided by this Commission.

Resorts chose to enter into this particular program before obtaining Commission approval with the knowledge and complete understanding that such approval would ultimately be required. In fact, the condition itself recommends that Resorts obtain the advice and assistance of the Commission staff before proceeding. Resorts, in effect, elected to take a substantial risk when it committed itself to this housing program prior to informal review by the staff or formal consideration by the Commission. Consequently, the fact that Resorts may have acted in good faith in giving $1,000,000 to the Housing Authority ostensibly for low and moderate income housing cannot be the determining factor in deciding whether this commitment has been

satisfied. Moreover, Resorts cannot escape potential criticism for any shortcomings of this housing proposal by attempting to delegate complete responsibility to another entity. Resorts must ultimately accept responsibility for the success or failure of this proposal insofar as satisfying its housing burden is concerned. These brief preliminary remarks are not intended to derogate Resorts' efforts but only to underscore the fact that the Commission is not constrained to sanction Resorts' proposal merely because the Housing Authority bonds have already been purchased.

The second component of the housing condition is a "realistic program." The Commission previously observed that within the context of this case, the term means a workable, feasible program, one with a capacity to establish housing suitable to its purpose. By necessity, it must also mean that the program contains sufficient detail and specificity so that the Commission can understand its basic features and make educated decisions as to its practicality and workability.

The program is divided into Phase I and Phase II. Phase I has already been approved by the Housing Authority for the construction of ten new homes on specified locations in Atlantic City. The various components of Phase I, including the type of housing, the purchase price and selection of participants, were detailed to the Commission with the requisite degree of specificity to indicate that Phase I is a realistic program

for producing a limited number of new houses in Atlantic City.

It is eminently clear, however, that Phase II of Resorts' proposal has not progressed beyond the planning stage. Any determination regarding the efficacy of Phase II would be purely conjectural since the plan has not been formalized in any fashion nor presented for approval to the Housing Authority. Resorts' explanation for the delay is that the implementation of Phase II will depend upon whether Phase I proves successful. Under these circumstances, it would be premature for the Commission to rule that Phase II of this operation is a realistic program. A decision regarding Phase II is therefore deferred pending future developments.

The requirement that Resorts prove a realistic program is, of course, intricately related to element three - "low and moderate income housing." In order to be found in compliance with this housing condition, Resorts must demonstrate to the Commission's satisfaction that this housing proposal has the capacity and likelihood for developing low and moderate income housing. It would be insufficient for Resorts to produce housing that did not constitute low and moderate income housing. Moreover, and of paramount importance, all of the $1,000,000 expenditure must be directly related to the production of low and moderate income housing. In other words, it is not sufficient for Resorts to spend $1,000,000 towards new housing

construction if only a portion of that money results in low and moderate income housing with the remaining funds benefitting other purposes. This obviously was not the Commission's intent when imposing the license condition.

The fundamental issue is how to define low and moderate income housing. There are two factors to be considered. One is how to statistically define a low or moderate income family and the second is to determine the price of a house that would be affordable to such families. The combination of these factors results in a workable definition of low and moderate income housing. The New Jersey Supreme Court recently declared, in South Burlington County NAACP v. Mt. Laurel Twp., 92 N.J. 158 (1983), that "moderate income families" are those whose incomes are no greater than 80% and no less than 50% of the median income of the area ("area" being defined as a standard metropolitan statistical area (SMSA)) with adjustments for smaller and larger families. "Low income families" are those whose incomes do not exceed 50% of the median income of the area. The median income for a family of four in Atlantic City is $26,500.00. Thus, for Atlantic City, low income would be less than $13,250.00 and moderate income would be between $13,250.00 and $21,200.00. The Court further observed that a family could afford to pay no more than 25% of its gross income for housing.

The Commission adopts the doctrine espoused in Mt. Laurel. Significantly, the experts who testified at the hearing concurred with this approach. The Commission therefore rejects the Housing Authority's definition that 90% of the approved SMSA, $23,800.00, is a low income ceiling and that moderate income ranges from $23,800 to $41,000. Resorts did not argue in favor of such calculations.

We now turn to the specific program proposed by Resorts to determine if it has the capacity for producing low and moderate income housing as that term has been defined above. The parties acknowledge that the houses to be constructed are not affordable to low income persons. They may be affordable to those families earning income in the upper range for moderate income. Candidates for Phase I are restricted to over-income residents of public subsidized housing in Atlantic City. The Housing Authority has identified 140 such families, of which 95 have expressed an interest in participating in the lottery for selection into this program. Their incomes range from $22,000 to $45,000 per year. Significantly, these families have household incomes exceeding the permissible amount to qualify as moderate income families. Accordingly, the houses that will be built in Phase I cannot be termed low or moderate income housing.

This conclusion, drawn from the numerical definition of low and moderate income families, does not necessarily mean, however, that Phase I should be rejected as failing to produce the required type of housing intended by the license condition. The critical inquiry is whether low and moderate income families will benefit from the housing to be produced. There can be no dispute that, if Phase I succeeds, 10 to 15 public housing units will be vacated thereby permitting a corresponding number of families from the Housing Authority's waiting list to move into subsidized public housing. This result will directly benefit low income housing. The fact that the houses to be constructed in Phase I may be unaffordable or unavailable to low and moderate income families does not detract from this elementary but highly pertinent fact - 10 to 15 low and moderate income families will receive low income housing as a direct result of this program.

Thus, to a certain extent, Phase I satisfies the requirement of creating low income housing. The question remains as to whether it satisfies Resorts' total commitment. When one considers what constitutes a substantial number of units necessary to satisfy the commitment, we must by necessity resort to mathematical calculations. Resorts, through its indirect participation in the tri-party program, has managed to raise the sum of $3,000,000, one-third of which was contributed by Resorts. Accordingly, one-third of the program's funds must

be shown to have a positive impact upon low and moderate income housing. If 75 total houses are proposed at $40,000 per house, 25 houses must be built in Phase I, opening 25 public housing units to satisfy Resorts' $1,000,000 burden. Unfortunately, completion of Phase I contemplates the creation of only 10 to 15 such houses or at best, only 20% of the total program. The commitment, therefore, is only partially satisfied by Phase I.

The eligibility requirements for Phase II, as presently contemplated, differ from Phase I in one important respect. Eligibility will not be limited to over-income families in public housing but will also include over-income families in private subsidized housing as well as qualified Atlantic City employees. At the hearing, Resorts could not produce a reasonable estimate as to how many city employees might be interested in participating in this program. The income of these employees ranges from $8,000 to $69,000 per year with over 80% earning less than $30,000. (P18).

The addition of city employees in the lottery pool results in two significant developments. First, unlike the situation in Phase I, there is no guarantee that public housing units would be made available for low income families. It is therefore problematical that Phase II will have any impact whatsoever upon low income families. Second, some moderate income families may become homeowners in Phase II if those city employees fortunate enough to be selected in the lottery have

incomes in the moderate income range. The influx of moderate income families for Phase II would definitely be a welcome benefit of this program.

The Commission is acutely aware that the likelihood of Phase II producing the desired result is pure speculation at this stage of development. Therefore, the Commission withholds final judgment of Phase II until Resorts can demonstrate, through tangible evidence and actual performance, that Phase II has created a sufficient supply of low and moderate income housing to satisfy this housing commitment.

V. CONCLUSION

The Commission views the housing program proposed by Resorts as a creative approach to the housing problems associated with the overall reduction in federal funding for new construction. Through the combined efforts of Resorts, the Housing Authority, local lending institutions and the Federal National Mortgage Association, Resorts has been able to put forth a program that will contribute $3,000,000 to new housing construction in Atlantic City.

Phase I is a realistic workable program that will, through the creation of vacant units in public housing, directly benefit low and moderate income families. Thus, at the present time, Resorts has succeeded in satisfying part of its overall commitment. To the extent that Phase I will provide ten low income units, $400,000 of the total commitment, or 40% thereof,

has been satisfied. If, as Resorts claimed at the hearing, 15 such units are produced in Phase I and if the cost per unit remains at $40,000, then $600,000 or 60% of the commitment will have been satisfied. In the event that Phase I can be expanded to produce 25 units at a cost of $40,000 per unit and to vacate 25 units in public housing, Resorts will have succeeded in satisfying its total commitment.

The Commission is concerned, however, with the lack of progress demonstrated in making this housing program a reality. We will closely monitor the progress of this housing program and will review its status at Resorts' license renewal hearing in February 1984. At the hearing, Resorts will be required to demonstrate some appreciable progress in the implementation of Phase I and Phase II. Resorts will also be afforded the opportunity to produce documentation that Phase I and II have succeeded in creating the requisite amount of low and moderate income housing. The Commission's ruling herein is thus made conditional upon a showing of performance by Resorts. If Resorts demonstrates at the renewal hearing that Phase I and Phase II have succeeded in producing low and moderate income housing to the extent required by this housing condition, the Commission will issue an unconditional statement of compliance. In the interim, the Commission conditionally approves Phase I and withholds decision on Phase II, awaiting further progress.

NEW JERSEY CASINO CONTROL COMMISSION

WALTER N. READ, CHAIRMAN

CARL ZEITZ, VICE-CHAIRMAN

JOEL R. JACOBSON, COMMISSIONER

E. KENNETH BURDGE, COMMISSIONER

DON M. THOMAS, COMMISSIONER

DATED: October 5, 1983.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-19
OAL DOCKET NO. CCC 10284-82

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. RESORTS INTERNATIONAL HOTEL, INC., GARY D. THOMPSON, Casino Cage Manager, WILLIAM GALLION, Assistant Cage Manager, GARY GRANT, Credit Manager, RANDALL MIHELIC, Assistant Credit Manager, MARIE SACCO, Casino Teller, STEPHANIE KLEIN Cage Shift Manager, Respondent.	FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of the initial decision of the Office of Administrative Law (hereafter OAL) with the Commission on April 28, 1983, which incorporated a stipulation of settlement voluntarily entered into by the parties which provided, in pertinent part, that respondent Resorts International Hotel, Inc. (hereinafter Resorts), would pay $100,000 in settlement of the complaint, Docket No. 81-19, filed by the Division of Gaming Enforcement with the Commission on May 11, 1981, and the complaint would be dismissed with prejudice as to all parties; and neither party having filed exceptions or

objections to the initial decision; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of July 6, 1983, to modify the terms of the stipulation of settlement as incorporated into the initial decision; and the parties having consented to such modifications,

IT IS on this 5th day of July 1983, ORDERED that the terms of the stipulation of settlement as incorporated into the initial decision of the OAL be and hereby are modified as follows:

1. The third paragraph of the settlement agreement (p. 23 of the stipulation) should read:

> WHEREAS, Respondent, Resorts International Hotel, Inc., acknowledges that in those 13 instances set forth in paragraph 29 of the stipulation, it violated the provisions of the Commission's emergency order dated October 9, 1979.

2. The final paragraph of the settlement agreement (p. 14 of the stipulation) should read:

> NOW, THEREFORE, be it resolved that the Respondent, Resorts International Hotel, Inc., agrees to pay the sum of $130,000 in full settlement of the complaint and the issue raised by the Commission's order of remand dated November 19, 1982, concerning possible violations of the Commission's emergency order dated October 9, 1979, and that upon receipt of such payment, the complaint shall be dismissed with prejudice as to Gary Thompson, William Gallion, Gary Grant, Randall Mihelic, Marie Sacco and Stephanie Klein.

IT IS FURTHER ORDERED that the initial decision, as modified herein, be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that respondent Resorts International Hotel, Inc. pay a fine in the amount of $130,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that upon the Commission's receipt of payment of the above fine, the complaint shall be dismissed with prejudice as to Gary Thompson, William Gallion, Gary Grant, Randall Mihelic, Marie Sacco and Stephanie Klein; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 8, 1983

FILED
NEW JERSEY
APR 28 1983
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 10284-82

AGENCY DKT. NO. 81-19

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

Petitioner

v.

RESORTS INTERNATIONAL HOTEL, INC.: GARY D. THOMPSON, CASINO CAGE MANAGER; WILLIAM GALLION, ASSISTANT CAGE MANAGER; GARY GRANT, CREDIT MANAGER; RANDALL MIHELIC, ASSISTANT CREDIT MANAGER; MARIE SACCO, CASINO TELLER; STEPHANINE KLEIN, CAGE SHIFT MANAGER,

Respondents.

APPEARANCES:

Mitchell A. Schwefel and Kevin F. O'Toole, Deputies Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

John M. Donnelly, Esq., for respondents (Sterns, Herbert & Weinroth, attorneys)

Record Closed: March 28, 1983 Decided: April 22, 1983

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on May 11, 1981 charging respondents with various violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq. and the regulations adopted by the Commission thereunder. The complaint centered around alleged deviations from acceptable practices relating to the granting of credit. These specific charges arose from a series of events which resulted from the massive gaming activities of David Zarin and Martha Nemtin, patrons of the respondent casino hotel. At this point, it is sufficient to note that the gaming activities of Mr. Zarin and Ms. Nemtin at the respondent casino ran to the millions of dollars and that ultimately, as a result of a sequence of events which are noted below, the debt balances of Zarin and Nemtin, as of their final day of gambling at Resorts casino, April 29, 1980, were in the total amount of $4,660,000.

Following the issuance of the complaint on May 11, 1981, the respondent filed an answer on August 24, 1981. The matter was ultimately transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on February 26, 1981, and a Prehearing Order was issued on March 10, 1982. Thereafter, the parties engaged in extensive discovery and on September 7, 1982, submitted to the Administrative Law Judge a Stipulation of Settlement of the issues in dispute between them. This Stipulation of Settlement proposed a settlement of the issues in dispute and a payment by respondent Resorts International Hotel, Inc. to the New Jersey Casino Control Fund in full settlement of the allegations set forth in the complaint. The charges against the individual respondents were to be dismissed. The Stipulation of Settlement of September 7, 1982, was incorporated into an Initial Decision-Settlement, issued on October 18, 1982. That decision was presented to the Casino Control Commission, which determined on November 9, 1982, to reject the Initial Decision and order the matter remanded to the Office of Administrative Law. An Order of Remand, dated November 9, 1982, directed the remand and the consideration of an additional issue which had not been considered by the parties previously. The Order of Remand also noted the Commission's concern that the record presented to the Commission should contain sufficient information to "apprise the Commission of the relevant facts."

Following the Order of Remand, the matter was returned to Judge Masin and the parties appeared for a second prehearing conference in December 1982. At that time,

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the parties indicated that it was their belief that the matters in dispute could be resolved by a settlement and that they further believed that the significant, relevant facts were not particularly in dispute and could be the subject of a stipulation. The respondent filed various appeals with the Appellate Division of the Superior Court in an attempt to overturn the remand order issued by the Commission, but the appeals were not accepted by the Appellate Division. Thereafter, the parties entered into extensive discussions and eventually agreed upon a Stipulation of Facts and Settlement Agreement, a copy of which document is attached to this Initial Decision and made a part hereof as if set forth in full in the body of this Initial Decision. The Stipulation of Settlement contains 57 paragraphs of factual stipulation detailing the history of the Zarin/Nemtin gambling activity at the respondent casino and the actions and practices of the respondent. The Stipulation also references the Emergency Order of October 9, 1979, and paragraph 5 thereof, the document which the Commission, in its order of remand, had specifically requested be considered as a part of the remand proceeding. In addition to the stipulation of facts, the parties have also presented to the Administrative Law Judge two volumes of supporting documents upon which the stipulations of facts are grounded. These documents, constituting exhibits A through Q, have been marked in evidence as joint exhibits for the purpose of this settlement only.

The Administrative Law Judge has examined in detail the stipulated facts and the supporting documentation. It appears to this Judge that the Zarin/Nemtin incident, while not necessarily unique, resulted from a combination of circumstances, such as the immense level of Mr. Zarin's gambling activities, the desire of Resorts to accommodate and encourage Mr. Zarin as a valued patron, the false sense of security provided to Resorts by the lengthy history of Mr. Zarin's apparently successful payment of his debts, and the failure of Resorts to be alert for the possibility that Mr. Zarin's financial situation might not be as secure as it had been led to believe. At the same time, the court does not find any indication that Resorts' activities were significantly egregious. It appears that while the respondent could have taken more care in connection with its dealings with Mr. Zarin that it did not in any way attempt to hinder the the Casino Control Commission or the Division of Gaming Enforcement in connection with their responsibilities for moritoring the activities of casinos. While some instances of poor record keeping or deviations from general practice were noted, generally, it appears that Resorts did attempt to ccmply with the letter of the Emergency Order.

The court **FINDS** as fact those facts set forth in the Stipulation of Facts numbered 1 through 57. The court also **FINDS** that this Settlement Agreement is reasonable, within the confines of the law, and disposes of all issues in dispute between the parties. In connection with the proposed payment by Resorts of $100,000 into the New Jersey Casino Control Fund as full settlement of the allegations in the complaint, the court **FINDS** that such payment is reasonable in light of the circumstances of the case and the nature of the disposition thereof, that is, a settlement. The parties have agreed that a full trial of the issues in dispute would require many days of trial and significant expense. Given the nature of the proceeding, the anticipated cost of litigation, and the changes which had been made in regulations and practices to avoid repetition of this type of incident, the court **CONCLUDES** that the settlement figure is reasonable and should be accepted.

In view of the above, it appears that this contested case is concluded and the matter is, therefore, **DISMISSED**. The charges against the individual respondents are also **DISMISSED**. The parties are directed to comply with the terms and conditions of the Settlement Agreement.

It is expressly understood that it is intention of both parties to this proceeding that the settlement which has been submitted to and approved by the Administrative Law Judge and which shall ultimately be submitted to the Casino Control Commission is based on the understanding that if the Commission ultimately determines that it cannot accept the settlement as set forth in the Stipulation of Facts and Settlement Agreement, that the settlement shall be voided and the matter returned to the Office of Administrative Law for further proceedings. This understanding includes the proposed amount of the payment to the Casino Control Fund. Should the settlement as written be unacceptable to the Commission, the parties desire to present additional and supplemental evidence.

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 22, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

April 21, 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

May 3, 1983
DATE

Ronald L. Parker/pk
OFFICE OF ADMINISTRATIVE LAW

ml

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 8556-81
AGENCY DOCKET NO. 81-19

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

Plaintiff,

vs.

RESORTS INTERNATIONAL HOTEL, INC.: GARY D. THOMPSON, Casino Cage Manager; WILLIAM GALLION, Assistant Cage Manager; GARY GRANT, Credit Manager; RANDALL MIHELIC, Assistant Credit Manager; MARIE SACCO, Casino Teller; STEPHANIE KLEIN, Cage Shift Manager,

Respondents.

Civil Action

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

With the above-captioned matter having been discussed by and between the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Mitchell A. Schwefel and Kevin F. O'Toole, Deputy

Attorneys General, and John M. Donnelly, Esquire, Attorney for Respondents, Resorts International Hotel, Inc. and the above-named individuals, set forth below are the facts and proposed terms of settlement that have been agreed upon and stipulated to. For ease of presentation, in light of the diverse aspects of the instant matter, the stipulated facts and settlement agreement are divided into the following areas: A) Preliminary Facts, B) The Credit Patrons (David Zarin and Martha Nemtin), C) Resorts' Credit Practices and Procedures, D) The Predecessor Complaint and the Emergency Order, E) The Check Kiting Scheme, F) The Aftermath of the Check Kiting Scheme, and G) The Settlement Agreement.

A. Preliminary Facts

1. Respondent, Resorts International Hotel, Inc. (hereinafter called "Resorts"), is the holder of a plenary casino license issued on February 26, 1979 and subsequently renewed annually by the Casino Control Commission (hereinafter called "the Commission"). Said plenary casino license authorizes Resorts to operate a casino hotel in accordance with the Casino Control Act, N.J.S.A. 5:12-1 et seq. (hereinafter called "the Act") and the regulations promulgated thereunder.

2. Respondents, Gary D. Thompson, William Gallion, Gary Grant, Randall Mihelic, Marie Sacco, and Stephanie Klein, are the holders of duly issued casino key employee or casino employee licenses granted by the Commission. Said respondents, at all times referenced herein, have been employed by Resorts and have

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acted on behalf of Resorts as duly authorized agents or employees thereof.

3. On May 11, 1981, Plaintiff, the Division of Gaming Enforcement (hereinafter called "the Division"), filed with the Commission a Complaint against Resorts and the individually named Respondents alleging violations of the Act and regulations pertaining to the extension of credit and the internal control procedures utilized in connection with Resorts' relationship with two gaming patrons, David Zarin and Martha Nemtin.

B. The Credit Patrons

4. David Zarin is presently 65 years old and a life-long resident of New Jersey. His permanent residence is at 220 W. Jersey Street, Elizabeth, New Jersey. A review of his business and financial background reveals that he is a substantial land developer and real estate investor who previously built low and middle income housing projects in Pennsylvania and Florida. With the advent of casino gaming in Atlantic City, Mr. Zarin began to concentrate his business interests in the Atlantic City area.

5. Martha Nemtin is a Canadian National and a licensed real estate broker and developer in the Montreal, Canada area. Ms. Nemtin traveled to Atlantic City in May, 1978 in order to meet with a former real estate associate who had properties available for sale in the Atlantic City area. Ms. Nemtin was aware that David Zarin had an interest in acquiring land or real estate for the purpose of developing subsidized housing and Ms. Nemtin hoped that she would be responsible for sales between her former associate and Mr. Zarin.

6. From June of 1978 until the end of April, 1980, David Zarin and Martha Nemtin were seen together at Resorts International Hotel and Casino on a regular and continual basis. Mr. Zarin was the guest of Resorts and received substantial "complimentary services", including free room, food, beverages and limousine services. Ms. Nemtin accompanied Mr. Zarin and shared in all types of the gratuities extended by Resorts to Mr. Zarin. Resorts provided David Zarin and Martha Nemtin with adjoining suites reserved for their use while at Resorts or while in the Atlantic City area.

7. When Resorts opened its casino on May 26, 1978, David Zarin began his gaming activity shortly thereafter. On or about June 11, 1978, David Zarin requested from Resorts a $10,000 credit line and a credit file was established by Resorts pursuant to then-cited regulation N.J.A.C. 19:45-26(d). The original credit file of David Zarin is attached hereto and incorporated herein and marked as Exhibit A. Exhibit A consists of 97 separate pages designated A-1 through A-97 respectively.

8. Resorts approved the extension of a $10,000 credit line to David Zarin on June 11, 1978 and Mr. Zarin negotiated his first counter checks on that date.

9. Although Martha Nemtin was a steady companion of David Zarin from the inception of his gambling activity she did not request a credit line on her behalf until October 30, 1978. On that date, Martha Nemtin requested from Resorts a $25,000 credit line and a credit file was established by Resorts pursuant to then-cited regulation N.J.A.C. 19:45-26(d). The original credit

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file of Martha Nemtin is attached hereto and incorporated herein and marked as Exhibit B. Exhibit B consists of 22 separate pages designated B-1 through B-22 respectively.

10. Resorts approved the extension of a $35,000 credit line to Martha Nemtin on November 5, 1978. Ms. Nemtin had negotiated her first counter checks on her account on October 30, 1978.

11. On May 19, 1982, a deposition was taken of David Zarin by Resorts in the presence of legal counsel representing all of the parties to the instant matter. The representations made by Mr. Zarin in said deposition are not offered here as Findings of Fact. However, the deposition of David Zarin is attached hereto and marked as Exhibit C and it is stipulated by the parties to be a certified, sworn statement of David Zarin offered as part of the record herein.

12. On October 18, 1982, a deposition was taken of Martha Nemtin by Resorts in the presence of legal counsel representing all of the parties to the instant matter. The representations made by Ms. Nemtin in said deposition are not offered here as Findings of Fact. However, the deposition of Martha Nemtin is attached hereto and marked as Exhibit D and is stipulated by the parties to be a certified, sworn statement of Martha Nemtin offered as part of the record herein.

C. Resorts' Credit Practices and Procedures

13. As described in paragraph 8 of this Stipulation, supra, David Zarin's initial permanent credit limit was $10,000. Increases (or decreases) in David Zarin's permanent credit limit occurred as follows:

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Exhibit Reference	Date Approved	"Permanent" Credit Limit	Authorized By
A-3	6/11/78	10,000	Irv Rogers
A-5	7/15/78	15,000	Rick Howe
A-7	8/19/78	20,000	"
A-8	8/25/78	25,000	"
A-9	9/25/78	30,000	"
A-10	undated	40,000	"
A-11	10/8/78	50,000	"
A-27	5/30/79	100,000	Gary Grant
A-28	6/13/79	125,000	"
A-31	8/1/79	150,000	"
A-35	undated	175,000	"
A-36	9/30/79	100,000	"
A-39	10/24/79	125,000	"
A-40	11/21/79	200,000	"
A-88	4/12/80	215,000	"

At no time during David Zarin's gaming activity at Resorts was his permanent credit limit greater than $215,000.

14. Beginning on May 16, 1979 (Exhibit Reference A-25), Resorts extended David Zarin's credit limit beyond his permanent stated credit limit through "temporary" credit increases. These "temporary" credit increases were effectuated through a practice identified as a "TTO"; that is, a "This Trip Only" credit increase. In January, February, March and April of 1980, these TTO credit increases were extended to David Zarin on a daily basis with multiple TTO's occurring each day. As an illustration of the frequency of this practice, the following schedule is presented:

Date	Number of TTO's Extended on That Date	Exhibit Reference
1/15/80	9	A-47 to A-48
1/29/80	9	A-53 to A-54
1/30/80	6	A-54 to A-55
1/31/80	8	A-56
2/9/80	6	A-59 to A-60
2/20/80	6	A-62 to A-63
3/6/80	9	A-68 to A-70

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3/19/80	7	A-74 to A-75
3/30/80	6	A-80 to A-81
4/3/80	7	A-82 to A-83
4/8/80	7	A-85 to A-86

15. Extending TTO's to David Zarin, as described in paragraph 14 above, had the effect of allowing him to continue gambling after he had reached either his permanent credit limit or his last-approved temporary credit limit. As an illustration of the scope of the TTO practice it should be noted that on January 30, 1980, the TTO's extended by Resorts to David Zarin raised his temporary credit limit to $871,000, which was over four (4) times his permanent stated credit limit of $200,000 on that date.

16. As described in paragraph 10 of this Stipulation, supra, Martha Nemtin's initial permanent credit line was $35,000. Increases (or decreases) in Martha Nemtin's permanent credit limit occurred as follows:

Exhibit Reference	Date Approved	"Permanent" Credit Limit	Authorized By
B-2	11/5/78	35,000	Rick Howe
B-4	2/9/79	50,000	Gary Grant
B-8	9/5/79	70,000	"
B-9	11/30/79	100,000	"
B-15	3/22/80	240,000	"

At no time during Martha Nemtin's gaming activity at Resorts was her permanent credit limit greater than $240,000.

17. On May 16, 1979 (Exhibit Reference B-7), the same date that Resorts first extended David Zarin's permanent credit limit through a "TTO" credit increase, Resorts also began this same

practice with Martha Nemtin's credit account. In December of 1979 and January, February, March, and April of 1980 Resorts extended numerous "temporary" credit increases to Martha Nemtin's account which resulted in Martha Nemtin receiving "temporary" credit that rose as high as $475,000 on February 8, 1980 at a time when her permanent stated credit limit was only $100,000.

18. During their gaming activity at Resorts, David Zarin and Martha Nemtin often acted in concert with one another at the gaming tables. On occasion, David Zarin would negotiate a counter check on his account and provide Martha Nemtin with chips to gamble with. On other occasions, Martha Nemtin would negotiate a counter check on her account and chips would go to David Zarin. Without question, David Zarin was the primary gambler. At the height of his gaming activity at Resorts, he spent many hours each day at the craps table and he bet significant sums of money. David Zarin and Martha Nemtin both cashed out gaming chips at the casino cage for each other and they both paid debts on each others accounts.

19. Although David Zarin and Martha Nemtin had separate and distinct lines of credit at Resorts, they often engaged in transactions affecting each others credit accounts. This is illustrated by the numerous references on David Zarin's credit file indicating his use of Martha Nemtin's checks and the references on Martha Nemtin's credit file indicating her use of David Zarin's checks. Furthermore, attached to the credit files of both David Zarin and Martha Nemtin was a note dated April 10, 1980 which reads as follows:

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"Transfers between Zarin & Nemtin are to facilitate the redemption of MKR (sic) for both partys (sic) with one check." (Exhibit References A-87 and B-17).

20. On numerous occasions, David Zarin presented to Resorts personal checks drawn on his own bank accounts or bank accounts of Martha Nemtin in substitution for counter checks previously negotiated at the gaming tables. Beginning on October 6, 1978 (Exhibit Reference A-10) and on numerous occasions thereafter, Resorts extended to David Zarin the practice of having these personal checks considered clear before they had actually processed through the banking system.

21. Beginning on March 2, 1979 (Exhibit Reference B-4) and on numerous occasions thereafter, Resorts extended to Martha Nemtin the practice of having her personal checks considered clear before they had actually processed through the banking system.

22. Resorts' considered clear practice used in conjunction with their TTO practice enabled both David Zarin and Martha Nemtin to continue gambling even after they had reached either their permanent stated credit limit or their approved temporary credit limit. By utilizing these two practices, Resorts allowed David Zarin's and Martha Nemtin's credit files to reflect lower outstanding debt balances then their actual total obligation to Resorts. These lower outstanding debt balances reflected on David Zarin's and Martha Nemtin's credit files can best be illustrated by noting that on their final day of gambling, April 29, 1980, David Zarin's credit file reflected an outstanding balance of $305,000 when in fact his outstanding debt

was $3,435,000 (Exhibit Reference A-97) and Martha Nemtin's credit file reflected an outstanding balance of $240,000 when in fact her outstanding balance was $1,225,000. (Exhibit Reference B-22).

D. The Predecessor Complaint and The Emergency Order

23. On October 3, 1979, the Division of Gaming Enforcement filed with the Commission a Complaint against Resorts and five (5) named respondents, Walter I. Rogers, James D. Carr, Corey T. Clerk, Gary D. Thompson, and Gary Grant. Said Complaint alleged 809 violations pertaining to Resorts' casino gaming credit system and its system of internal procedures and administrative and accounting controls.

24. Included among said 809 violations referred to in paragraph 23 above were 100 violations specifically identified as pertaining to the extension of credit and to the recordation of the credit transactions of David Zarin and Martha Nemtin.

25. Pursuant to said Complaint referred to in paragraph 23 above, the Division sought immediate relief in the form of a Cease and Desist Order. Included among the specific remedial requests of the Division was the following:

> "CEASE AND DESIST the issuance of credit to any patron whose patron credit reference card indicates the patron has exceeded any properly approved credit limit. In determining whether a credit limit has been exceeded, the credit manager shall include as credit all yet uncollected checks received in payment of a counter check. Any and all accounts maintaining a balance be presented to a commercial bank for collection immediately." Request A1(f) (emphasis added).

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26. On October 9, 1979, then Commissioner Prospero DeBona issued an Emergency Order with respect to the Division's request for immediate remedial relief pursuant to the October 3, 1979 Complaint against Resorts. Commissioner DeBona rejected in part the suggested language of the Division and adopted as paragraph 5 of the Emergency Order the following language:

> "Effective immediately, Resorts shall not issue credit to any patron whose patron credit reference card indicates that the credit now outstanding exceeds the properly approved credit limit. In determining whether a credit limit has been exceeded, all yet undeposited checks received in payment of a counter check or checks shall be included as credits." (emphasis added).

27. Following settlement negotiations between the parties to the Complaint, Commissioner DeBona issued a Report and Recommendation dated June 27, 1980. This Report and Recommendation, which incorporated a Stipulation of Settlement, was considered and adopted by the Commission at its public meeting of July 24, 1980 and a Final Order was issued on August 11, 1980 and signed by then Chairman Joseph P. Lordi. Pursuant to said Final Order, Resorts International Hotel, Inc. paid a monetary fine of $225,000 to the Casino Control Fund. For the convenience of Your Honor and the Commission, attached hereto as Exhibit E is the Division's Complaint, Schedule of Violations, and Final Order of the Commission including the Report and Recommendation, the Stipulation of Settlement, and the Emergency Order pertaining to the prior action.

28. As described in paragraphs 12, 15, 18 and 19 of this Stipulation, supra, Resorts increased the credit limits of David

Zarin and Martha Nemtin on a "temporary" basis through the practice of "TTO" credit increases. Furthermore, Resorts considered clear the personal checks presented by David Zarin and Martha Nemtin prior to those checks actually clearing through the normal banking collection process. These two practices permitted Resorts to comply with the technical requirements of paragraph 5 of the Emergency Order, excepting those instances set forth below in paragraph 29. The properly approved permanent credit limits of David Zarin and Martha Nemtin were increased through the "TTO" procedure and the personal checks presented by them were considered clear following their deposit into Resorts' depository bank on the day following their presentment.

29. The Division of Gaming Enforcement has reviewed the credit transactions of David Zarin and Martha Nemtin from the period of October 9, 1979 through April 29, 1980 for the purpose of determining compliance with paragraph 5 of the Emergency Order. Although, as indicated in paragraph 28 above, the practice of TTO credit increases and considering checks cleared was intended by Resorts to comply with the letter of the Emergency Order, the large number and the frequency of credit transactions engaged in by David Zarin and Martha Nemtin caused a sufficient degree of confusion among Resorts' personnel that deviations from their own practices occurred. The Division's review disclosed the following deviations:

A) Counter Checks issued without a correspondingly approved TTO increase.

David Zarin's account	Exhibit Reference	Martha Nemtin's account	Exhibit Reference
10/31/79	A-40	2/29/80	B-14
2/20/80	A-62	3/2/80	B-14
2/26/80	A-64	4/17/80 (TTO misdated)	B-19
2/28/80	A-65		
3/9/80	A-70		
3/19/80	A-74		

B) Counter Checks issued without a corresponding notation "considering clear" personal checks presented the prior gaming day.

David Zarin's account		Exhibit Reference
2/8/80	(considered clear notation misdated)	A-59
2/25/80		A-63
4/3/80		A-82
4/4/80		A-83

E. The Check Kiting Scheme

30. For a substantial period of time both David Zarin and Martha Nemtin paid their gaming debts to Resorts without any outwardly manifested problems. These debts were in the form of counterchecks negotiated for gaming chips or they were in the form of personal checks given in substitution or consolidation of counterchecks.

31. One exception to this "problem free" situation was a group of checks totalling $200,000 which David Zarin had presented to Resorts and which he subsequently became aware that there was insufficient funds to cover. On or about March 3, 1980 (Exhibit Reference A-67), Mr. Zarin notified Resorts of this situation and, prior to the checks actually returning from the bank on March 6, 1980, Mr. Zarin paid Resorts in full

immediately. Mr. Zarin explained this situation to Resorts as having been caused by a secretarial error.

32. Originally, David Zarin's personal checks and counterchecks were drawn on New Jersey banks (the Guarantee Bank in Atlantic City and the National State Bank in Elizabeth) and Martha Nemtin's personal checks and counterchecks were drawn on Canadian banks (the Toronto Dominion Bank, the Bank of Nova Scotia, and the Bank of Montreal).

33. From the latter part of 1979 until their credit was terminated on April 29, 1980, David Zarin and Martha Nemtin began cashing out gaming chips that they had either won, or more often, that they had obtained by negotiating counter checks and not gambling with the entire amount.

34. Beginning in November of 1978, Resorts extended to David Zarin the "privilege" of cashing checks for non-gaming purposes. Prior to January of 1980, these non-gaming checks were cashed infrequently and in amounts of $10,000 or less. Beginning in January of 1980, the frequency and the amounts of these non-gaming checks cashed for David Zarin increased markedly, as illustrated by the following schedule:

January, 1980		February, 1980		March, 1980		April, 1980	
Date	Amount	Date	Amount	Date	Amount	Date	Amount
1/21	$20,000	2/1	$30,000	3/9	$30,000	4/3	$100,000
1/21	20,000	2/1	30,000	3/9	30,000	4/7	90,000
1/24	25,000	2/4	85,000	3/9	40,000	4/11	90,000
1/24	15,000	2/4	60,000	3/10	30,000	4/14	90,000
1/24	20,000	2/8	40,000	3/10	40,000	4/18	20,000
1/24	25,000	2/10	40,000	3/17	48,000	4/21	90,000
1/24	20,000	2/18	100,000	3/17	48,000	4/24	90,000
1/27	25,000	2/25	100,000	3/21	90,000	4/28	135,000
1/27	25,000	2/29	100,000	3/26	25,000		
1/28	60,000			3/31	100,000		
Total	$255,000		$585,000		$481,000		$705,000

The four (4) month total covering January through April, 1980 amounts to $2,026,000 in non-gaming checks cashed by Resorts for David Zarin. It was Mr. Zarin's practice to leave the casino room with the proceeds from the non-gaming checks.

35. Resorts also extended to Martha Nemtin the "privilege" of cashing checks for non-gaming purposes. Three (3) such non-gaming checks cashed for Martha Nemtin can be identified as follows:

Date	Amount
2/17/80	$ 30,000
3/13/80	36,000
4/18/80	180,000
Total	$246,000

36. By virtue of cashing out chips as described in paragraph 33 of this Stipulation, supra, and the cashing of non-gaming checks as described in paragraphs 34 and 35 of this Stipulation, supra, David Zarin and Martha Nemtin were able to leave the casino with large sums of cash.

37. David Zarin and Martha Nemtin both arranged to have safety deposit boxes at the hotel front desk of Resorts where they were able to store these large sums of cash and, on occasion, security personnel of Resorts escorted Mr. Zarin and Ms. Nemtin from the casino cage to the front desk safety deposit boxes. For the four (4) month period in 1980, David Zarin and Martha Nemtin made regular trips to their safety deposit boxes, oftentimes several trips on the same date. Attached hereto and incorporated herein and marked as Exhibits F and G are the Safe Deposit Box agreements of David Zarin and

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Martha Nemtin, respectively. The Safe Deposit Box agreements of David Zarin are designated F-1 through F-33 and the Safe Deposit Box agreements of Martha Nemtin are designated G-1 through G-26.

38. When David Zarin's credit extensions and gaming activity was at its peak from the beginning of February, 1980 until April 29, 1980, Mr. Zarin deposited $7,343,000 in cash into a personal checking account at the Guarantee Bank in Atlantic City (Account #01-0-777-494-6). During this same time period, David Zarin made cash purchases of $2,271,000 worth of Treasurer's Checks from the Guarantee Bank in Atlantic City. Attached hereto and incorporated herein and marked as Exhibit H is a three (3) page Analysis of David Zarin's Guarantee Bank Deposits and Treasurer's Check purchases for the months of February, March, and April of 1980 along with copies of David Zarin's bank statements from the Guarantee Bank for said period.

39. A large portion, if not all, of said cash deposits referred to in paragraph 38 above were presented to Guarantee Bank tellers in the form of $100.00 bills bundled in Resorts International bill wrappers. Furthermore, a large portion, if not all, of said Treasurer's Check purchases referred to in paragraph 38 above were also made with $100.00 bills bundled in Resorts International bill wrappers and presented to Guarantee Bank tellers. Attached hereto and incorporated herein and marked as Exhibit I is a two (2) page Analysis of 49 Currency Transaction Reports - IRS Form 4789, along with copies of said Currency Transaction Reports.

40. The fact that David Zarin and Martha Nemtin had their
460. outstanding debt balance lower than their actual total obligation

by giving Resorts personal checks that Resorts considered clear, when in fact the personal checks were not actually cleared through the banking system, along with the fact that nearly $10,000,000 in cash was put through the Guarantee Bank by David Zarin during February, March, and April of 1980, it was possible for David Zarin to float or cycle the cash he took out of Resorts for the period of time in which the actual checks were in the clearing process and ultimately paid to Resorts' depository bank. The above circumstances in large part enabled Mr. Zarin to implement a check kiting scheme which resulted in the 93 count indictment described below in paragraph 52.

41. On or about April 17, 1980, David Zarin opened a U.S. Dollar account at the Royal Bank of Canada in Montreal, Canada. Said account, number 426-333-1, was opened by David Zarin in his own name. On or about that same date, David Zarin presented checks to Resorts' cage personnel that were drawn on this newly opened account at the Royal Bank of Canada. This was a switch from Mr. Zarin's prior use of New Jersey Banks for checks drawn on his accounts. Attached hereto and incorporated herein and marked as Exhibit J is a Solemn Declaration of Mr. Warren Walker, Assistant Manager of the Royal Bank of Canada.

42. On or about April 25, 1980, David Zarin opened a U.S. Dollar account at the Canadian Imperial Bank of Commerce in Montreal, Canada. Said account, number 02-07810, was opened by David Zarin in his own name. On or about that same date, David Zarin presented checks to Resorts' cage personnel that were drawn on this newly opened account at the Canadian Imperial Bank of Commerce. Attached hereto and incorporated herein and marked as

Exhibit K is a Solemn Declaration of Mr. Andre Maynard, Administration Officer at the Bank of Commerce.

43. On or about April 17, 1980, Resorts' personnel took notice of this change from David Zarin's use of domestic banks to his use of foreign banks and contemplated the possibility that David Zarin could not honor his outstanding gaming debt. Gary Grant, Resorts' credit manager and a named respondent herein, became suspicious of this development and alerted Resorts' then Director of Internal Audit, Matthew Kearney.

44. On October 18, 1982, a deposition was taken of Gary Grant, Resorts' credit manager and a named respondent herein, in the presence of legal counsel representing all of the parties to the instant matter. The representations made by Mr. Grant in said deposition are not offered here as Findings of Fact. However, the deposition of Gary Grant is attached hereto and marked as Exhibit L and it is stipulated by the parties to be a certified, sworn statement of Gary Grant offered as part of the record herein.

45. As a result of the events described in paragraphs 41, 42, and 43 above, Resorts' officials decided to institute a courier service to expedite the clearance of David Zarin's checks drawn on his Canadian bank accounts. Resorts contacted the Casino Control Commission to determine if a courier service was permissible and upon being so advised, the courier service was enacted. This action resulted in the collapse of the "check kiting" scheme of David Zarin.

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46. On April 29, 1980, credit to both David Zarin and Martha Nemtin was terminated by Resorts.

47. On April 30, 1980, Resorts was informed that the first in a series of checks drawn on the Royal Bank of Canada and the Canadian Imperial Bank of Commerce which had been presented to Resorts by David Zarin would be returned to Resorts for non-sufficient funds.

48. On May 1, 1980, representatives of Resorts met with Guy S. Michael, then Chief, Legal Section, of the Division of Gaming Enforcement for the purpose of notifying the Division that Resorts expected a substantial amount of returned checks on David Zarin's credit account at Resorts. Attached hereto and incorporated herein and marked as Exhibit M is a Memorandum dated May 6, 1980 from Guy S. Michael which details the above-described meeting.

49. Sometime in early May, 1980, Martha Nemtin issued stop payment orders on counterchecks and personal checks that were made payable to Resorts and which were drawn on her account at the Toronto Dominion Bank, the Bank of Nova Scotia, and the Bank of Montreal.

50. In all, the total of non-sufficient funds and stopped payments both on personal checks and counterchecks negotiated by David Zarin and Martha Nemtin with Resorts International equalled $4,660,000. Of this total $3,435,000 was attributable to the credit account of David Zarin and $1,225,000 was attributable to the credit account of Martha Nemtin.

F. The Aftermath of the Check Kiting Scheme

51. In May of 1980 and subsequently, Resorts on its own initiative adopted internal procedures to address the check kiting scheme. These procedures included the creation of a Credit Committee to review all initial and subsequent credit extensions in excess of $25,000, improved guidelines for the considered clear practice, adoption of a practice for expediting the collection of drafts drawn on foreign bank accounts, and a limitation on the amount of non-gaming checks that a patron could cash. Attached hereto and incorporated herein and marked as Exhibit N are three (3) Resorts' internal memorandums documenting the above actions taken by Resorts.

52. On May 7, 1981, after a Grand Jury investigation David Zarin was indicted by the State Grand Jury, Indictment No. SGJ 77-81-1, and charged with 93 counts of theft by deception, in violation of N.J.S. 2C:20-4, in response to the "check kiting" scheme he perpetrated against both Resorts International Hotel, Inc and the Boardwalk Regency Corporation. Martha Nemtin was not indicted. A true copy of said Indictment is attached hereto and incorporated herein and marked as Exhibit O.

53. Prior to the above-described Grand Jury indictment, Resorts filed suit against both David Zarin and Martha Nemtin for enforcement of the gaming debts. David Zarin and Resorts entered into a Settlement Agreement on September 28, 1981 wherein Mr. Zarin has agreed to pay Resorts $500,000 in full and final settlement of his outstanding gaming debt. Martha Nemtin refused to answer Resorts' Complaint asserting her Canadian nationality

as a bar to service or jurisdiction and a Judgment in Default was entered against her. Said Default Judgment is currently the subject of litigation in the Superior Court of New Jersey under the caption, Resorts International Hotel, Inc. v. Martha Nemtin.

54. Martha Nemtin has sued David Zarin in U.S. District Court claiming that he owes her over $2 million in business and gambling loans. David Zarin has counter-claimed alleging a debt of over $1 million owed to him by Martha Nemtin. This suit is captioned Nemtin v. Zarin, U.S. District Court for the District of New Jersey, Civil Action No. 81-3004.

55. On or about January 6, 1982, David Zarin was admitted into the Atlantic County Pre-Trial Intervention Program. Mr. Zarin's admission into this diversionary program was based largely upon expert medical representations that Mr. Zarin suffered from pathological (compulsive) gambling. Mr. Zarin's admission into PTI was conditioned upon his reporting to a PTI Counselor on a monthly basis for 12 consecutive months, his full and continued participation in Gamblers Anonymous, his assurance to make restitution of his gaming debts, and his performance of 100 hours of volunteer community service. Attached hereto and incorporated herein and marked as Exhibits P and Q respectively are the medical evaluations of Drs. Robert L. Custer and Robert T. Latimer and the PTI Participation Agreement involving David Zarin.

56. On or about July 14, 1982, the Honorable Paul R. Porreca, J.S.C., signed an Order of Dismissal with respect to SGJ Indictment #SGJ 77-81-1 against David Zarin. Attached hereto and

incorporated herein and marked as Exhibit R is said Order of Dismissal.

57. On September 9, 1982 before the Honorable Jeff S. Masin, A.L.J., the parties entered into the record an initial Stipulation of Settlement. By Order dated September 28, 1982 and revised October 13, 1982, Judge Masin incorporated said initial Stipulation of Settlement into an Initial Decision. On October 26, 1982, said Initial Decision was considered by the Commission at its regularly scheduled public meeting. The Commission voted to reject the Initial Decision and ordered the matter remanded to the Office of Administrative Law on the basis that the record before it failed to apprise them of the relevant facts, thereby precluding them from making a reasoned determination as to the propriety of the proposed settlement. Attached hereto and incorporated herein and marked as Exhibit S is the initial Stipulation of Settlement and the Commission's Order of Remand.

G. The Settlement Agreement

WHEREAS, paragraphs 1 through 57 of this Stipulation, supra, which are set forth above, have been agreed upon by and between the parties hereto and they are stipulated to as Findings of Fact; and

WHEREAS, Respondent, Resorts International Hotel, Inc. acknowledges that its pre-existing credit practices and policies, as set forth in Parts C, D and E above, were insufficient to prevent it from being defrauded by one of its casino patrons; and,

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WHEREAS, Respondent, Resorts International Hotel, Inc. acknowledges that in those instances set forth in paragraph 29 above it deviated from its own practices and procedures which were intended to comply with the Commission's Emergency Order of October 9, 1979;

WHEREAS, Respondent, Resorts International Hotel, Inc. has recognized the necessity of strengthening its controls over casino credit; and,

WHEREAS, Respondent, Resorts International Hotel, Inc. has instituted practices and procedures that address the allegations contained in the Division of Gaming Enforcement's Complaint and which reasonably assure that extensions of credit of the magnitude alleged in said Complaint are being more closely monitored; and,

WHEREAS, the individually named Respondents employed by Resorts have been advised of the above practices and procedures and they acknowledge their existence and the necessity of complying with said practices and procedures; and,

WHEREAS, the parties have endeavored to submit to Your Honor, and ultimately to the Casino Control Commission, a detailed and comprehensive submission of all of the material and relevant facts pertinent to the allegations contained in the Division's Complaint; and,

WHEREAS, Respondent, Resorts International Hotel, Inc. recognizes that its actions, or inactions, in regard to monitoring the credit extensions and check cashing transactions of David Zarin and Martha Nemtin justify the imposition of an administrative sanction pursuant to N.J.S.A. 5:12-64;

NOW THEREFORE, be it resolved that the Respondent, Resorts International Hotel, Inc. agrees to pay the sum of $100,000 to the New Jersey Casino Control Fund in full settlement of the allegations as forth in the Division of Gaming Enforcement's Complaint and that upon receipt of such payment, said Complaint shall be dismissed with prejudice as to all parties.

By: _____
MITCHELL A. SCHWEFEL
Deputy Attorney General

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

By: _____
JOHN M. DONNELLY, ESQ.

Counsel for Respondents
RESORTS INTERNATIONAL HOTEL,
INC.; GARY D. THOMPSON;
WILLIAM GALLION; GARY GRANT;
RANDALL MIHELIC; MARIE SACCO;
AND STEPHANIE KLEIN

TABLE OF EXHIBITS

VOLUME I:

(1) Exhibit A - David Zarin's credit file consisting of 97 separate pages designated A-1 through A-97.

(2) Exhibit B - Martha Nemtin's credit file consisting of 22 separate pages designed B-1 through B-22.

(3) Exhibit C - Deposition of David Zarin taken on May 19, 1982.

(4) Exhibit D - Deposition of Martha Nemtin taken on October 18, 1982.

VOLUME 2:

(5) Exhibit E - Division's Complaint against Resorts filed October 3, 1979, with Schedule of Violations, Final Order of the Commission, Report and Recommendation of Commissioner DeBona, Stipulation of Settlement, and Emergency Order.

(6) Exhibit F - Safe Deposit Box Agreements of David Zarin consisting of 33 separate cards designated F-1 through F-33.

(7) Exhibit G - Safe Deposit Box Agreements of Martha Nemtin consisting of 26 separate cards designed G-1 through G-26.

(8) Exhibit H - Three (3) page Analysis of David Zarin's Guarantee Bank deposits and Treasurer's Check purchases for the months of February, March and April of 1980, along with copies of David Zarin's bank statements from the Guarantee Bank for said period.

(9) Exhibit I - Two (2) page Analysis of Currency Transaction Resports - IRS Form 4789, along with copies of said Currency Transaction Reports.

(10) Exhibit J - Solemn Declaration of Mr. Warren Walker, Assistant Manager, Royal Bank of Canada.

(11) Exhibit K - Solemn Declaration of Mr. Andre Maynard, Administration Officer, Canadian Imperial Bank of Commerce.

(12) Exhibit L - Deposition of Gary Grant, Resorts' credit manager, taken on October 18, 1982.

(13) Exhibit M - Memorandum dated May 6, 1980 from Guy S. Michael, Division of Gaming Enforcement, detailing conversations with representatives of Resorts on or about May 1, 1980.

(14) Exhibit N - Three (3) Resorts International internal memorandums documenting changes in practices and policies to address the check kiting scheme.

(15) Exhibit O - 93 count indictment number SGJ 77-81-1 against David Zarin handed down on May 7, 1981.

(16) Exhibit P - Medical evaluations of David Zarin conducted by Drs. Robert L. Custer and Robert T. Latimer, respectively.

(17) Exhibit Q - Atlantic County Pre-Trial Intervention Participation Agreement involving David Zarin.

(18) Exhibit R - Order of Dismissal signed by the Hon. Paul R. Porreca, J.S.C., on July 14, 1982 dismissing the criminal charges against David Zarin.

(19) Exhibit S - Initial Stipulation of Settlement and Commission's Order of Remand.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 81-19
OAL DOCKET NO. CCC 8556-81

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, v. RESORTS INTERNATIONAL HOTEL, INC. GARY D. THOMPSON, Casino Cage Manager, WILLIAM GALLION, Assistant Cage Manager; GARY GRANT, Credit Manager, RANDALL MIHELIC, Assistant Credit Manager; MARIE SACCO, Casino Teller; STEPHANIE KLEIN, Cage Shift Manager Respondents.	ORDER OF REMAND

This matter having been opened to the Casino Control Commission upon the filing of an "Initial Decision Settlement" (hereafter Initial Decision) by the Office of Administrative Law on October 18, 1982, which incorporated a Stipulation of Settlement voluntarily entered into by the parties which provided, in pertinent part, that Respondent, Resorts International Hotel, Inc. (hereafter Resorts) would pay $75,000 in settlement of the Complaint, Docket No. 81-19, filed by the Division of Gaming Enforcement with the Commission on May 11, 1981, and the Complaint would be dismissed with prejudice; and no exceptions or objections having been filed by the parties thereto; and the Commission having considered the entire record in these proceedings; and the Commission having further considered the Emergency Order which it entered on October 9, 1979, in State v. Resorts, et al., Docket No. 79-21 (a copy of

which is attached hereto and incorporated herein), particularly page three, paragraph five thereof, which related to the same or similar conduct complained of in the instant complaint and which was in full force and effect during a portion of the time period addressed in the instant complaint, viz: October 9, 1979, to April 30, 1980; and the Commission having resolved at its public meeting of October 26, 1982, to reject the Initial Decision because the record failed to apprise the Commission of the relevant facts, thereby precluding it from making a reasoned determination as to the propriety of the proposed settlement; and the Commission having further resolved to remand this matter to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-16.5(c);

IT IS on this 9th day of November 1982, ORDERED that the Initial Decision be and hereby is rejected; and

IT IS FURTHER ORDERED that the matter be remanded to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-16.5(c); and

IT IS FURTHER ORDERED that, in addition to the issues raised by the Complaint, the proceedings following remand should determine whether Resorts has violated paragraph 5 of the Emergency Order dated October 9, 1979; and

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

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

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 9, 1982

FILED
NEW JERSEY
OCT 18 1982
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 8556-81

AGENCY DKT. NO. 81-19

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Plaintiff
v.
RESORTS INTERNATIONAL HOTEL, INC.; GARY D. THOMPSON, Casino Cage Manager; WILLIAM GALLION, Assistant Cage Manager; GARY GRANT, Credit Manager; RANDALL MIHELIC, Assistant Credit Manager; MARIE SACCO, Casino Teller; STEPHANIE KLEIN, Cage Shift Manager,
Respondents.

APPEARANCES:

Richard T. Morrissey, Deputy Attorney General, (Irwin I. Kimmelman, Attorney General, State of New Jersey, attorney) for petitioner

John Donnelly, Esq., (Sterns, Herbert and Weinroth, attorneys) for respondent

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

This matter having been opened to the Office of Administrative Law as a contested case following transmittal from the Casino Control Commission, and it appearing that the Division of Gaming Enforcement filed a complaint against the respondents; charging violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and it appearing that Counsel for the parties have entered into a Stipulation of Settlement, a copy of which settlement is attached to this Order and made a part hereof, and it

appearing that by the terms of said Stipulation of Settlement, the parties have resolved the matters in dispute between them, and it further appearing that the proposed settlement is consistent with law and is in the best interest of the parties, and it further appearing that the individual respondents' have agreed to the terms of the aforementioned Stipulation of Settlement and have signed their names to a copy of said Stipulation of Settlement, which copy is attached to this Order and made a part hereof, and for good cause shown;

It is on this 13 day of October, 1982 **ORDERED** that the parties shall comply with the terms and conditions of the attached Stipulation of Settlement.

It is further **ORDERED** that the complaint filed by the Division of Gaming Enforcement against the respondents shall be **DISMISSED WITH PREJUDICE** as to all parties.

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

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

October 13, 1982
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

October 18, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

fms

STERNS, HERBERT & WEINROTH
A PROFESSIONAL CORPORATION
186 WEST STATE STREET
P. O. BOX 1298
TRENTON, NEW JERSEY 08607
(609) 392-2100

ATTORNEYS FOR RESPONDENTS

BEFORE THE NEW JERSEY
CASINO CONTROL COMMISSION
Dkt. No. 81-19

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

Plaintiff,

v.

RESORTS INTERNATIONAL HOTEL, INC.; GARY D. THOMPSON, Casino Cage Manager; WILLIAM GALLION, Assistant Cage Manager; GARY GRANT, Credit Manager; RANDALL MIHELIC, Assistant Credit Manager; MARIE SACCO, Casino Teller; STEPHANIE KLEIN, Cage Shift Manager.

Respondents.

STIPULATION OF SETTLEMENT

The New Jersey Division of Gaming Enforcement ("Division") and Resorts International Hotel, Inc. ("Resorts") and the above named individual Respondents, being desirous of amicably settling the questions at issue in the above matter hereby say:

WHEREAS, the Division has filed a Complaint against Resorts and the individually named Respondents in the above captioned matter alleging that certain credit practices were violative of the New Jersey Casino Control Act and Regulations ("Act"); and,

WHEREAS, Resorts and the various individually named Respondents have filed an Answer denying that the activities alleged by the Division constitute a violation of the Act or Regulation; and

WHEREAS, the parties do not materially dispute the facts as set forth in the Complaint and Answer; and,

WHEREAS, the Regulations adopted pursuant to the Act have been amended to directly address some of the practices which form the basis of the Complaint; and,

WHEREAS, Resorts adknowledges that its pre-existing credit practices and policies were insufficient to prevent its being defrauded by or of its casino patrons; and,

WHEREAS, Resorts has recognized the necessity of strengthening its controls over casino credit; and,

WHEREAS, Resorts has instituted practices and procedures that address the allegations contained in the Complaint and which reasonably assure that extensions of credit of the magnitude alleged in the Complaint will be more closely monitored; and,

WHEREAS, the individually named Respondents employed by Resorts have been advised of the above practices and procedures and acknowledge their existence; and,

WHEREAS, the Division acknowledges that there was no criminal or civil intent on the part of Resorts or the various individually named Respondents to violate the Act;

NOW THEREFORE, be it resolved that the Respondent, Resorts International Hotel, Inc. shall pay the sum of $75,000 to the New Jersey Casino Control Fund in full settlement of the allegations as set forth in the Complaint and that upon receipt of such payment, said Complaint shall be dismissed with prejudice as to all parties.

NEW JERSEY DIVISION OF GAMING ENFORCEMENT

Date: 9-7-82 BY: Richard J. Thomson
Deputy Attorney General

RESORTS INTERNATIONAL HOTEL, INC.; GARY D. THOMPSON; WILLIAM GALLION; GARY GRANT; RANDALL MIHELIC; MARIE SACCO; STEPHANIE KLEIN

Date: 9/7/82 BY: John M. Donnelly
JOHN M. DONNELLY

...RNS, HERBERT
...WEINROTH
...FESSIONAL CORPORATION
...UNSELLORS AT LAW

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket Number 79-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, vs. RESORTS INTERNATIONAL HOTEL, INC., WALTER I. ROGERS, Vice President; JAMES D. CARR, Casino Manager; COREY T. KLERK, Casino Controller; GARY D. THOMPSON, Casino Cage Manager; GARY GRANT, Credit Manager, Respondents.	EMERGENCY ORDER

This matter having been opened to the Casino Control Commission by way of the Complaint of the Division of Gaming Enforcement, and by way of the Division's application for an emergency order conditioning the operating certificate of Resorts International Hotel, Inc., and the Commission having at its meeting of October 3, 1979, delegated to the undersigned as Hearing Examiner in this matter the authority to hear said application and rule thereon, and a hearing upon said application having been held before the Hearing Examiner on October 8, 1979, Howard Barman, Deputy Attorney General appearing for the Charging Party, the Division of Gaming Enforcement [the Division], and Joel H. Sterns, Esq. appearing for the Respondents, Resorts International Hotel, Inc. [Resorts], et al. and the Hearing Examiner having heard a considered the arguments of counsel, and having read and considered the verified complaint and supporting documents filed therewith, the supporting affidavits submitted by the Division

at the hearing upon this application, and the briefs and affidav... submitted by Respondents, this Hearing Examiner hereby finds:

1. That the Division has presented prima facie proof of 809 violations of the Casino Control Commission's internal accounting control regulations pertaining to the issuance and processing of credit to casino patrons; and

2. That such proof indicates the strong probability of the existence of additional undiscovered violations of a similar nature; and

3. That, accordingly, the relief sought by the Divisior upon this application is necessary immediately to preserve the public policies declared by the Casino Control Act within the meaning of Section 109(a)(3) of the Act.

It is, therefore, hereby ORDERED pending final adjudication of Complaint No. 79-21, that the operation certificate of Resorts is limited and conditions as follows:

1. Effective immediately, Resorts shall not issue credit to any patron whose patron credit reference card is missing information of a personal history nature required by regulation until such patron is contacted and such information is supplied;

2. Effective immediately, Resorts shall not issue credit to any patron whose patron credit reference card has not been verified for credit from either a recognized credit bureau, the patron's bank or another legal casino until such verification is received and properly recorded on such card.

3. Effective immediately, Resorts shall not issue credit to any patron whose patron credit reference

card does not contain the initials of the person who verified the patron's credit background until such time as the patron's credit background is properly verified and initialed, except as follows:

(a) Patrons having at least three collected credit transactions may be issued credit providing that within 48 hours of such issuance either: (1) a Resorts' employee is able to identify the credit verification as one performed by him and so indicates in writing in a log established for that purpose, or (2) the patron's credit references are reverified and recorded on such log.

4. Effective immediately, Resorts shall not issue credit to any patron whose credit limit was at any time authorized or extended by anyone other than the credit manager, casino manager, assistant casino manager or casino shift manager until such time as the credit limit is evaluated by one of the aforementioned persons in accordance with pertinent regulations, which person shall indicate such approval and initial the same upon the card in his own hand;

5. Effective immediately, Resorts shall not issue credit to any patron whose patron credit reference card indicates that the credit now outstanding exceeds the properly approved credit limit. In determining whether a credit limit has been exceeded, all yet undeposited checks received in payment of a counter check or checks shall be included as credits;

6. Effective immediately, Resorts shall not issue credit to any patron described in the preceding paragraph (5) above until such time as the balance of outstanding

credit has been reduced below the properly approved limit. Under no circumstances shall a patron's credit limit be increased to accommodate a prior extension of credit in excess of the properly approved limit;

7. Effective immediately, Resorts shall not issue credit to any patron whose patron credit reference card contains any required notation which is not recorded in ink or other permanent form, except that where the non-permanent notation is the credit limit indication, such credit may be issued provided that such credit limit is reapproved immediately by a person authorized to do so who shall also draw a line through the non-permanent notation, record the approved credit limit in permanent form and initial and date such new credit limit recordation; and, it is further

ORDERED that Resorts shall engage Price Waterhouse & Company to perform the following:

1. A physical inventory of all counter checks and personal checks whether received in redemption, consolidation or otherwise, contained in the current inventory of the marker bank, the main bank or by the Collection Manager or held in any other location. All such checks are to be reviewed for completeness and authenticity in compliance with N.J.A.C. 19:45-1.24. An accounting of any such checks not in complete compliance with N.J.A.C. 19:45-1.24 shall be made and delivered to the Commission and the Division no later than 5:00 p.m. on October 19, 1979. Any correction made on any such check shall be noted in said accounting together with the name of the person who made such correction;

2. A physical inventory of all counter checks and personal checks whether received in redemption, consolidation, or otherwise, contained in the current inventory of the marker bank, the main bank or any other location for the purpose of reviewing compliance with N.J.A.C. 19:45-1.27. An accounting of any such checks not deposited in compliance with N.J.A.C. 19:45-1.27 shall be made and delivered to the Commission and the Division no later than 5:00 p.m. on October 19, 1979;

3. An audit to determine whether the inventory of counter checks, and personal checks, whether received in redemption, consolidation or otherwise, reconciles with the continuous trial balance of outstanding personal and counter checks. An accounting of any discrepancies shall be made and delivered to the Commission and the Division no later than 5:00 p.m. on October 19, 1979;

4. An audit to determine whether the inventory of personal and counter checks received in redemption reconciles with the log of checks received in redemption by the licensee as required by N.J.A.C. 19:45-1.26. An accounting of any discrepancie shall be made and delivered to the Commission and the Division no later than 5:00 p.m. on October 19, 1979;

5. An audit to determine whether the inventory of personal and counter checks agrees in total with the balance of Resorts' patron credit reference cards. An accounting of any discrepancies shall be made and delivered to the Commission and the Division no later than 5:00 p.m. on October 19, 1979;

6. A preliminary listing of all outstanding personal and counter checks by individual patron, including an indication of all checks held in violation of depository requirements or which are post-dated or undated, as well as an indication of those patrons whose undeposited checks exceed the properly approved credit limit, shall be made and delivered to the Commission and the Division no later than 5:00 p.m. on October 15, 1979; and, it is further

ORDERED that Resorts shall submit to the Commission staff for review and approval a list of Resorts employees who will perform an audit and accounting, as specified in paragraph A. (1)(j) of the Complaint, of all patron credit reference cards, which list shall include no employees with incompatible functions, together with a detailed written audit program including a description of the training to be given to those conducting the audit, no later than 5:00 p.m. on Tuesday, October 9, 1979; and is it further

ORDERED that Resorts shall submit to the Commission staff for review and approval a written plan for the correction of errors or deviations from regulatory requirements noted during the audit of patron credit reference cards , a written plan for the depositing of checks for the purpose of reducing outstanding credit where the properly approved credit limit has been exceeded, for depositing those checks which exceed depository requirements, for depositing those checks which are not dated or are post-dated, and for the deposit of those checks which in any other way do not comply with the requirements of N.J.A.C. 19:45-1.1, et seq., no later than 5:00 p.m. on October 15, 1979; and it is further

ORDERED that Resorts shall submit to the Commission staff for review and approval a detailed plan for the classroom instruction of all relevant employees concerning their duties and requirements under internal accounting control regulations and Resorts' own internal control procedures relating to the credit system. The employees to be instructed shall include, without limitation, the following: cage cashiers, pit clerks, managers, including cage, credit, casino, accounting and any other managers having duties related to credit, dealers, box-persons, floorpersons and accounting department personnel, no later than 5:00 p.m. on October 19, 1979; and it is further

ORDERED that Resorts shall submit to the Commission staff for review and approval a written detailed plan for a system of review by the Casino Controller of all signature cards for completeness and authenticity and for the updating of such cards to reflect additions, deletions and changes in job status pursuant to N.J.A.C. 19:45-1.44(b), no later than 5:00 p.m. on October 15, 1979; and it is further

ORDERED that Resorts shall submit to the Commission staff for review and approval a written detailed plan for the comparison of all personal and counter checks received for any purpose and deposited in the licensee's bank account as reflected on the log maintained by the cashier's cage, with the bank's records of checks received, in accordance with N.J.A.C. 19:45-1.26, no later than 5:00 p.m. on October 15, 1979; and it is further

ORDERED that Resorts shall conduct a complete accounting for all payment, accounting, cage payment and issuance

copies of all counter checks issued to date. Resorts shall submit an accounting of all missing counter check copies, together with the results of investigation of all such missing copies, to the Commission and the Division, no later than 5:00 p.m. on November 12, 1979; and it is further

ORDERED that Resorts shall immediately cause all signature cards to be securely stored in the accounting department that Resorts immediately and at all times have personnel available who are able to operate the information storage equipment; and that all counter checks and name credits issued to the casino cage be maintained in sequential order and controlled and accounted for in accordance with pertinent regulations; and it is further

ORDERED that Resorts shall submit to the Commission staff for review and approval a table of organization for the internal control of casino credit in accordance with N.J.S.A. 5:12-99(a)(3) no later than 5:00 p.m. on October 15, 1979; and, it is further

ORDERED that Resorts shall immediately take all steps necessary to insure that the issuance of counter checks at the casino cashier's cage be limited to consolidations in accordance with pertinent regulations and that counter checks issued or payments received as part of consolidations or partial redemptions be issued, controlled and accounted for in accordance with pertinent regulations; and it is further

ORDERED that copies of this Order be served upon the

Respondents and the Division forthwith.

THE NEW JERSEY CASINO CONTROL COMMISSION

by: Prospero A. DeBona / A.A.
COMMISSIONER PROSPERO DEBONA
HEARING EXAMINER

dated: October 9, 1979

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-181

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	FINAL ORDER
v.	
RESORTS INTERNATIONAL HOTEL, INC.	
Respondent.	

This matter having been opened to the Casino Control Commission upon the filing of a Stipulation of Settlement with the Commission on August 11, 1983, whereby Resorts International, Inc. admits to the possession, sale, offer for sale, furnishing or giving away of any alcoholic beverage adulterated with a foreign substance contrary to N.J.A.C. 13:2-23.9 and N.J.S.A. 5:12-103(d) and agrees to pay the sum of $3,750 in full settlement of the Complaint of the Division of Gaming Enforcement (Docket No. 82-181) filed on November 19, 1982; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of September 7, 1983, to adopt the Stipulation of Settlement and assess a civil penalty upon Resorts International Hotel, Inc. in the amount of $3,750 for violations of the aforestated statutory and regulatory provisions,

IT IS on this 30th day of September 1983, ORDERED that the Stipulation of Settlement be and hereby is approved by the Casino Control Commission; and

IT IS FURTHER ORDERED that Resorts International Hotel, Inc., pay a civil penalty in the amount of $3,750 as provided in the Stipulation of Settlement which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 30, 1983

FILED
NEW JERSEY
DEC 21 1983
CASINO CONTROL COMMISSION

STERNS, HERBERT & WEINROTH
A PROFESSIONAL CORPORATION
186 WEST STATE STREET
P. O. BOX 1298
TRENTON, NEW JERSEY 08607
(609) 392-2100

Attorneys for Respondent

BEFORE THE CASINO CONTROL COMMISSION
DOCKET NO. 82-181

STATE OF NEW JERSEY, Petitioner, vs. RESORTS INTERNATIONAL HOTEL, INC., Respondent.	Civil Action STIPULATION OF SETTLEMENT

WHEREAS, the New Jersey Division of Gaming Enforcement has caused a Complaint to be filed in the above-captioned matter; and

WHEREAS the Complaint charges that in August and September of 1982 the Division tested 604 bottles of alcoholic beverages contained in one of Resorts International Hote, Inc.'s (Resorts) banquet carts; and

WHEREAS the Division contends, and Resorts admits that

of the 604 bottles of banquet alcoholic beverages tested, 75 were "found to contain adulterated material in the nature of dead fruit flies"; and

WHEREAS the Division has consulted with the New Jersey Department of Alcoholic Beverage Control and concluded that an appropriate administrative sanction in the above-captioned matter is a sanction in the amount of $50.00 per alleged adulterated bottle; and

WHEREAS the parties are desirous of amicably settling this litigation without the necessity for a full hearing; and

WHEREAS the problem raised by the Division's Complaint has been addressed by the purchase and implementation of capped "speed pours" on banquet beverage storage bottles;

NOW THEREFORE, be it resolved that Resorts agrees to pay the sum of $3,750.00 to the Casino Control Fund in full settlement of the above-captioned Complaint and, upon the payment of such sum, the matter shall be deemed fully adjudicated and resolved.

IRWIN I. KIMMELMAN, ESQ.
Attorney General of New Jersey
Attorneys for Division of Gaming Enforcement

Dated: 6/10/83

By: _____
Fredric E. Gushin
Deputy Attorney General

STERNS, HERBERT & WEINROTH, P.A.
Attorneys for Resorts International Hotel, Inc.

Dated: 6/9/83

By: _____
Mark D. Schorr

FILED
NEW JERSEY
NOV 19 1982
CASINO CONTROL COMMISSION

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for the State of New Jersey
25 Market Street
CN-047
Trenton, New Jersey 08625

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 82-181

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

Plaintiff, :

vs. :

Resorts International Inc. Hotel Casino :

Respondent. :

Plaintiff, State of New Jersey, acting by and through its Division of Gaming Enforcement, having its principal office at 25 Market Street in the City of Trenton, County of Mercer of New Jersey says:

COUNT I

1. Plaintiff, by and through its Division of Gaming Enforcement, now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1, et seq. (hereinafter

called "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter called "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, Resorts International Inc., (hereinafter called "Resorts") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at North Carolina Avenue and the Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. Resorts is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to Resorts effective on February 26, 1979, and renewed on February 26, 1980 and February 26, 1981. Resorts has been conducting casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

4. Resorts is the holder of, and operates pursuant to, a Certificate of Operation effective May 28, 1978, at which time Resorts was the holder of a temporary casino permit. Said certificate of operation entitles Resorts to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1, et seq. and the regulations promulgated hereunder.

5. Resorts is permitted to serve patrons of its casino hotel alcoholic beverages pursuant to its casino hotel alcoholic beverage licenses.

6. On or about August 30, 1982, Division investigators tested ten bottles of alcoholic beverages for adulterated material. Of the ten bottles tested, three contained foreign matter determined to be fruit flies.

7. At the time, Resorts personnel assured the Division that action would be taken to immediately correct this situation.

8. Three days later, Division investigators returned to Resorts to determine if corrective action had, in fact, been taken. Of 594 bottles of alcoholic beverages tested, 72 were found to contain adulterated material in the nature of dead fruit flies.

9. Resorts intended to either sell or give away this liquor at future banquets and affairs which frequently take place at the facility. Some of the bottles which contained dead fruit flies were partially used and were stored on a beverage cart with their original bottle caps removed and replaced with direct speed pour devices for use that day.

10. N.J.A.C. 13:2-29.3 promulgated by the Alcoholic Beverage Commission prohibits the possession, sale, give away, offer for sale of any alcoholic beverages adulterated with any foreign substances.

11. N.J.S.A. 5:12-103(c) specifically incorporates by reference the provisions of Title 33 of the Revised Statutes of

the rules, regulations and bulletin promulgated by the Director of the Division of Alcoholic Beverage Control.

12. The incidents mentioned in paragraphs 6 through 9 violate N.J.A.C. 13:2-23.9 and N.J.S.A. 5:12-103(c).

WHEREFORE, Plaintiff demands judgment that Respondent has violated N.J.A.C. 13:2-23.9 and N.J.S.A. 5:12-103(c).

WHEREFORE, Plaintiff demands judgment imposing an appropriate fine or suspension of appropriate alcoholic beverage licenses upon Resorts for said violation.

WHEREFORE, Plaintiff demands that the Commission take appropriate action to prevent these events from occurring in the future.

WHEREFORE, Plaintiff demands any other relief which the Commission in its judgment may deem appropriate.

Respectfully submitted

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for State of New Jersey

By _____
Fredric E. Gushin
Deputy Attorney General

DATED: November 17, 1982

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-5

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	FINAL ORDER
v.	
RESORTS INTERNATIONAL HOTEL, INC.	
Respondent.	

This matter having been brought before the New Jersey Casino Control Commission upon the filing of a Complaint by the Division of Gaming Enforcement with the Commission on January 10, 1983, against Resorts International Hotel, Inc. ("Resorts") alleging violations of N.J.S.A. 5:12-96(e), N.J.A.C. 19:45-1.2(d) and N.J.A.C. 19:45-1.5(c)(3), concerning movement of certain books, records and documents from the casino hotel building to an off-site warehouse; and a prehearing conference having been held on March 7, 1983, before E. Kenneth Burdge, Hearing Commissioner, and the parties having agreed to stipulate to all factual issues except one limited issue, specifically whether Resorts moved the documents in the good faith belief that the move was not in violation of the Act or regulations promulgated pursuant thereto; and Commissioner Burdge having conducted a hearing on April 22, 1983, on this limited issue; and Commissioner Burdge

having issued an Initial Decision on July 11, 1983, incorporating the stipulation of facts entered into by the parties, and finding that Resorts officials did not act in good faith in moving the documents but were of the opinion that their actions were not violative of the aforementioned statutes or regulations; and Resorts having filed exceptions to the Initial Decision on July 25, 1983, to which the Division of Gaming Enforcement responded by letter dated August 9, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of September 21, 1983 to: (1) affirm and adopt the Initial Decision; (2) find that Resorts has violated N.J.S.A. 5:12-96(e), N.J.A.C. 19:45-1.2(d) and N.J.A.C. 19:45-1.5(c)(3); (3) order Resorts to present within thirty (30) days of the date of this order a plan and time schedule whereby it will bring itself into compliance with the aforementioned statutes and regulations; and (4) assess a civil penalty upon Resorts in the amount of $10,000,

IT IS ON this 6th day of October 1983, ORDERED that the Initial Decision of Commissioner E. Kenneth Burdge be and hereby is affirmed and adopted, and

IT IS FURTHER ORDERED that Resorts pay a civil penalty in the amount of $10,000 based upon the Commission's finding that Resorts violated N.J.S.A. 5:12-96(e), N.J.A.C. 19:45-1.2(d) and N.J.A.C. 19:45-1.5(c)(3), which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control, and based further upon the reasons stated in the Opinion of the Casino Control Commission which is attached hereto and incorporated herein by reference, and

IT IS FURTHER ORDERED that within thirty (30) days of the date of this order Resorts International Hotel, Inc. present a plan and time schedule whereby it will bring itself into compliance with N.J.S.A. 5:12-96(e), N.J.A.C. 19:45-1.2(d) and N.J.A.C. 19:45-1.5(c)(3), and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATE: OCTOBER 6, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 83-5

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

Complainant,

v.

RESORTS INTERNATIONAL HOTEL, INC.,

Respondent.

OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

Walter N. Read, Chairman
Carl Zeitz, Vice Chairman
Joel R. Jacobson, Commissioner
E. Kenneth Burdge, Commissioner
Don M. Thomas, Commissioner

APPEARANCES:

For the Division of Gaming Enforcement:

Kevin F. O'Toole, Deputy Attorney General

For Resorts International Hotel, Inc.:

John M. Donnelly, Esquire

For the Casino Control Commission:

Dennis Daly, Senior Assistant Counsel
Carol A. Welsch, Assistant Counsel

PROCEDURAL HISTORY

This matter arises from a complaint filed by the Division of Gaming Enforcement (DGE) with the Commission against Resorts International Hotel, Inc. (Resorts) on January 10, 1983. That

complaint charged Resorts with a violation of Section 96(e) of the Casino Control Act (Act), N.J.S.A. 5:12-96(e), and the pertinent regulations, N.J.A.C. 19:45-1.2(d) and N.J.A.C. 19:45-1.5(c)(3), as a result of Resorts' movement of certain records from the casino hotel building to an off-site warehouse.

A prehearing conference was held before Commissioner E. Kenneth Burdge. At the conference, the parties agreed to stipulate to all factual issues except one: whether Resorts moved the documents in a good faith belief that the move was not a violation of the Act. It was decided that a hearing would be conducted on this one narrow factual issue. The parties agreed that the entire Commission would hear the legal issues raised by the petition. These issues are now before the Commission.

On April 22,1983, Commissioner Burdge conducted the limited hearing on the "good faith" issue. On July 11, 1983, he issued an initial decision, in which he noted that, pursuant to Section 130(g)[1] of the Act, a decision on the good faith of Resorts could "only go to the degree of the penalty imposed by the Commission, and not to a finding of a violation itself." N.J.S.A. 5:12-130(g).

---

1 Section 130(g) states:

> It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself.

After examining all the evidence, Commissioner Burdge found that Resorts' officials did not act in good faith in moving the documents primarily because the officials failed to seek advice either from their own attorneys or from the Commission and DGE before taking action that was of at least questionable propriety given the statutory and regulatory provisions at issue. Commissioner Burdge further found that the Resorts' officials involved were not, in fact, aware that their actions in moving the documents from the casino hotel building were violative of the Act or Commission regulations. Commissioner Burdge concluded:

> Thus, if the Commission does find there was a violation, such violation was unknowing (see N.J.S.A. 130(g)) and the Commission may, in its discretion, consider the lack of knowledge as a mitigating factor in deciding a penalty. (Initial Decision at 8).

On July 25, 1983, Resorts filed a letter-memorandum of exceptions to the initial decision. The DGE responded to these exceptions by letter dated August 9, 1983.

FACTS

We hereby adopt the facts as recounted in the parties' stipulation of facts (attached) and Commissioner Burdge's initial decision. Nevertheless, in the interest of clarity, we will briefly recount the essential facts of this case. Sometime in 1980, Resorts began transferring boxes of documents and records from its casino hotel building to a warehouse at 611 Atlantic Avenue, Atlantic City. These transfers were made without the knowledge or consent of the Commission or the DGE. There are presently aproximately 5,500 boxes of Resorts' documents stored at 611 Atlantic Avenue.

Approximately 500 of these boxes of documents pertain to Resorts' predecessor companies. The DGE does not claim that movement of these documents is a violation of the Act or pertinent regulations and we agree. The other 5,000 boxes of documents relate to the business of Resorts Casino Hotel. Resorts states in its brief that no casino related documents have been moved. However, the records include documents pertaining to casino bus caravans and collection files, including write-offs or charge-offs, which relate to the operation of the casino and, thus may be considered casino records.

LEGAL ISSUES

Given the fact that the removed records relate both to the activities of the hotel and functioning of the casino, the question is whether, by statute or regulation, Resorts was obligated to maintain such records on the premises of the hotel casino facility. Section 96(e) of the Casino Control Act provides:

> It shall be an express condition of continued operation under this act that a casino licensee shall maintain all books, records, and documents pertaining to the licensee's operations on the licensed premises immediately available for inspection during all hours of operation. All such books, records, and documents shall be maintained for a period of not less than 7 years.

The Commission has also promulgated regulations concerning record retention, including N.J.A.C. 19:45-1.2(d) which states in relevant part:

> All accounting records shall be located on the premises of the establishment. The required retention period shall be not less than seven years, for all accounting records.

Resorts initially contended that Section 96(e) and Commission regulation N.J.A.C. 19:45-1.2(d) encompass only casino records not hotel records and that casino licensees are not required to maintain hotel records. However, at oral argument Resorts conceded that Section 96(e) covers both hotel and casino records. (T99-101). Thus, this issue need not be further addressed.

Does the phrase "licensed premises" as used in Section 96(e) refer to the casino hotel building?

A threshold question regarding the interpretation of 96(e) is what the phrase "licensed premises" means within the context of that section. Licensed premises is not defined by the Act. Upon consideration of the phrase in the context of Section 96(e) and in the framework of the Act as a whole, we conclude that "licensed premises" means the casino hotel building itself which includes a casino room, sleeping units, meeting and exhibition space and indoor public space. See, N.J.S.A. 5:12-27 which defines hotel or approved hotel.

It is well established that when the Legislature chooses not to define a term employed in a statute, it may be assumed that the term was intended to have its ordinary meaning and that it is not being employed as a term of art. In re Matter of Grand Jury Subpoena of Fawn Vrazo, 176 N.J. Super. 455 (Law Div. 1980). Within the context of the Casino Control Act the

ordinary meaning of the phrase "licensed premises" is that it refers to the casino hotel building. It is also well established that all parts of a statute should be read together and interpreted harmoniously, Cabarale v. Governing Body of Pemberton Township, 167 N.J. Super. 129 (Law Div. 1979), aff'd 171 N.J. Super. 586 (App. Div. 1980), and that, if a phrase appears more than once in a statute, the same meaning should be attached to it. In re Matter of Petiton of Byron, 165 N.J. Super. 468 (Law Div. 1978).

There are a number of places in the Act where the phrase "licensed premises" is used to refer to the casino hotel building. For example, the context in which the phrase is used in Section 98 is strikingly similar to that of Section 96(e). Section 98, entitled "Casino Facility Requirements," states in subsection (b)(1):

> Each casino licensee shall:
>
> (1) Install a closed circuit television system according to specifications approved by the commission, and provide access on the licensed premises to the system or its signal by the commission or the division, in accordance with regulations pertaining thereto (emphasis added).

In drafting Section 98(b)(1) the Legislature used the phrase "on the licensed premises" in describing where access should be provided to a casino licensee's closed circuit television system. Similarly, the Legislature used the same phrase in reference to record storage requirements in Section 96(e).

In both situations the Legislature is referring to the approved casino hotel facility although it does not use the statutorily defined term "approved hotel."[2]

A further example is provided by Section 144 which concerns the requirement that a casino licensee invest not less than 2% of its gross revenues in land and real property within Atlantic City or the State of New Jersey. Section 144(e) requires in relevant part:

> In the event of the sale or other disposition of the licensed premises, any investment obligation imposed by subsection b which is not satisfied shall be immediately deemed due and payable as investment alternative tax (emphasis added).

The meaning of licensed premises in this context is clearly the casino hotel building. The Legislature was seeking to assure that the investment obligation would not be avoided by the sale of the casino hotel building.

Section 71 of the Act, which requires the exclusion from the casinos of certain persons, also uses language similar to that used in Section 96(e). Section 71(c) allows the

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2 N.J.S.A. 5:12-27, in relevant part, defines approved hotel as:

> A single building located within the limits of the city of Atlantic City as said limits were defined as of November 2, 1976, and containing not fewer than 500 sleeping units, each of at least 325 square feet measured to the center of perimeter walls, including bathroom and closet space and excluding hallways, balconies and lounges; each containing private bathroom facilities; and each held available and used regularly for the lodging of tourists and convention guests and conforming in all respects to the facilities requirements contained in this act.

Commission to impose sanctions upon a casino if it:

> ...knowingly fails to exclude or eject from the premises of any licensed casino any person placed by the commission on the list of persons to be excluded or ejected (emphasis added).

Because the Legislature uses the phrase "licensed premises" or phrases very similar to it in Sections 98, 144 and 71 to refer to the casino hotel building, well-settled principles of statutory construction lead us to conclude that the language in 96(e) should be interpreted similarly. To interpret it in any other way would be to acknowledge the existence of other forms of "licensed premises" which are nowhere else discussed in the Act. Such an interpretation would leave the Commission with no guidance as to the characteristics which such "premises" should possess nor criteria for evaluating the suitability thereof. In a statute as comprehensive as the Act, the Legislature would hardly create a class of licensed facilities in such a cavalier manner.

Does Section 96(e) require books, documents and records to be stored on the premises of the casino hotel?

Resorts argues that Section 96(e) of the Act does not require books, records and documents to be stored on the licensed premises. Rather, Resorts claims the language in question merely identifies the type of books, records and documents which must be maintained. Thus, the modifying phrase "on the licensed premises" would not, in Resorts' view, specify where the materials are to be stored, but rather that the only materials that must be so maintained are those "pertaining to the licensee's operations on the licensed premises." Resorts states:

> Plainly, the phrase 'on the licensed premises' does not modify 'books, records and documents', rather that phrase modifies, 'licensee's operations' and, therefore, only records of operations on the licensed premises, as opposed to operations which may take place on premises which are not licensed are required to be retained for inspection.

In support of this interpretation Resorts cites the rule of statutory construction that qualifying words refer solely to the immediately preceding word or phrase.[3] Resorts asserts that if the Legislature intended otherwise it would have inserted a comma after the word "operations" in the statute.

Although Resorts has correctly stated the general rule, the rule of last antecedent is only an aid in discovering the intent of the Legislature and not an inflexible or uniformly binding rule. It is only applicable where no contrary legislative intention appears. State v. Congdon, 76 N.J. Super. 493, 502 (App. Div. 1962); Raybestos Manhattan, Inc. v. Glaser, 144 N.J. Super. 152, 168 (Ch. Div. 1976). An example of the flexibility of the rule is provided in a widely respected treatise on statutory construction. "Where the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the word or phrase will not be restricted to its immediate antecedent." 2A Sutherland, Statutory Construction §47.33 (4th Ed. 1973).

Other principles of statutory construction strongly suggest that the Legislature intended all books, records and documents to be maintained on the licensed premises and that Resorts' interpretation of the section is incorrect. Resorts claims that "on the licensed premises" modifies "licensee's operations."

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[3] For convenient reference, this opinion will refer to this rule as the rule of last antecedent.

However, "licensee's operations" does not require any further modification. The casino licensee can only operate its casino hotel within the confines of the casino hotel building. The Commission does not directly regulate any businesses which the licensee may own other than the casino hotel.[4] Thus, the modification of "licensee's operations" by "on the licensed premises" is unnecessary and under Resorts' interpretation the phrase "on the licensed premises" would be surplusage. Yet another of the basic rules of statutory construction is that a statute should not be interpreted in a way which makes certain words superfluous. U.S. v. Johnson, 462 F.2d 423 (3 Cir. 1972), cert. denied 410 U.S. 937 (1972); Foy v. Dayko, 82 N.J. Super 8 (App. Div. 1964). Resorts' proposed interpretation of Section 96(e) would make the phrase "on the licensed premises" superfluous; therefore, this interpretation should be avoided.

Moreover, Section 96(e) mandates that the books, records and documents be available during the hours of operation. The subsequent section, Section 97, defines the hours of operation as the hours during which the casino room may be open for gaming, 10 a.m. to 6 a.m. on weekends and holidays and 10 a.m. to 4 a.m. on all other days. The requirement that the books, records and documents be available during these rather peculiar hours suggests that the Legislature envisioned that the

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4 The Commission is not confined to regulate only activities physically taking place on the licensed premises, but it would actively regulate only business which pertains to such activities. Indeed, under Resorts' interpretation, the licensee would be under no obligation to retain records of actions occurring physically outside the facility no matter how critical they may be to the licensee's operations. The Legislature certainly would not have intended such an artificial restriction in the highly regulated casino gaming context.

documents would be stored in the same building as the casino. This is further evidence that the Legislature intended all books, records and documents to be maintained on the licensed premises.

Finally, an examination of the legislative history of Section 96(e) provides no definitive answer, but as a whole the legislative history supports the position that all books, records and documents must be maintained on the licensed premises. Before the passage of the Casino Control Act, the State Commission of Investigation (SCI) issued a report making recommendations as to the draft of the Act that was then before the Legislature. (See, State Commission of Investigations' Report & Recommendation on Casino Gambling (SCI Report)). Following receipt of the SCI report, the Senate Judiciary Committee proposed an amendment to Section 96 to include the present subsection (e).

The SCI report devoted a whole section to the need for regulatory control over casino hotel record storage. The SCI emphasized that it is important for the State regulatory agencies to have immediate access to all books and records (SCI Report, supra at 9-F). The SCI stated that problems in locating documents tends to "defeat the immediate access to books and records that all authorities agree is necessary to conduct unannounced spot audits of casino and casino related activities." (Ibid.) As a solution to these problems the SCI

advocated "that the licensee's books and records be required to be maintained in New Jersey at a location (or more than one location if the regulatory body is satisfied that a good reason exists for splitting up the books) designated by the licensee in writing." (emphasis original). Ibid.

It is obvious that the Legislature did not adopt the SCI's recommendation in total. Resorts asserts that the Legislature, in requiring all documents to be "immediately available," addressed the SCI's concerns. This is a tenable interpretation. However, a closer reading of the SCI Report reveals that the report was concerned about where the documents would be kept (a designated place in New Jersey) as well as how they would be kept (immediately available). The SCI also preferred that all records be kept in one place. An on-site storage requirement provides a definite location for the casino hotel records and insures that all records will be kept in one place. Reading Section 96(e) as Resorts does, there is no indication as to the place of the records, only as to how the records should be kept, that is "...immediately available for inspection." Whereas reading the Section the alternative way, the place the records should be stored (on the premises) is clearly indicated. This is the preferable reading of the statute, because it indicates a location for the records and answers the concerns of the SCI report.

There is no doubt that Section 96(e) of the Act could have been more artfully drafted. The adverbial phrase "on the licensed premises" would have been more appropriately placed immediately after the verb it modifies: "shall maintain." The ultimate goal of the interpreter of a statute is to discover

the intent of the legislature. Sometimes, as here, the application of an intrinsic aid to construction leads to a result contrary to the intent. In such cases the intent of the Legislature cannot be ignored. As our Supreme Court stated in Jersey City Chapter Prop. Owner's etc. Assoc. v. City Council, 55 N.J. 86, 100-01 (1969): "[w]hen all is said and done, the matter of statutory construction here will not justly turn on literalisms, technisms or the so-called formal rules of interpretation; it will justly turn on the breadth of the objectives of the legislation and the commonsense of the situation."

An examination of the language of Section 96(e) within the context of the whole statute and the legislative history leads us to conclude that Section 96(e) does require that all books, records and documents pertaining to the licensee's operations be maintained on the licensed premises.

For all the above reasons, the Commission rejects Resorts' proposed interpretation of Section 96(e) and finds that Resorts violated both the Act and the regulations by moving the documents in question to a facility other than the licensed premises.[5]

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5 As noted above, the Commission regulations plainly require all accounting records to be "located on the premises of the establishment." N.J.A.C. 19:45-1.2 (d). There cannot be, and there is not, any argument that Resorts complied with this obligation when it moved the records to the warehouse. Thus, the finding of a violation against Resorts may be sustained on the basis of the regulation alone and we so hold as an alternative, independent ground of our decision.

REMEDY

Currently, Resorts is storing 5,000 boxes of documents in its off-site warehouse.[6] The Commission cannot condone a continuing violation of the Act and the regulations. Thus, Resorts must return these documents to the casino hotel building or otherwise bring itself into compliance with the law.

N.J.A.C. 19:45-1.2(d) allows the movement off-site of documents which have been microfilmed:

> All accounting records shall be located on the premises of the establishment. The required retention period shall be not less than seven years, for all accounting records. Such records may be stored, immediately after preparation of the documents, on microfilm or microfiche or other suitable method approved by the Commission. With Commission approval, all original accounting records and documents recorded on microfilm, microfiche or other suitable method may be stored in a secured location off the premises of the establishment. A microfilm, microfiche or other suitable system may be approved or disapproved by the Chairman unless any Commissioner indicates the system should be considered by the entire Commission in which case such system shall be so considered.

On March 28, 1983, the Commission approved the use of the 611 Atlantic Avenue warehouse for the storage of previously microfilmed documents. On that date the Commission also approved the Resorts' microfilm system.

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6 An additional 500 boxes of documents pertaining to Resort's predecessor companies are now stored at the off-site warehouse. These are not covered by the Act or regulation and do not need to be moved back to the casino hotel.

Within 30 days, Resorts shall submit to the Commission a plan and time schedule for bringing itself into compliance with Section 96(e) and the pertinent regulations; this plan shall be subject to approval by the Commission.

Under the cited regulation, the present violation could be remedied by microfilming the 5,000 boxes of documents and placing the microfilmed copies in the casino hotel building, leaving the originals in the 611 Atlantic Avenue warehouse.

SANCTIONS

Section 130 of the Act lists the factors the Commission should take into consideration when deciding a penalty:

> a. The risk to the public and to the integrity of gaming operations created by the conduct of tne licensee or registrant;
>
> b. The seriousness of the conduct of the licensee or registrant; and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;
>
> c. Any justification or excuse for such conduct by the licensee or registrant;
>
> d. The prior history of the particular licensee or registrant involved with respect to gaming activity;
>
> e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
>
> f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.
>
> g. It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of the violation itself.

The seriousness of Resorts' conduct can hardly be overestimated. The removal of these records from the licensed premises without prior notice or approval of the Commission was egregious conduct which flaunted the strict regulatory process attendant to the casino industry. The proper maintenance of records is essential to the State's ability to monitor the operations of casino hotel facilities.

There is evidence in the record that Resorts has maintained the documents moved off-site in a reasonably safe facility with an indexing system and, most significantly, that the records were maintained in a legible form. Moreover, although Resorts' officials knew that moving the documents might present problems under N.J.A.C. 19:45-1.2(d), after an examination of that regulation the responsible officials concluded that the move was permissible. While a licensee's obligation to proceed cautiously in this highly regulated business must be underscored, we are also influenced by the lack of any malice in this regard. (See, N.J.S.A. 5:12-130(b) and (g) and the initial decision). However, the failure of Resorts to obtain Commission approval is in itself serious. Without Commission oversight of the record storage system, the documents might have been unavailable for Commission or Division audits through an inadequate indexing system, or the documents themselves might have been damaged or destroyed.

Considering all of these factors, as well as Commissioner Burdge's initial decision, the Commission assesses Resorts a civil penalty of $10,000. We note that this penalty might have been much more severe had the documents in question been

unavailable for Commission or Division audits or had they been damaged or destroyed.[7]

CONCLUSION

Commissioner Burdge's initial decision on the issue of good faith is supported by substantial credible evidence in the record as a whole and the Commission affirms and adopts this decision. Also, the Commission orders Resorts to present to the Commission within 30 days a plan and time schedule to bring itself back into compliance with Section 96(e) of the Act and the pertinent regulations. Finally, the Commission assesses Resorts a civil penalty of $10,000. An appropriate order consistent with this opinion shall be entered forthwith.

Walter N. Read, Chairman

Carl Zeitz, Vice Chairman

Joel R. Jacobson, Commissioner

E. Kenneth Burdge, Commissioner

Don M. Thomas, Commissioner

DATE: Oct. 4, 1983

7 If a subsequent Commission or Division audit finds that the documents were not kept in good condition, then another complaint against Resorts for failure to maintain records may be appropriate.

State of New Jersey

CASINO CONTROL COMMISSION

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

Plaintiff,

vs.

RESORTS INTERNATIONAL HOTEL, INC.,

Respondent.

INITIAL DECISION
DOCKET NO. 83-5

APPEARANCES:

Kevin O'Toole, Esq., for the plaintiff, Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

John M. Donnelly, Esq., for the respondent, Resorts International Hotel, Inc. (Sterns, Herbert & Weinroth, attorneys)

Record Closed May 16, 1983, Decided June 27, 1983, BEFORE Commissioner E. Kenneth Burdge

STATEMENT OF THE CASE

The Division of Gaming Enforcement (DGE) has brought a complaint against Resorts International Hotel, Inc. (Resorts) for moving documents from the casino-hotel building to an off-site warehouse. At issue in the present proceeding is whether Resorts moved the documents knowing that such a move would be in violation of the Casino Control Act (Act) or whether the move was made in good faith.

PROCEDURAL HISTORY

On January 10, 1983 the DGE filed a complaint against Resorts charging a violation of the Act, specifically N.J.S.A. 5:12-96(e) and regulations enacted pursuant thereto, N.J.A.C. 19:45-1.1 through 19:45-1.46. On January 26, 1983, Resorts answered the complaint, denying that it had violated the Act or the pertinent regulations. Resorts also requested a hearing pursuant to N.J.S.A. 5:12-108(c) (1) and N.J.A.C. 19:42-6.3(1).

A prehearing conference was held on March 7, 1983, to discuss the type of proceeding appropriate to resolve the factual and legal issues raised by the complaint. At the prehearing conference the parties agreed to stipulate to all factual issues except one: whether Resorts moved the documents in the good faith belief that the move was not a violation of the Act. It was decided that a hearing would be conducted on this narrow factual issue. It was also decided that the legal issues raised by this complaint would be presented to the full Commission. This initial decision concerns only the "good faith" issue.

FINDINGS OF FACT

The parties have entered into a written stipulation of most of the material facts. A copy of this stipulation is attached and incorporated herein as if set forth in full. The matters contained in the stipulation are believable and thus are found as fact.

Additionally, testimony was adduced at the hearing, little of which was in any respect controverted. Robert Fiore, Senior Vice President of Finance for Resorts, testified that shortly after he was hired in October 1979 he inspected the record storage facility on the eleventh floor of the Resorts casino hotel building and found it to be disorganized and overcrowded. He further testified that it was in response to the disorganized storage room that he decided to move these documents to an off-site warehouse located at 611 Atlantic Avenue, Atlantic City. Before making his decision, Mr. Fiore said he read Commission regulation N.J.A.C. 19:45-1.1 et seq. which requires, among other things, that all accounting records be stored on the premises of the establishment. Mr. Fiore discussed the applicability of the regulations to the documents in question with Marvin Ashner, President and Chief Executive Officer of Resorts and Robert Gensamer, Assistant Corporate Controller. These three officials formed the opinion that the strictures of N.J.A.C. 19:45-1.1 et seq. did not apply to hotel related records. Mr. Fiore characterized all the documents in question as related to hotel operations, although he admitted that some documents could be characterized as either hotel or casino related.

Mr. Fiore testified that he did not seek the help of Resorts' attorneys or the Commission staff in interpreting the regulations.

Steven Hansen, Resorts' Records Retention Supervisor, testified that in July 1980, the documents stored on the 11th floor were moved to the 611 Atlantic Avenue warehouse under his supervision. This move was made without the prior knowledge or consent of the Casino Control Commission or the Division of Gaming Enforcement. Mr. Hansen further testified that the documents were organized at the warehouse and later a computer indexing system was instituted to help locate the documents.

On September 21, 1981, Resorts filed a petition with the Commission requesting approval of a microfilming system (see N.J.A.C. 19:45-1.2(d)) for the filming of documents which Resorts considered casino related. Resorts proposed to store the original documents in the 611 Atlantic Avenue warehouse, so approval of the facility was also sought.

Mr. Deno Marino, then manager of Operations and Financial Evaluation for the Casino Control Commission, had responsibility for the review of all microfilming procedures and off-site storage facilities. On December 22, 1981, Mr. Marino went to Atlantic City to meet with Resorts officials to discuss the September 21, 1981,

petition. While there he asked the Resorts officials if he could inspect the 611 Atlantic Avenue warehouse.

Mr. Marino testified that the Resorts officials did not express any reservations about his visit. Indeed, Steven Hansen and two other Resorts' employees accompanied Mr. Marino to the warehouse. Upon arriving at the warehouse Mr. Marino observed numerous boxes containing documents. These boxes were not hidden from view. Mr. Marino inquired as to the nature of the documents and Mr. Hansen told him that they were hotel records. Mr. Marino expressed the opinion that Resorts had a serious problem and that Mr. Hansen should consult with management.

Mr. Hansen immediately informed his superiors, including Robert Fiore, of Mr. Marino's concerns and Mr. Fiore contacted counsel for Resorts. Upon advice of counsel, in December 1981, Resorts moved certain documents back to the casino hotel complex. These documents concerned the cost of complimentary services to casino patrons.

Jan Gilbert, Manager of Administrative Services at the Sands Hotel Casino, was qualified at this hearing to testify as an expert on record retention. She stated that there are many advantages to storing inactive files off-site. Ms. Gilbert further testified that in her

opinion that Resorts had an excellent record retention system. Ms. Gilbert also stated that before Sands stored documents in an off-site warehouse, it requested and received Commission approval. Ms. Gilbert said that she did not rely on her own understanding of the record storage regulations but rather sought the advice of the Commission prior to moving the documents.

On March 28, 1983, the Casino Control Commission approved the 611 Atlantic Avenue warehouse as an appropriate facility in which to store the originals of documents which have been microfilmed.

CONCLUSIONS

Section 130(g) of the Act states:

> It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself.

Thus, a finding of good faith in this proceeding could serve only to mitigate the penalty which would be imposed upon Resorts; it will not excuse a violation.

The Casino Control Act and the Commission's regulations are complex and the casino industry will often

have questions as to their meaning.[1] It is clear that Mr. Fiore had some questions about whether N.J.A.C. 19:45-1.2 prohibited the movement of the documents to an off-site warehouse. He was concerned enough about the applicability of the regulations to consult with two other Resorts officials as to their meaning. The appropriate procedure, in the face of such concerns, is to petition the Commission for a declaratory ruling on the applicability of the relevant provisions of the Act and the regulations. See N.J.S.A. 52:148-8; N.J.A.C. 19:42-9. At a minimum, a casino official should consult with the casino's own attorneys who, in turn, should consult with the staff of the Commission or the DGE, before any action that could be violative of the Act or the regulations is taken. In this

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1. N.J.S.A. 5:12-96(e) states:

> It shall be an express condition of the continued operation under this act that a casino licensee shall maintain all books, records, and documents pertaining to the licensee's operations on the licensed premises immediately available for inspection during all hours of operation. All such books, records, and documents shall be maintained for a period of not less than 7 years.

The pertinent regulation, N.J.A.C. 19:45-1.2(d), provides in pertinent part:

> All accounting records shall be located on the premises of the establishment. The required retention period shall be not less than seven years, for all accounting records. Such records may be stored, immediately after preparation of the documents, on microfilm or microfiche or other suitable method approved by the Commission. With Commission approval, all original accounting records and documents recorded on microfilm, microfiche or other suitable method may be stored in a secured location off the premise of the establishment.

instance, the Resorts officials failed to seek advice from any of these sources. In view of this failure, I can not find that Resorts acted in good faith.

However, I do find that Resorts officials involved were of the opinion that their actions in moving the documents from the casino hotel premises were not violative of the Act or Commission regulations. Thus, if the Commission does find there was a violation, such violation was unknowing (see N.J.S.A. 130(g)) and the Commission may, in its discretion, consider this lack of knowledge as a mitigating factor in deciding a penalty.

E. Kenneth Burdge
Commissioner

Date: July 11, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-192
OAL DOCKET NO. CCC 00024-83
REGISTRATION NO. 02249-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	FINAL ORDER
NELSON REYES,	:	
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 27, 1983, recommending that the complaint, Docket No. 82-192, filed by the Division of Gaming Enforcement seeking revocation of the respondent's casino hotel employee registration be dismissed; and no exceptions or objections having been filed by either party; and the Commission having considered the entire record in this matter and having resolved at its public meeting of September 7, 1983, for good cause shown, to affirm and adopt the initial decision and dismiss the complaint against the respondent,

IT IS on this 18th day of October 1983, ORDERED that the initial decision filed by the Office of Administrative Law be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement be and hereby is 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 final order be served upon Nelson Reyes and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 18, 1983

FILED
NEW JERSEY
AUG - 2 1983
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 24-83

AGENCY DKT. NO. 82-192

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

v.

NELSON REYES,
Respondent

APPEARANCES:

Patricia Wild, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Nelson Reyes, Pro Se

Record Closed: July 8, 1983 Decided: July 26, 1983

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

The Division of Gaming Enforcement seeks an order from the Casino Control Commission revoking the respondent's casino hotel registration. The Division bases its request on the respondent's 1981 conviction for distribution of methamphetamine The respondent entered a plea to one count of a multi-count indictment which initially had charged him with conspiracy to distribute controlled dangerous substances and possession and distribution of CDS. The indictment charged the possession and distribution as having occurred on February 15 and 17, 1981. The respondent pled guilty to the third count of

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the indictment, which was the charge of distribution on February 15. The respondent was sentenced on December 7, 1981 to one year probation with a condition that he serve 45 days in the county jail. He was given credit for one day served and ordered to pay a $25 penalty to the Violent Crimes Compensation Board. A resentencing on December 14, 1981 amended the sentence to one year probation with a condition that the respondent serve 30 days in the county jail and be given credit for time served. In addition, he was ordered, as a special condition of probation, to perform 200 hours of community service. The penalty to the compensation board was also included in the new sentence.

Following the filing of the Division's complaint with the Commission, the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on May 3, 1983 and an order was entered on May 10, 1983. A hearing was held at the Northfield Municipal Court on July 8, 1983.

The Division's case consisted solely of the documentation of the indictment and the conviction. The respondent testified that at the time of his arrest he was one week from graduating from blackjack school. He was married on August 21, 1982 and has an option to buy a home. This option is to be exercised shortly. He has been working since October 4, 1982 at the Claridge Hotel-Casino as a Steward Shift Supervisor. In that position he is responsible for the supervision of approximately 40 employees who work in the restaurant and buffet areas. These employees are responsible for keeping the kitchens and restaurants organized and in working condition. They take care of the kitchen utilities, washing of dishes and floors and ceiling to floor maintenance.

The respondent presented letters from his supervisors at the Claridge. These documents speak of Reyes as "attentive to his responsibilities" and as having "contributed greatly to the smooth operations of the Food and Beverage department." Lawrence A. Weiss, Food and Beverage Manager, noted that Reyes had "always solved operational problems with a level head and has demonstrated maturity as a supervisor." John Stivala, Banquet Manager, noted that Reyes is a "conscientious worker" and is a "outstanding individual in his working capacity." Stivala states that the respondent is "reliable as well as attentive in anything asked of him." Barry J. Cregan, Director of Food and Beverage, noted that Reyes is "an excellent employee who has proven to be honest and of very strong character. He has also shown above average leadership qualities."

With respect to the criminal incident, Mr. Reyes testified that at the time he was 21 years old and was unemployed. He was very low on money. He became involved in the drug transaction as a way of obtaining some money. He was to have served as the middleman. He stated that the drugs belonged to both he and his co-defendant and that he had paid part of the money to obtain the drugs. According to the respondent the sale involved approximately one-eighth of an ounce of methamphetamines, worth not more than $200. The Division presented no factual evidence in connection with the circumstances surrounding the sale, the amount of drugs sold or any other pertinent information in support of the charge.

Mr. Reyes testified that he had paid for his mistake. In addition to the time he served in jail he did over 200 hours of community service and still occasionally goes to the ambulance service in Mullica where he did his service. He is now a resident of Tuckerton.

The respondent testified that he had previously worked at Playboy, but was only there for about one month and left because of poor management and because his supervisor had her family working in the facility and he saw no way of moving up.

Cases of this nature present significant difficulties. The respondent does not deny that he has been convicted of an enumerated disqualifying offense which, pursuant to N.J.S.A. 5:12-86(c), requires that he not be issued a registration. However, he argues that he has rehabilitated himself and that therefore, under the provisions of the Act, he should not suffer the adverse consequences of the enumerated disqualifying conviction. N.J.S.A. 5:12-96(d) and 91(e).

The great difficulty here is determining whether the period of time which has passed since the incident and the conviction for the enumerated disqualifying offense is sufficient to permit a finding of rehabilitation. It is clear that since his conviction Mr. Reyes has avoided any further difficulty with the law, has completed his probation, in addition to the time he served in the county jail, has rendered the public service required of him as part of the probation, and has found steady employment in a responsible position in the casino industry. In addition, although the documentation presented to support his character, honesty and integrity, as well as his claim of rehabilitation, was in the form of unsworn statements from his supervisors, I find them sufficiently reliable in content to conclude that he has performed his job in an above average manner which has impressed his employer and which bodes well for his future in the industry.

529.

If Mr. Reyes were employed in the casino operation itself I believe that the seriousness of his criminal incident would make it difficult to conclude that rehabilitation had been sufficiently proven after only a year and one-half since the sentencing and about two and one-quarter years since the incident. However, although Mr. Reyes' position is a responsible one, he is not a casino employee and his responsibilities have nothing to do with that extremely sensitive aspect of the industry. Therefore, it seems that where one holds a position on the level of that achieved by Mr. Reyes, the standard for determining the length of time that must pass before rehabilitation can be found is somewhat less strict than for a casino employee. Having taken into consideration the serious nature of the criminal conflict involved and having considered the nature of Mr. Reyes' position, his apparently successful adjustment to life since the criminal matter, and my impressions of the respondent in terms of his appearance and demeanor at the prehearing conference and the hearing itself, I am convinced that Mr. Reyes has rehabilitated himself and that he should not be stripped of his casino hotel registration. I believe that while the Commission certainly must be concerned about permitting someone with a record of distribution of a controlled dangerous substance to hold a registration, to remove the registration of one such as the respondent before me under the facts and circumstances of this case would be a disservice to the respondent, his employer and the industry in general which would outweigh the benefits to be obtained by holding Reyes up as an example and disallowing his employment as a hotel employee. While the court expresses no opinion as to how the respondent would fare had his criminal activity occurred after he received his license or registration from the Commission and entered employment in the industry, given all the facts herein, including that the criminal activity occurred before employment in the industry, I find that Reyes is rehabilitated. Therefore, the complaint seeking revocation is **DISMISSED.**

530.

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 26, 1983
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

July 27, 1983
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 29, 1983
DATE

Ronald L. Lakewood
OFFICE OF ADMINISTRATIVE LAW

ks

531.

EVIDENCE LIST

On behalf of petitioner:

P-1 Package of certified documents containing indictment 1557-80-N-4; Judgment of Conviction and Order for Commitment.

On behalf of respondent:

R-1 Letter of March 28, 1983 from Lawrence A. Weiss

R-2 Letter of March 28, 1983 from John Stivala

R-3 Letter of April 4, 1983 from Barry J. Cregan

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-52
OAL DOCKET NO. CCC 1024-83
LICENSE NO. 25473-21

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

Complainant,

v.

SAMUEL A. ROBB,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on July 5, 1983, recommending that the casino employee license held by Respondent be revoked for a period of five years; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on August 3, 1983, to modify the said Initial Decision and to revoke the casino employee license held by Respondent,

IT IS on this 12th day of September 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified by the Commission as follows:

1. That portion of the Initial Decision which Orders that the casino employee license held by Samuel A. Robb "...be revoked for a period of five years.." be rejected. While the Commission agrees that revocation of Mr. Robb's casino employee license is appropriate, it is not appropriate to revoke a license for any specified period of time. Rather, upon the issuance of an order of revocation, the Commission regulation on reapplication by natural persons after denial or revocation, N.J.A.C. 19:41-8.8, establishes the consequences

> of that order, the nature of which varies dependent upon the bases for the revocation. As applied to the facts of this case, N.J.A.C. 19:41-8.8 essentially provides that the respondent is not eligible to apply for or obtain any license (except a casino key employee license), registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of the final order, unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g). The respondent is ineligible to apply for a casino key employee license until ten (10) years from the date of his conviction for a disqualifying offense absent early reapplication under N.J.A.C. 19:41-8.8(g).

IT IS FURTHER ORDERED that the casino employee license held by Respondent be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Samuel A. Robb is not eligible to apply for or obtain any license (except a casino key employee license), registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this order, pursuant to N.J.A.C. 19:41-8.8(a), unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g), and the Respondent is ineligible to apply for a casino key employee license until ten (10) years from the date of his conviction for a disqualifying offense absent early reapplication under N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Samuel A. Robb, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 26, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1024-83
AGENCY DKT. NO. 82-52

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Petitioner
v.
SAMUEL A. ROBB,
Respondent.

APPEARANCES:

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

Samuel A. Robb, Pro Se

Record Closed: June 6, 1983 Decided: July 1, 1983

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

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Samuel A. Robb, respondent. The Division alleged that Mr. Robb had committed a violation of the criminal laws, for which the Division seeks revocation of his casino employee license, pursuant to section 129 of the Casino Control Act (Act). The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on June 29, 1982. By letter filed on February 7, 1983, the respondent requested a hearing. The Commission suspended the casino employee license held by the respondent pending final disposition of this matter. On February 14, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 29, 1983, and the matter was scheduled for hearing.

FINDINGS OF FACT

Mr. Robb was licensed by the Commission as a casino employee on April 15, 1981 (license no. 25473-21). As of March 25, 1982, the respondent was employed by the Golden Nugget Hotel and Casino (Golden Nugget) as a coin cashier. Prior to that time he was a change attendant. The respondent was assigned as a coin cashier at the Golden Nugget's coin redemption center. He operated an automatic counting machine. More specifically, slot machine patrons would place coins into a tray, which was given to a cashier. The cashier would sort the coins and scoop them into a counter. The counted coins would fall into a bag. The cashier would then pay the total counted to the customer. Ultimately, the bag of coins would be weighed and verified against the count total.

On the evening of March 25, 1982, Susan Klein, Coin Shift Supervisor and the respondent's immediate supervisor, was advised privately by the respondent's fellow cashier at the coin redemption center that she suspected that the respondent had taken money off a tray received from a customer before it was counted and diverted it to his private use. At approximately 11:30 p.m., Ms. Klein contacted the Golden Nugget's security office and requested a surveillance of the respondent. Surveillance Officer Kenneth Clayton initiated surveillance. At 11:34 p.m., the respondent was observed receiving patron coins, scooping them with his right hand, taking some coins from the tray with his left hand and, before they were counted, placing them into his pant pocket (P-2). At 11:37 p.m. and at 11:39 p.m. the respondent was again observed removing coins from the tray and placing them into his pant pocket. At 11:47 p.m., the respondent was detained by casino security as he left the cage area.

Golden Nugget security contacted the Division. Division agents John Albert and William McMonagle reviewed the videotape and observed the respondent's conduct as described by Officer Clayton. The agents arrested the respondent, transported him to Division offices and gave him his Miranda rights. The agents searched the respondent and discovered 22 quarters and one Susan B. Anthony dollar, a total of $6.50. During questioning by the agents, the respondent admitted his misconduct.

The respondent was charged with a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, in the amount of $6.50 (P-3). On April 19, 1982, the respondent appeared at the Atlantic City Municipal Court and pled guilty to the charge. The respondent received a fine of $100 and $25 costs.

The respondent was terminated from his employment at the Golden Nugget by reason of his misconduct. The termination was based upon the Golden Nugget's policy, which in turn was based upon the nature of the misconduct and without regard to the amount taken.

Mr. Robb testified on his own behalf. He did not dispute the charge. Further, he admitted that he knew at the time of his misconduct that the bag total and the machine count would reconcile and not reveal the monies he diverted to his own use. In addition, the respondent testified that he was distraught at the time of the incident due to marital problems and heavy debt. He has since been divorced and has sold his home. The respondent expressed regret for his misconduct and asserted that it would never be repeated. In support of this position, the respondent cited his prior unblemished employment in the banking and investment industry where he worked for years. Since his termination, the respondent has been unable to secure steady employment. He expressed a need for his license in order to obtain work.

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

538.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereto, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

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

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

> related to" casinos and that the "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The circumstances surrounding the incident establish that the respondent conceived and carried out a method of stealing monies which was designed to avoid detection. Although the respondent contended that he suffered from personal problems at the time, such were not established to be so serious to the extent that they would mitigate his misconduct. Also, the incident occurred only 15 months ago, which is very recent. Since the incident, the respondent has not repeated this misconduct.

These factors establish that the respondent's misconduct strikes at the very heart of the policies of the Act. First, the respondent violated the fiduciary obligation of his employer to its patrons. More specifically, the respondent committed a theft from casino patrons, i.e., the public. This conduct is directly related to the public confidence and would, unquestionably, undermine such public confidence in the gaming industry. Second, the respondent's actions would have a direct negative impact upon the public perceptions of the financial integrity of casino operations.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

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

A licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

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

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

First, Mr. Robb is licensed as a casino employee and worked in the coin redemption center. In this position he had direct and substantial contact with the patrons of the casino in regard to their financial transactions. Such a position requires integrity and honesty in all dealings with the public. Further, the manner in which a cashier performs his duties has an immediate and direct impact upon the public's perception of the integrity of the casino industry and gaming operations. Such a position is very sensitive.

Second, the applicant was convicted of a violation of N.J.S.A. 2C:20-3, theft by unlawful taking. Because the amount taken was $6.50 the respondent was only adjudged guilty of a disorderly person's offense, pursuant to N.J.S.A. 2C:20b(3). Such a conviction is not an automatic disqualifier under section 86c(1) of the Act. Nevertheless, it is clear that the respondent breached a fiduciary duty at the time he committed the offense, pursuant to N.J.S.A. 2C:21-15. Accordingly, the respondent's offense constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(e), which is a statutory disqualifer under section 86c(1) of the Act. This establishes the misconduct as very serious. However, the seriousness of the misconduct is best illustrated by the fact that the respondent committed a theft from the public during the performance of his duties as a duly licensed employee of a licensed casino hotel. Because the nature of this misconduct is directly related to the policies of the Act, it is extremely serious. The fact that the respondent took only $6.50 is irrelevant to the seriousness of the misconduct.

Third, the respondent stated that he was undergoing a marital breakup and was in heavy debt at the time of his misconduct. However, the respondent's personal problems were not so serious as to overcome his misconduct, and they do not logically lead to the

commission of the crime. Further, his misconduct indicated a preconceived plan of action. Accordingly, the personal problems described by the respondent do not mitigate his conduct to any significant degree.

Fourth, the respondent committed the offense on March 25, 1982, approximately 15 months ago.

Fifth, the respondent's age at the time of the offense was not established; however, it was evident that his misconduct was not the result of immaturity.

Sixth, the respondent's misconduct was isolated. Although it included the commission of a series of thefts, these acts occurred within a very brief period of time. The respondent committed no misconduct prior to the incident, nor subsequent thereto.

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

Eighth, the respondent has demonstrated some rehabilitation. He admitted his misconduct immediately upon his arrest, pled guilty to the charge, has not repeated his misconduct and has expressed remorse. Although the respondent has been unable to secure permanent employment since his termination, I reject the proposition that the casino industry is the respondent's best opportunity for employment as justification for continuation of his licensure.

I am not persuaded that the respondent has met his statutory burden to establish his rehabilitation. Because the nature of the offense strikes at the heart of the policies of the Act, it is essential that the respondent demonstrate by substantial means, and by more than the nonrepetition of his misconduct, his rehabilitation. Under the circumstances of this matter, more than 15 months is required.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

542.

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

Under section 89b(2) of the Act, Mr. Robb was required to maintain, by clear and convincing evidence, good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, supra, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

The inability of the respondent to establish his rehabilitation from his recent criminal conduct precludes his ability to show that he possesses the degree of good character, honesty and integrity required to maintain licensure. In addition, it was evident that the respondent's misconduct was knowing and premeditated. The respondent's explanation of the circumstances underlying his misconduct was not persuasive and did not serve to mitigate the seriousness of his actions. Accordingly, it is clear that the respondent has failed to maintain the requisite degree of good character, honesty and integrity.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he possesses the requisite degree of good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2).

543.

(D) PENALTY

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

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

a. the risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;

c. any justification or excuse for such conduct by the licensee;

d. the prior history of the particular licensee involved with respect to gaming activity;

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

There can be no doubt that the commission of a theft offense by a licensed employee of a casino within the scope of his official duties creates a real peril in regard to the public confidence in the casino industry and the perceived integrity of gaming operations. Further, the misappropriation of patron monies by a licensed casino employee, with full knowledge that such actions are unlawful, and pursuant to a plan intended to avoid detection, is very serious. Although the respondent had no prior history of misconduct and suffered from personal problems at the time, the seriousness of his actions are not mitigated. Given the fact that the respondent does not now possess the qualifications for licensure and there being no mitigating factors, the respondent's license must be revoked. I so **CONCLUDE.**

544.

DISPOSITION

It is **ORDERED** that the casino employee license (license no. 25473-21) held by Samuel A. Robb be **REVOKED** for a period of five years.

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

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

July 1, 1983
DATE

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

Receipt Acknowledged:

X. Cox 5, 1983
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 7, 1983
DATE

Ronald L. Lankenau
OFFICE OF ADMINISTRATIVE LAW

ml/ee

545.

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE:

P-2 State of New Jersey v. Samuel A. Robb, Municipal Court of the City of Atlantic City, Docket Number C-02980, Complaint, March 25, 1982; and Judgment of Conviction, April 19, 1982

P-3 New Jersey State Police — Surveillance Incident Report, prepared by Ken Clayton, March 25, 1982 (2 pages)

EXHIBITS NOT ADMITTED INTO EVIDENCE:

P-1Id. Golden Nugget Jackpot Cup (Exhibit not offered)

P-4Id. New Jersey State Police — Investigation Report, prepared by William McMonagle, March 26, 1982; New Jersey State Police — Arrest Report, prepared by William McMonagle, March 26, 1982 (3 pages)

P-5Id. New Jersey State Police — Property Report, prepared by William McMonagle, March 26, 1982

WITNESS LIST

FOR THE PETITIONER:

John Albert
Kenneth Clayton
Susan Klein

FOR THE RESPONDENT:

Samuel A. Robb

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-63
OAL DOCKET NO. CCC 855-83
APP. NO. 08170-40

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

Complainant, :

v. : FINAL ORDER

NANCY G. ROBERTSON

Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law with the Commission on May 26, 1983, recommending that the casino hotel employee registration held by Nancy G. Robertson be revoked; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on June 29, 1983, for good cause shown, to affirm and adopt the said initial decision and to revoke the casino hotel employee registration held by Nancy G. Robertson,

IT IS on this 7th day of July 1983, 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 registration held by Nancy G. Robertson be and hereby is revoked based upon the reasons set forth in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Nancy G. Robertson be and hereby is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless she obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Nancy G. Robertson, the Division of Gaming Enforcement and the authorized agents of all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 7, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0855-83

AGENCY DKT. NO. 82-63

DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

NANCY G. ROBERTSON,

Respondent.

APPEARANCES:

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

Nancy G. Robertson, Pro Se

Record Closed: April 11, 1983 Decided: May 26, 1983

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

The Division of Gaming Enforcement moved to revoke the Casino Employee Registration of Nancy Robertson because she committed the offense of theft in the third degree, a disqualification for casino licensure by reason of N.J.S.A. 5:12-86c(1). Ms. Robertson requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

The facts in this case are not in dispute. Nancy Robertson was employed at the Sands Hotel and Casino as a Front Desk Clerk beginning on November 16, 1981. During that time, she was entrusted with a $2,000 "bank" which was her responsibility (P-4, House Bank Contract). In January 1982, Ms. Robertson gave two weeks' notice to her

supervisor, Signe Carlson, who was then the Assistant Front Office Manager. When she called in sick for the two days following the giving of her two-week notice, Ms. Carlson told her to consider herself terminated at that point and that she need not come in for the remainder of the two weeks. Ms. Carlson also told her to turn in her bank. However, Ms. Robertson did not turn in her bank.

By March, Ms. Carlson decided that the locked box where Ms. Robertson's bank was kept had to be drilled open. This was accomplished on March 22, 1982, and a shortage of $1,169.89 was discovered (P-5, House Bank Audit Sheet). Ms. Carlson and other supervisors confronted Ms. Robertson with the shortage, and Ms. Robertson admitted that she had appropriated the money for her own use. She entered into a restitution agreement whereby she agreed to pay back the full amount taken, over a period of time (P-6). Criminal charges had been filed (P-1), but were later withdrawn as part of the restitution agreement.

There is no doubt that Ms. Robertson violated N.J.S.A. 2C:20-9, theft in the third degree. This constitutes automatic disqualification for licensure, pursuant to N.J.S.A. 5:12-86c(1), and justification for this action to revoke Ms. Robertson's registration.

Ms. Robertson has made a beginning step for rehabilitation. She entered into a restitution agreement and complied with the payment schedule. The debt has now been repaid. She managed to do this while surviving on welfare and a small support payment from her husband. She had separated from her husband just a few months before the birth of her child, whom she now raises. The child is four years old. Ms. Robertson appropriated the casino funds for her own use because of the unrelenting pressure of bills that she could not pay. The incident seems to be isolated. I paid close attention to Ms. Robertson's appearance and demeanor, and I am satisfied that she is sincere in her regret for the incident and in her avowed intent to live by the letter of the law in the future. However, the offense was serious and occurred while in the performance of her duties as a registrant. The offense occurred fairly recently. Such an offense carries with it a natural implication of lack of honesty. It is too fresh for rehabilitation to have been established. The term "honest" implies a sense of general probity which is the antithesis of criminal tendency or conduct and which implies a law-abiding person. State v. Micci, 46 N.J. Super. 454 (App. Div. 1957). Although the incident was isolated, and performed

under great stress and personal pressure, and although Ms. Robertson struggled to make restitution and did so, nevertheless, the offense is too fresh and too serious. In order to observe the integrity of the industry, I believe there is no option but to revoke Ms. Robertson's registration. Of course, this does not foreclose Ms. Robertson from reapplying in the future when her rehabilitation may be more easily established.

For the foregoing reasons, the registration of Nancy G. Robertson is hereby **REVOKED.**

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

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

5/26/83
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

5/26/83
DATE

Bernadette T. Fraser
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 31 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

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551.

WITNESSES

As set forth in transcript.

EXHIBITS

As set forth in transcript.

552.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-EA-25
OAL DOCKET NO. 1637-83
LIC. NO. 19941-82

IN THE MATTER OF THE APPLICATION OF RAYMOND J. ROSSI FOR RENEWAL OF HIS CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on July 25, 1983, recommending that the application of Raymond J. Rossi for renewal of his casino employee license be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 7, 1983, to affirm and adopt the said Initial Decision and to grant the application of Raymond J. Rossi for renewal of his casino employee license,

IT IS on this 15th day of September 1983, ORDERED that the Initial Decision of the Office of Adminsitrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 15, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1637-83

AGENCY DKT. NO. 83-EA-25

RAYMOND J. ROSSI,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Raymond J. Rossi, petitioner, Pro Se

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

Record Closed: June 9, 1983 Decided: July 25, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Raymond J. Rossi to the Casino Control Commission for renewal of his casino employee license, permitting him to work in a casino as a bartender. The issues to be determined in this matter are as follows:

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

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2. Whether the petitioner, with specific reference to his arrest in Durham, North Carolina, on October 21, 1980, on charges of felonious possession of marijuana, possession of marijuana with intent to distribute and sell, and possession of methaqualone, has committed or 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, or which would indicate licensure would be inimical to the policy of the Casino Control Act, within the meaning of Section 86c(4) of the Act, even if such conduct has not or may not be prosecuted under the criminal laws of this State, within the meaning of Section 86g of the Act.

3. Whether the petitioner, notwithstanding any possibile disqualification which may exist pursuant to Section 86 of the Act, has demonstrated his rehabilitation, within the meaning of Section 90h of the Act.

PROCEDURAL HISTORY

By letter from the Casino Control Commission, dated February 14, 1983, the petitioner was informed that there is a substantial possibility that the Commission will deny his renewal application, based upon a letter report from the Division of Gaming Enforcement, dated January 24, 1983. The petitioner requested a hearing upon his application for renewal of his casino employee license and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on March 7, 1983, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 23-year-old resident of Hammonton, New Jersey. In November 1980, the petitioner was licensed as a nongaming casino employee. For the past two and one-half years, the petitioner has been employed by the Golden Nugget Casino in Atlantic City, New Jersey. Within four months after he commenced this employment, the petitioner was promoted from the position of barporter to bartender. The petitioner's performance in this position has been evaluated by his employer as better than satisfactory (Exhibit P-5).

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Letters from the petitioner's assistant beverage managers were admitted into evidence as Exhibits P-2 and P-3. The petitioner is characterized as a cooperative and respected employee, who is entrusted with several thousand dollars worth of liquor and cash sales. Assistant Beverage Managers Anthony Platanella and Edward Menzer both characterized the petitioner as an excellent employee.

On October 21, 1980, the petitioner was arrested in Durham, North Carolina, and was charged with felonious possession of marijuana, possession of marijuana with intent to distribute and sell, and possession of methaqualone. After indictment on these charges by the Durham County Grand Jury on November 3, 1980 (Exhibits R-6 and R-7), the petitioner entered a plea of guilty as part of a plea bargain agreement on November 4, 1980, to felonious possession of marijuana and to misdemeanor possession of methaqualone. Pursuant to the plea bargain agreement, the charge of possession with intent to distribute and sell marijuana was dismissed. The petitioner was sentenced to a suspended two-year custodial term in the North Carolina State Department of Corrections, fined $1,000 and was placed on probation for a period of three years (Exhibit R-10).

The petitioner's probation was transferred to Atlantic City from North Carolina. His probation started on March 13, 1980, and ended on November 22, 1982, one year and two months early, as a result of his satisfactory participation (Exhibit P-4).

Explaining the incident which led to his arrest in North Carolina, on October 21, 1980, the petitioner stated that a friend had asked him to accompany him on a trip from New Jersey to North Carolina. The petitioner agreed on the spur of the moment to make the trip. In North Carolina, the petitioner's friend obtained from another person plastic bags filled with marijuana. It was the entirely credible testimony of the petitioner that he had no financial stake in this transaction and that, although he knew that his friend was placing bags of marijuana in the trunk of the car in which they were traveling, the petitioner did not know the amount of marijuana which had been maintained. The petitioner also explained that he had been given a small amount of marijuana and methaqualone by his friend's acquaintance. According to the petitioner, he was not a drug user, but he felt pressure to accept the drugs when offered. The Durham Police Department had been alerted to this transaction by an informant, and the petitioner and his friend were arrested the same day. On the advice of counsel, the petitioner entered his guilty plea to the charges of possession of marijuana and methaqualone.

According to the petitioner, he has had no involvement with drugs since his arrest in October 1980. The North Carolina drug incident was the petitioner's first offense, and he has not been convicted of any other offenses.

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 also incorporates the disqualification criteria set forth in Section 86 of the Act. Pursuant to Section 86c, the Casino Control Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. Section 86g of the Act provides that licensure shall be denied an applicant on the basis of the commission by the applicant of any act which would constitute any enumerated offense under Subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. Finally, the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure would be inimical to the policy of the Act and to casino operations, pursuant to Section 86c(4).

The petitioner has testified with candor concerning his involvement in a drug transaction in Durham, North Carolina, on October 21, 1980. It is apparent that the petitioner knew that his friend had purchased a quantity of marijuana, but it is also clear that the petitioner did not know the amount of the purchase. It is also clear that the petitioner was not financially involved in the transaction and that he did not have any plan to distribute or sell the marijuana which had been purchased by his friend. Had the petitioner possessed marijuana with the intention to distribute and sell, this conduct would have been the equivalent of a violation of N.J.S.A. 24:21-19(a)(1), a specifically enumerated disqualifying offense under Section 86c(3). I have specifically found that the petitioner had no such intention, and thus I must **CONCLUDE** that the petitioner has not committed, nor has he been convicted of, an offense which is an enumerated disqualifier from licensure, pursuant to Section 86c of the Casino Control Act. It is apparent that the petitioner's conduct was not of such a nature as to justifiably undermine public confidence

in the integrity of the legalized gaming industry. In addition, the petitioner has been satisfactorily employed by an Atlantic City casino as a bartender for approximately two and one-half years. The petitioner has performed in this capacity while licensed as a casino employee.

Based upon the foregoing, I must also **CONCLUDE** that the petitioner has not committed any offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations. Based upon the relevant and credible evidence in the record, I further **CONCLUDE** that the petitioner has established, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of Section 89b(2) of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, Raymond J. Rossi, for renewal of a casino employee license, permitting him to work in a casino as a bartender, 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 25, 1983
DATE

Joseph R. Fidler
JOSEPH R. FIDLER, ALJ

Receipt Acknowledged:

July 25, 1983
DATE

Nancy A. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 27, 1983
DATE

Ronald L. Lakewood
OFFICE OF ADMINISTRATIVE LAW

ks/ee

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INVENTORY OF EXHIBITS:

For the Petitioner:

P-1 Letter of the Division of Gaming Enforcement, dated January 24, 1983
P-2 Letter of Recommendation, dated April 22, 1983
P-3 Letter of Recommendation, dated May 10, 1983
P-4 Termination of Probation, dated November 22, 1982
P-5 Performance Evaluation, dated December 7, 1982

For the respondent:

R-1 Incident Report, dated October 23, 1980
R-2 Arrest Report, dated October 21, 1980
R-3 Property Report, dated October 21, 1980
R-4 Property Report, dated October 21, 1980
R-5 Property Report, dated October 22, 1980
R-6 Indictment, dated November 3, 1980
R-7 Indictment, dated November 3, 1980
R-8 Transcript of Plea, dated March 13, 1981
R-9 Probation Judgment, dated March 13, 1981
R-10 Judgment Suspending Sentence, dated March 13, 1981

WITNESSES:

For the Petitioner:

Raymond J. Rossi

For the Respondent:

Richard Wilson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-87
OAL DOCKET NO. CCC 5319-82
APP. NO. 10641-21

IN THE MATTER OF THE APPLICATION
OF CAROLYN M. VALENTINE SELDON
LICENSURE AS A CASINO EMPLOYEE

AMENDED
FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on June 1, 1983, recommending that the casino employee license application of Carolyn M. Valentine Seldon be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on July 20, 1983, to modify the said Initial Decision and to grant the casino employee license application of Carolyn M. Valentine Seldon,

IT IS on this 18th day of August 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) The Commission finds that Ms. Seldon collected unemployment funds to which she was not entitled at a rate of $464 per month from October 16, 1979, through June 21, 1980. Although such conduct was not prosecuted, her acts constitute the statutory disqualifying offense of theft by deception in the third degree. Such conduct mandates her disqualification pursuant to N.J.S.A. 5:12-86(g).

(2) The Commission further finds that coextensive with the positive findings of the Administrative Law Judge with respect to Ms. Seldon's good character, honesty and integrity, she has rehabilitated herself from the disqualifying offense pursuant to N.J.S.A. 5:12-90(h).

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: August 18, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-87
OAL DOCKET NO. CCC 5319-82
APP. NO. 10641-21

IN THE MATTER OF THE APPLICATION
OF CAROLYN M. VALENTINE SELDON
LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on June 1, 1983, recommending that the casino employee license application of Carolyn M. Valentine Seldon be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on July 20, 1983, to modify the said Initial Decision and to grant the casino employee license application of Carolyn M. Valentine Seldon,

IT IS on this 28th day of July 1983, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) The Commission finds that Ms. Seldon collected unemployment funds to which she was not entitled at a rate of $464 per month from October 16, 1979, through June 21, 1980. Although such conduct was not prosecuted, her acts constitute the statutory disqualifying offense of theft by deception in the degree. Such conduct mandates her disqualification pursuant to N.J.S.A. 5:12-86(c)(1) and (g).

(2) The Commission further finds that coextensive with the positive findings of the Administrative Law Judge with respect to Ms. Seldon's good character, honesty and integrity, she has rehabilitated herself from the disqualifying offense pursuant to N.J.S.A. 5:12-90(h).

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 28, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5319-82
AGENCY DKT. NO. 82-EA-87

CAROLYN M. VALENTINE SELDON,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Respondent.

APPEARANCES:

John H. Fitzgerald, Esq., for the petitioner (Cape-Atlantic Legal Services, Inc.)

William J. Walsh, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: April 14, 1983 Decided: May 31, 1983

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

STATEMENT OF THE CASE

This matter concerns the application of Carolyn M. Valentine Seldon, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (security), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had failed to disclose information material to licensure and that the applicant lacked the requisite good character, honesty and integrity.

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PROCEDURAL HISTORY

Ms. Seldon filed her Personal History Disclosure Form-2 (PHDF-2) with the Commission on July 24, 1979. The application was filed under the name Carolyn M. Valentine; however, the applicant has since married and goes by the surname Seldon. By letter, dated May 17, 1982, the Commission advised the applicant that, based upon information received in a report and in a supplemental report from the Division, dated April 2, 1982, and April 26, 1982, respectively, there was a "substantial possibility" that the Commission would deny licensure and that she had a right to a hearing. By letter, dated May 21, 1982, the applicant requested a hearing. On May 26, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 11, 1982, and the matter was scheduled for hearing.

At the hearing, the prehearing order was amended to reflect Ms. Seldon's marriage. The order was further amended with regard to Paragraph I.A., the Division withdrew its objection under N.J.S.A. 5:12-86b regarding the purported failure of the applicant to disclose a complaint filed against her by J.M. Fields, Inc., but added the allegation that the applicant failed to disclose during her interview by a Division investigator two terminations from employment with the Boardwalk Regency Corporation.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Seldon is 34 years of age. She is a lifelong resident of New Jersey. Her father died when she was eight years old. She lived with her mother, three brothers and one sister. Her mother physically abused the children. Also, her mother supported the family on welfare. At age 13, the applicant was sentenced to an indeterminate term at the State Home for Girls because of her involvement in a fight at school. She served one year. The applicant left school during the ninth grade.

The applicant is the mother of five children, ages 13 to 17. She is divorced from her first husband, who abused her. The applicant has supported her family on welfare.

The applicant's employment history is as follows: during 1971, she was employed by J.J. Inc., a sewing factory. She was laid off from this position. From 1972 to 1973, the applicant was employed by the Algiers Motel as a chambermaid. She was laid off at the end of the season. During 1974, the applicant was employed by Marlborough Bleimheim in the laundry. Again, she was laid off at the end of the season. During 1975, the applicant was employed by the Colony Motel as a chambermaid. She was laid off at the end of the season. In addition, the applicant suffered a heart attack during the course of this employment. During 1976, the applicant was employed at the Lincoln-Roosevelt Motel as a chambermaid. She was laid off at the end of the season. During 1977, the applicant was employed by Wonder Gardens as a cocktail waitress. She was laid off at the end of the season. During 1978, the applicant was employed by Milton Adlers as a glass blower. On Part VII of her PHDF-2, the applicant indicated that she was laid off from this position. In fact, the applicant was unable to work because of illness. She determined that she did not like the work and notified her employer that she did not intend to return. The applicant put down that she was laid off from the position because she could have returned to work if she had wanted to return. From 1978 to 1979, the applicant was employed by Ramada Inn as a part-time maid. She was laid off at the end of the season.

From May 1979 to August 1979, the applicant was employed by the Boardwalk Regency Corporation (BRC) as a security officer. She was terminated from her position purportedly because two "pink slips" had been issued due to tardiness and absenteeism. The applicant filed an action with the Affirmative Action Office of BRC. A Mr. Nieves determined that there were no "pink slips" in the applicant's personnel file. Mr. Nieves succeeded in securing substitute employment for the applicant. On October 16, 1979, the applicant commenced employment as a seating hostess at the Marvin Garden Restaurant at BRC. She was terminated from this position on June 21, 1980. The applicant stated that her boyfriend had beaten her and that her face was bruised. This prevented her from attending work, although she did not seek medical attention for her injuries. Since the applicant had prior absences and had no sick time available, she was terminated. The applicant understood BRC's position and did not contest the dismissal. The applicant has not been employed since June 21, 1980.

On January 3, 1978, the applicant was arrested by the Atlantic City Police Department and charged with a violation of N.J.S.A. 2A:139-1, possession of stolen property. She was released on her own recognizance. Ultimately, the charge was

downgraded to a disorderly person's offense, the applicant pled guilty and was fined $25. The circumstances underlying the incident were in dispute and will be discussed in greater detail, infra.

On May 17, 1978, a complaint was filed against the applicant which alleged two violations of N.J.S.A. 2A:111-15, overdrawing credit on checking account (R-1 and R-2). More specifically, it was alleged that on December 12, 1977, the applicant had issued two checks in amounts of $236.95 and $271.99 to the J.M. Fields department store with the knowledge that there were not sufficient funds for the payment of the checks. On April 10, 1979, the Atlantic County Prosecutor's Office remanded the matter to the Ventnor City Municipal Court for prosecution as a disorderly person's offense, pursuant to N.J.S.A. 2A:170-50.4 (R-2 and R-3). However, because the applicant was never served with the charges, the matter was dismissed without prejudice on May 8, 1979 (R-2).

This incident was not disclosed in response to question no. 46 on the applicant's PHDF-2. The applicant testified that she was unaware of the charges until an August 1980 conference with a Division investigator. Her testimony was supported by the record and the Division withdrew the allegation.

The applicant also described the circumstances underlying the incident. During November 1978, the applicant was ill with pneumonia and was hospitalized. She had requested a neighbor who was a close friend to conduct some financial business, including banking, on her behalf. Her neighbor had taken some documents to a bank, but it was closed. The neighbor retained the documents overnight. That evening, the neighbor had guests. The next day it was discovered that the applicant's checkbook, money order, food stamp card and welfare identification card, together with some of the property of the neighbor, had been stolen. The applicant testified that she had notified the bank of the incident and at the bank's request had signed an affidavit in order to initiate a stop order. The applicant also stated that she reported the loss to the Atlantic City Welfare Board. The applicant did not recall if she had notified the police of the incident. The applicant further stated that upon learning that several of her checks had been written to various stores, she called the managers of each and explained the circumstances. Further, since she used the checking account only for her rent, there were not sufficient funds in the account to cover the checks (R-7 and R-8).

Division Investigator Charles Littlefield testified that in response to his inquiry the bank was unable to locate any affidavit signed by the applicant or any other notification that her checks had been stolen.

Prior to the applicant's employment at BRC in May 1979, she and her children received welfare benefits in the amount of approximately $464 per month. The applicant reported her employment to the welfare board, and her grant was reduced accordingly. The applicant also advised the welfare board of her apparent termination in August 1979. However, she did not receive an increase in her benefits for three months. This caused the applicant to incur some indebtedness. Therefore, the applicant did not report timely her resumption of employment at BRC in October 1979. In fact, for the duration of her employment from October 1979 to June 1980, the applicant did not report such employment and continued to receive benefits to which she was not entitled. Ultimately, the welfare board discovered the failure to report and confronted the applicant with this information during a redetermination interview. The applicant acknowledged the employment and entered into a reimbursement agreement in the amount of $2,381, which was to be recouped by means of a reduction in the applicant's grant of $57 per month. Nevertheless, the applicant remained eligible for and continued to receive welfare benefits. As of October 22, 1982, the remaining balance of the amount to be reimbursed was $1,157 (R-5). It is anticipated that full restitution will be completed on or about September 1, 1984. No criminal charges were filed against the applicant.

During July 1981, the applicant married Samuel Seldon. Neither the applicant nor her husband is currently employed.

The applicant has served as an unpaid volunteer for a welfare rights organization. Her functions involve teaching preschool children.

The applicant has been offered employment by various casino hotels, which offers were conditioned upon licensure. The applicant has not secured a hotel employee registration because she does not want to be employed as a chambermaid. She was working as a chambermaid in 1975 when she had her heart attack.

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

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(B) DISPUTED FACTS

In dispute were the circumstances underlying the incident wherein the applicant was charged with being in possession of stolen property, the applicant's purported failure to disclose her two terminations by BRC to the Division investigator during an interview and the applicant's good character, honesty and integrity.

The applicant described the circumstances underlying the incident in which she pled guilty to possession of stolen property in 1978. Unknown to the applicant, a market had been robbed. A person unknown to the applicant sold stolen goods in the neighborhood, where such activity was common. The applicant purchased a box of meat for $20. Three days later, the police appeared with a search warrant and an arrest warrant. The police questioned the applicant regarding a Rodney Nixon, a former boyfriend. Apparently, the police suspected that Mr. Nixon had committed the theft.

Investigator Littlefield testified that during his interview of the applicant on August 25, 1980, she explained the incident differently. More specifically, she stated that unknown to her, Mr. Nixon had placed the meats in her freezer.

The two explanations offered by the applicant are difficult to reconcile. As will be discussed further, the applicant's recollection of the interview with the investigator was vague and limited. She simply did not recall the detail of their discussion. However, the two descriptions offered by the applicant are consistent in that the applicant did not commit the theft and apparently did not know that that which she possessed was stolen.

Investigator Littlefield testified that he interviewed the applicant on August 25, 1980. In a response to his inquiries regarding unemployment and discharges from employment, the applicant disclosed her employment by BRC as a seating hostess, but did not advise him of her termination on June 21, 1980. The investigator later learned of the termination and attempted to contact the applicant further. However, he was unsuccessful, and a letter sent to the applicant on October 2, 1980, which requested that she contact the investigator went unanswered (R-9).

Ms. Seldon had no precise recollection of the details of the discussion between herself and the investigator. Therefore, she was unable to explain her purported failure to

disclose her employment terminations by BRC. The applicant also had no recollection of having received the letter from the Division requesting that she contact the investigator.

An attempt was made to evaluate the credibility of Ms. Seldon. Initially, her position in this matter must be recognized. She is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. For the most part, based upon my review of the record and from my observations of the applicant's demeanor and my examination of the documentary evidence, it is evident that her testimony was accurate and truthful. However, in regard to some incidents, the applicant's testimony, although not disbelievable, left something to be desired. It is not possible to know whether the shortcomings in her testimony were due to her unfortunate personal background and lack of a substantial education, and were therefore harmless, or were the result of some other reason. Although I cannot conclude that the applicant's testimony was convincing and persuasive, I similarly cannot conclude that it was not believable.

With regard to the applicant's termination from her position as a security officer with BRC in August 1979, I am not persuaded that the applicant's apparent failure to disclose this termination, in light of her subsequent rehire as a result of an affirmative action inquiry, was a failure to disclose the termination. However, it is evident that the applicant failed to disclose her termination of June 21, 1980.

The applicant offered the testimony of Sharon Davis in support of her application. Ms. Davis is currently unemployed and is awaiting licensure as a casino employee. For the past two and one-half years, Ms. Davis has been a permanent substitute teacher in the employ of the Atlantic City Board of Education. Ms. Davis has known the applicant since 1967, although they only became close friends in 1974. They have many mutual friends. The applicant enjoys a good reputation for good character, honesty and integrity among her friends and associates. Ms. Davis also has a high opinion of the applicant. The witness stated that she leaves her children in the applicant's care. Further, the applicant is always willing to assist others. Ms. Davis also related a specific incident which she believed exhibited the applicant's character. Ms. Davis and the applicant were seated in an automobile when the applicant observed a man attempting to abduct a child. The applicant interceded at personal risk in order to protect the child.

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

1. Although the applicant was in possession of stolen property on January 3, 1978, she had not committed the theft and was unaware that the property had been stolen.

2. The majority of the applicant's testimony appeared to be credible. However, the applicant's testimony as a whole was not overwhelming.

3. The applicant's failure to disclose her termination by BRC in August 1979 may have resulted from her ignorance and from her subsequent reemployment as a result of an affirmative action inquiry.

4. The applicant failed to disclose to a Division investigator, during an interview, her termination by BRC on June 21, 1980.

5. Close friends and associates of the applicant are of the opinion that she is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission, 79-EA-34 (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq.

> The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), (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 (Jan. 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief than an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission, 79EA-9 (June 30, 1980), In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission, 80-EA-4 (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes as well as employment discharges are facts material to qualification.

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The Division contends that the applicant's failure to disclose her two employment terminations by BRC during her interview with a Division investigator is a disqualifying event.

In regard to the purported termination of August 1979 from the position of security officer at BRC, I am not persuaded that the applicant should have reasonably believed that this was a termination to be disclosed. The applicant was rehired as a result of her affirmative action complaint. Therefore, she could have reasonably construed such reemployment to have voided the termination.

In regard to the applicant's termination from the position of seating hostess on June 21, 1980, there is no question that this removal was subject to disclosure. However, the testimony regarding the interview was not completely clear in regard to what occurred. More specifically, given the limited educational background of the applicant and the several unintentional errors made in the completion of her PHDF-2, it was not clear that she understood the inquiries to include the period subsequent to the filing of her application form.

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

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

An applicant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;
(2) The nature and seriousness of the offense;
(3) The circumstances under which the offense occurred;
(4) The date of the offense;
(5) The age of the applicant when the offense was committed;
(6) Whether the offense was an isolated or repeated incident;

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

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

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

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

Under section 89b(2) of the Act, Ms. Seldon was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, for a Casino License, Casino Control Commission (Feb. 26, 1979), at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (Nov. 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here, the Division has raised issue regarding the applicant's conduct underlying her conviction.

The applicant's presentation portrays a positive but not a clear picture of Ms. Seldon. Part of the confusion is related directly to the problems emanating from the applicant's difficulties with disclosure and the inability of the Division to conduct a full

and complete investigation. A lack of commmunication between the Division and the applicant hampered the Division's investigatory efforts. However, such lack of communication was not shown to be purposeful; therefore, it cannot be held against the applicant. There is no question that the applicant has a poor work history both in and outside of the casino industry. The applicant has not exhibited an ability to hold permanent employment. Also, the applicant's failure to report earned income to the welfare board was serious and occurred while she was employed in the casino industry. Nevertheless, no criminal charges were filed against the applicant and she is making restitution. In part, this conduct might be attributable to the poor social conditions under which the applicant was raised. However, there were also positive elements in the applicant's presentation, such as the testimony of Ms. Davis. It was evident that the nature of the applicant's misconduct was not serious. Further, the limited amount of quality proofs appears to be related to the personal limitations of the applicant.

Although the applicant made a basically positive presentation of her qualifications for licensure, it is very difficult to make a determination in this case because of the high burden of proof, i.e., clear and convincing evidence. Nevertheless, there is little likelihood of the applicant's committing any unlawful acts in the future, and the applicant presents little, if any, risk to the public or to the integrity of casino gaming in this State. I am persuaded that the applicant has submitted minimally sufficient proof of her qualifications for licensure.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, her good character, honesty and integrity, under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Carolyn Valentine Seldon for licensure as a casino employee be **GRANTED.**

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

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

May 31, 1983
DATE

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

Receipt Acknowledged:

June 1, 1983
DATE

Bernadette M. Fricker
CASINO CONTROL COMMISSION

Mailed to Parties:

June 7, 1983
DATE

Ronald L. Larkenfeld
OFFICE OF ADMINISTRATIVE LAW

bm

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE:

R-1 Ventnor City Police Department - Investigation Report, prepared by William E. Ellis, May 15, 1978

R-2 State of New Jersey v. Carolyn Valentine, Ventnor City Municipal Court, Docket No. C-256, 257, May 17, 1978

R-3 Letter to Ventnor City Municipal Court from Richard J. Williams, Atlantic County Prosecutor, April 12, 1979

R-4 Letter to Ms. Eva Johnson from Virginia Steinhauer, Collection Supervisor, May 17, 1979

R-5 Letter to Mr. Stanley Adams, Investigator, from Ms. Karen B. Enous, Deputy Director, October 22, 1982

R-6 Personal History Disclosure Form - 2, Carolyn Marva Valentine, filed July 24, 1979 (29 pages)

R-7 Check drawn on the account of Carolyn Valentine at the First National Bank of South Jersey, payable to J.M. Fields, December 12, 1977

R-8 First National Bank of South Jersey, Account No. 822-4145, Carolyn Valentine, Checking account balance as of November 28, 1977

R-9 Letter to Carolyn Valentine from Anthony Scalzone, Chief, Investigations Section, October 2, 1980

EXHIBIT NOT ADMITTED INTO EVIDENCE:

P-1 Id. Letter to the Honorable Don M. Thomas, Acting Chairman, from Rosemary Quinn, Deputy Attorney General, April 2, 1982 (3 pages)

WITNESS LIST

FOR THE APPLICANT:

Sharon Davis

Carolyn M. Seldon

FOR THE RESPONDENT:

Charles Littlefield

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-22
OAL DOCKET NO. 1392-83
REG. NO. 03619-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
IVAN J. SILVERSTEIN,	:
Respondent.	:

FINAL ORDER

This matter having been opened to the Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on July 5, 1983, recommending that the casino hotel employee registration held by Ivan J. Silverstein be suspended for a period of two years; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 7, 1983, to modify the said Initial Decision and to revoke the casino hotel employee registration held by Ivan J. Silverstein,

IT IS on this 14th day of September 1983 ORDERED that the Initial Decision of the Office of Adminsitrative Law in this matter be and hereby is modified as follows:

(1) That portion of the Initial Decision which finds that Respondent's conviction of a statutory disqualifying offense reflects adversely upon his good character, honesty and integrity is rejected as unnecessary. As a result of amendments to N.J.S.A. 5:12-91, (L. 1981, c. 503, §12, effective February 15, 1982), casino hotel employee registrants are no longer required to affirmatively demonstrate good character, honesty and integrity.

(2) That portion of the Initial Decision which Orders that respondent's registration be suspended for a period of two years, which period shall begin upon the entry of the Final Order of the Casino Control Commission be and hereby is rejected as inconsistent with previous Commission determinations. The Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense pursuant to N.J.S.A. 5:12-86(c), absent rehabilitation pursuant to section 91(d) of the Act, or waiver pursuant to section 91(e) of the Act, the appropriate sanction is revocation of the credential. (See State v. Wynette Harris, Docket No. 81-19, Commission Decision 1983).

IT IS FURTHER ORDERED that the casino hotel employee registration issued to Ivan J. Silverstein be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Ivan J. Silverstein is not eligible to apply for or obtain any license, except a casino key employee license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this order, pursuant to N.J.A.C. 19:41-8.8(a), unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g), and the Respondent is ineligible to apply for a

casino key employee license until ten (10) years from the date of his conviction for a disqualifying offense absent early reapplication under N.J.A.C. 19:41-8.8(g); and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon Ivan J. Silverstein, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 16, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1392-83

AGENCY DKT. NO. 82-22

DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

IVAN J. SILVERSTEIN,

Respondent.

APPEARANCES:

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

John W. Gilbert, Esq., for respondent

Record Closed: May 19, 1983 Decided: July 5, 1983

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

STATEMENT OF THE CASE

This matter concerns the compliant of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on April 20, 1982, seeking judgment revoking the respondent's casino hotel employee registration, or some other appropriate sanction, pursuant to Sections 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's conviction for distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)(1). The issues to be determined in this matter are as follow:

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1. Whether the respondent, notwithstanding his conviction of an offense which constitutes a per se disqualifier under section 86c(3) of the Casino Control Act, has demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or some other sanction, pursuant to sections 91b and 129 of the act.

2. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 86a and 91 of the act, thereby requiring revocation of registration, or some other sanction, pursuant to sections 91 and 129 of the act.

PROCEDURAL HISTORY

The respondent's answer to the complaint of the Division of Gaming Enforcement was filed with the Casino Control Commission on February 25, 1983. The respondent requested a hearing on the complaint and the matter was thereafter transmitted by the Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The respondent is a 27-year-old resident of Longport, New Jersey. The respondent's occupation is food service, and he has been employed in Atlantic City casinos as a restuarant and banquet facility waiter. In 1978, the respondent was so employed by Resorts International Hotel and Casino. In 1982, the respondent was employed as a waiter by the Golden Nugget Hotel and Casino, and from 1979 until 1983, the respondent was employed as a waiter by the Tropicana Hotel and Casino. From 1979 until the present,

the respondent has been employed on a part-time basis as a banquet waiter by the Deauville Restaurant. That restaurant's Director of Catering, Margaret M. Connell, testified that the respondent is a reliable and honest employee who performs well and who has a very good attitude.

The respondent was originally licensed as a casino hotel employee in March 1979. In January 1980, this licensure was renewed. At the present time, the respondent is registered as a casino hotel employee, but he is not now employed by any operating New Jersey casino.

An undercover investigation conducted by the Margate City Police Department resulted in the respondent's arrest on October 14, 1980, on a charge of knowingly distributing hashish, in violation of N.J.S.A. 24:21-19(a)(1). The respondent explained that a friend, Pat Bloom, introduced him to Joe Kelian, who, unknown to the respondent, was working for the police. Kelian asked the respondent to obtain some hashish for him, but the respondent declined, saying that he did not indulge in drugs. According to the respondent, Kelian continually called, asking the respondent to buy him drugs. Kelian's continual phone calls aggravated and tired the respondent, so he decided to buy Kelian the hashish which he had requested.

The respondent testified that he knew a person who had some hashish. When he was contacted on the street by that person, the person asked the respondent if he wanted to buy the hashish. The respondent did buy the hashish and then he resold it to Kelian for the same amount which he had paid for it. This transaction occured on September 26, 1980, a few days after the respondent had been introduced to the drug purchaser. At that time, the respondent had been employed by Caesar's Boardwalk Regency Casino Hotel. However, the respondent denied that he had ever used or sold drugs while working at the casino.

On February 6, 1981, the respondent entered a guilty plea to the charge of distribution of hashish, in violation of N.J.S.A. 24:21-19(a)(1). As a result of his conviction, the respondent was fined $500 and placed on probation for a period of one year (Exhibit P-1). The respondent asserted that he has had no drug use or involvement since this incident. He explained that he is a very shy person and that people have been able to intimidate him. Although he acknowledged that he had not been threatened by Kelian, the

respondent stated that he had succumbed to the pressure from Kelian to buy the drugs. Now, the respondent feels that he would be able to take measures to avoid succumbing to such pressure. Significantly, the respondent acknowledged that he had three times previously been arrested and convicted for possession of marijuana, beginning in 1974.

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

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the act authorizes the revocation of registration of any person for the commission of any offense or violation under the act which would disqualify such person from holding his registration. Pursuant to sections 91b and 86c of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict the registration of any registrant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)(1), is such an automatic disqualifier under section 86c(3) of the act. Therefore, the respondent's conviction upon a plea of guilty to the charge of distribution of a controlled dangerous substance permits the revocation, suspension or limitation of his registration, pursuant to sections 86c, 91b and 129 of the Casino Control Act.

Pursuant to section 130 of the act, determination of an appropriate sanction should be based upon consideration of a number of factors. These factors include the risk to the public and to the integrity of gaming operations created by the conduct of the registratant, the seriousness of the conduct and any justification or excuse for the conduct and the corrective action taken by the registrant to prevent future misconduct of a like nature from occurring. Distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)(1), constitutes serious misconduct. This is especially true, in light of the appearance of this offense among those offenses specifically enumerated as disqualifiers from licensure, pursuant to section 86c of the act. Although

the respondent's conduct did not occur in a casino, it did occur while he was registered and employed as a casino hotel employee. It must also be noted that the respondent has three previous convictions for possession of marijuana. Thus, it is apparent that the respondent has been chronically involved with illegal drugs. To a substantial degree, it appears that the respondent's involvement with drugs may be attributed to his immaturity and impressionability.

The respondent's conviction of an offense which is listed as an enumerated grounds for revocation of his registration under section 86c(3) of the act obviously reflects adversely upon his good character, honesty and integrity. He is presently employed on a part-time basis, and this offers some indication of his potential for rehabilitation. However, there is little evidence in the record to establish that the respondent is no longer impressionable and easily swayed to illegal conduct. The seriousness of his illegal conduct while holding a casino hotel employee registration requires the imposition of an appropriate sanction. To do otherwise would be to ignore the Legislature's express declaration of public policy set forth in the Casino Control Act. N.J.S.A. 5:12-1b(6) provides in part:

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

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing grounds for revocation or suspension of the respondent's casino hotel registration, by a preponderance of the relevant and credible evidence, pursuant to sections 91 and 129 of the Casino Control Act. To permit the respondent to mature in the exercise of his self-control, I **CONCLUDE** that it would be appropriate to suspend the respondent's casino hotel employee registration for a period of two years, which period shall begin upon the entry of the final order of the Casino Control Commission in this matter.

588.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of the respondent be suspended for a period of two years. It is further **ORDERED** that the two-year suspension shall begin on the date of the entry of the final order of the Casino Control Commission in this matter.

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

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

July 5, 1983
DATE

Joseph J. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

July 5, 1983
DATE

Bernadette T. Frisi
CASINO CONTROL COMMISSION

Mailed to Parties:

July 7, 1983
DATE

Ronald L. Lakewood
OFFICE OF ADMINISTRATIVE LAW

ij

589.

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Certified Conviction Record

FOR THE RESPONDENT:

None

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Ivan J. Silverstein

Margaret M. Connell

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-EA-24
OAL DOCKET NO. CCC 1748-83
APP. NO. 42952-21

IN THE MATTER OF THE APPLICATION
OF GAIL A. SNYDER FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on September 2, 1983, recommending that the casino employee license application of Gail A. Snyder be granted; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on September 28, 1983, to affirm and adopt the said Initial Decision and to grant the casino employee license application of Gail A. Snyder,

IT IS on this 30th day of September 1983, 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 Gail A. Snyder 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 Gail A. Snyder and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 30, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1748-83

AGENCY DKT. NO. 83-EA-24

GAIL A. SNYDER,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Mark Vasser, Esq., for petitioner (Vasser, Spitalnick, Bloom, Mazin & Stein, attorneys)

William A. Mountford, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: July 19, 1983*

Decided: September 2, 1983

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

The Division of Gaming Enforcement objected to the application of Gail A. Snyder to the Casino Control Commission for licensure as a casino employee (teller). Ms. Snyder 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.

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*The record was kept open at the request of the Deputy Attorney General until July 19, at which time he adivsed this office that he no longer desired to supplement the record.

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Ms. Snyder is a 22-year-old woman with a fine reputation for good character, honesty and integrity. The uncontested and credible evidence of witnesses at the hearing and the letters of recommendation make this finding inescapable. I had ample opportunity to observe her appearance and demeanor as she testified and I **FIND** her to be truthful.

The reason for the objection by the Division is Ms. Snyder's termination from her employment as Assistant Manager of a Cumberland Farms store in 1982. The Division contends that the facts surrounding her termination impede her establishment of her reputation for good character, honesty and integrity, a condition for licensure set forth in N.J.S.A. 5:12-89(b)2. The Division also contends that she failed to disclose the true facts surrounding her termination, an event that would require disqualification by virtue of N.J.S.A. 5:12-86B.

Ms. Snyder's father died when she was a young teenager. From that time to the present she has contributed to the family income by working part-time, even while attending St. Philip's Grammar School, Holy Spirit High School and Atlantic County Community College. Her various employments always created a strong impression of trustworthiness, good character, honesty and integrity in the minds of her employers. This is clear from oral and written evidence presented by Paul's Hardware, Melody Lounge, Convention Hall, and others.

The lone exception is Cumberland Farms. Ms. Snyder's description of what took place at Cumberland Farms was uncontroverted by any other testimony. Her account was highly credible. It was also consistent with accounts that I have heard in the past concerning the method of operation of some chain store security operations. I **FIND** her account to be true.

While Ms. Snyder was working late one evening, two men entered the Cumberland Farms Store. She recognized one as a regional officer. While he talked to her, the other one walked around the store inspecting the shelves. After a while, the regional officer told Ms. Snyder that his companion would like to speak to her alone in the back room. Ms. Snyder complied.

In the back room, the other gentleman told Ms. Snyder that he understood why some people steal. He ascertained that she was studying to be a teacher. He told her that she could not become a teacher if she were arrested for theft. He asked her how her

parents would like to read of her arrest in the newspaper. He badgered her in this fashion and literally reduced her to tears. She denied ever having taken anything from the store. Her interrogator told her that he observed her locking the store during business hours, that stealing time from the store was the same as stealing money. She replied that she had no help in the store and had to lock the front door when she went to the bathroom or to lunch.

Ms. Snyder's interrogator insisted that she write a confession of theft in her own hand as he began to dictate. She protested and he reached for the phone, threatening to call the police and have her arrested. Afraid of the public humiliation, she began to write a confession that she denies to this day. When her interrogator observed that the written words were not as he had dictated, he tore the confession into pieces and instructed her to start again. Each time she protested, he would reach for the telephone. Finally, she signed a confession in which she admitted taking approximately $8.00 a week in merchandise for a total of approximately $176. She asked if she was now fired and he said that she was not fired, she was just suspended. She never returned to work at the store.

Two months later she received a letter from an attorney for Cumberland Farms demanding repayment of the $176 she allegedly stole. She made the payment and wrote the letters "RIP," her abbreviation for "rip-off," on the memorandum part of the check (P-8).

No charges were ever brought against Ms. Snyder. Her repeated, strenuous and certain denials of guilt were compelling in my opinion. She went along with the confession out of fear of public humiliation and special consideration for the effect such notoriety might have on her widowed mother.

I **CONCLUDE** that Ms. Snyder has established, by clear and convincing evidence, her reputation for good character, honesty and integrity, as well as the actual enactment of these qualities in her personality.

On her Personal History Disclosure Form she wrote her reason for leaving Cumberland Farms as "suspended-leaving store during working hours." In Ms. Snyder's mind, this was the only truthful allegation made against her by her interrogator. I **FIND** that she had no intent to mislead the Commission by her response. The omission of greater detail was inadvertent.

595.

For the foregoing reasons I **CONCLUDE** that Gail A. Snyder has established the qualifications for licensure.

Therefore, it is hereby **ORDERED** that a casino employment license (teller) be issued to Gail A. Snyder.

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

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

9/2/83
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

- 2 SEP 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Sept. 8, 1983
DATE

OFFICE OF ADMINISTRATIVE LAW

fms/ee

596.

WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-42
OAL DOCKET NO. CCC 04762-82
APP. NO. 00841-11

IN THE MATTER OF THE APPLICATION
OF STEWART M. SOBEL FOR LICENSURE
AS A CASINO KEY EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on July 5, 1983, recommending that the casino key employee license application of Stewart M. Sobel be denied; and Stewart M. Sobel having filed exceptions to the Initial Decision on August 3, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on August 24, 1983, to affirm and adopt the said Initial Decision and to deny the casino key employee license application of Stewart M. Sobel,

IT IS on this 25th day of August 1983, 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 Stewart M. Sobel be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Stewart M. Sobel is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Stewart M. Sobel, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: August 25, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4762-82

AGENCY DKT. NO. 82-EA-42

STEWART M. SOBEL,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Alfred J. Bennington, Jr., Esq., for petitioner

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

Record Closed: May 17, 1983 Decided: July 1, 1983

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Stewart M. Sobel to the Casino Control Commission for a key employee license permitting him to work in a casino as a pit boss in craps and blackjack. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner, with specific reference to his alleged involvement in illegal gambling from 1947 to 1972, termination of employment by the County of Los Angeles, California, due to a conflict of interest, and conviction, on July 26, 1973, as outlined in the

January 22, 1982, letter of objection from the Division of Gaming Enforcement, lacks the requisite reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act.

2. Whether the petitioner, with specific reference to his alleged conviction in California for violations of the conflicts of interest law, has been convicted of or has committed an offense which would be under New Jersey law at the time of application an enumerated statutory disqualifier from licensure, within the meaning of section 86c, even if such conduct has not or may not be prosecuted under the criminal laws of this state, within the meaning of section 86g of the act.

3. Was the alleged conviction properly expunged in California and has the petitioner waived his right to claim the expungement by disclosing it on his personal history disclosure form.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated January 22, 1982. The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A 52:14F-1 et seq.

FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. On the first day of hearing, the parties placed on the record a stipulation of facts (Exhibit J-2) and the petitioner presented character and expert testimony. Subsequently, during the course of his research for his post-hearing brief, counsel for the respondent Division of Gaming Enforcement discovered a reported California decision (Exhibit J-3) concerning the petitioner, People v. Sobel, 40 Cal. App. 3rd 1046, 115 Cal. Rptr. 532 (1974). After this decision was forwarded to counsel for the petitioner, a consent order was entered into reopening the record in this matter for taking additional testimony and for the admission of additional exhibits.

Having reviewed the decision of the California Court of Appeal concerning the petitioner, counsel for the respondent no longer consented to several of the stipulated facts agreed upon at the first hearing session. The following is a recitation of the remaining stipulated facts:

On May 26, 1978, the applicant was granted casino license No. 416-21 as a surveillance room employee. On August 7, 1980, the applicant received a position addition for floorperson in blackjack and boxperson. In February, 1981, the applicant was issued instructor's license No. 360-60 for craps.

The applicant disclosed that from 1947 to 1972 he was involved in illegal gambling in the states of Texas, Michigan, Illinois and California. In 1948, the applicant, while in the Air Force, started as a craps dealer in Texas. From 1948 until 1954, the applicant was a boxperson and floorperson in an operation in Illinois. From 1954 through 1959, the applicant was a boxperson and floorperson in craps and roulette in Michigan and from 1959 until 1972 the applicant acted as a floorperson in craps in Los Angeles County and Kern County, California. The applicant was apparently never charged or convicted of any criminal charges relating to these activities.

The applicant also disclosed that, on July 15, 1972, he was terminated from his employment as a deputy purchasing agent for the County of Los Angeles for conflict of interest. The applicant apparently had become romantically involved with a supplier (whom the applicant subsequently married) of books to the County and he issued purchase order checks to the said supplier for books which were never received. Ultimately, the county obtained the return of the money by withholding payment on other deliveries made by the supplier. Division investigation disclosed that, until the time of his termination, the applicant was given satisfactory reviews.

The applicant disclosed on his PHD No. 1 that, in September of 1973, the applicant was tried and found guilty of violation of a California Conflicts of Interest Law, fined $1,000 and placed on three years probation. Division investigation disclosed that the applicant was hired as an assistant deputy purchasing agent on June 30, 1969, by the County of Los Angeles. On July 13, 1970, the applicant was deputized to sign purchase orders and given the authority to negotiate and sign contracts for the County. Shortly thereafter, the applicant was appointed to handle all book purchases for the Purchasing and Stores Section.

In June of 1970, Eola Book Services, Inc. appeared on the first bid list for the County. On September 18, 1970, the applicant signed his first purchase order with Eola Book Services, Inc. Subsequent thereto and up until April 18, 1972, the applicant signed other purchase orders with said Eola Book Services, Inc. It should be

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noted for the fiscal year of 1969-1970, no transactions were recorded between Eola Book Services, Inc. and the County of Los Angeles. For the fiscal year 1970-1971, the dollar volume of the contracts between Eola and the County was $269,977. For the fiscal year 1971-1972, the dollar value volume was $361,249. The grand total dollar value volume between Eola Book Services, Inc. and the County of Los Angeles was $631,226.

In November, 1970, the applicant and Lotus Eola appeared in law offices of a Las Vegas, Nevada attorney and had the attorney form Eola Book Services, Inc. On November 30, 1970, Eola Book Services, Inc. opened a checking account at the First National Bank of Nevada, Las Vegas, Nevada. L. Eola and/or M. Stewart were authorized to draw funds from that account. On February 20, 1971, a check was made payable to the order of S.M. Sobel in the amount of $1,186.11 from that account and was signed by M. Stewart. On March 2, 1971, another check from that account was made payable to the order of cash in the amount of $700 and signed by L. Eola. Both the $1,186.11 check and the $700 check were deposited to the account of S.M. Sobel at the Fidelity Bank, Beverly Hills, California.

Eola Book Services also maintained two corporate checking accounts at the Inland Bank, Pomona, California. The authorized signatures on said accounts were L. Eola and M. Stewart.

The Questioned Documents Examiner of the Los Angeles County District Attorney's Office opined that the signatures of M. Stewart and Stewart M. Sobel were made by the same person.

On July 26, 1973, the applicant was found guilty by the Superior Court of California, County of Los Angeles, for violating Sections 1090 and 1097 of the Government Code. On September 7, 1973, the applicant was sentenced to three years probation and fined $1,000, as previously mentioned. Subsequent thereto and on February 2, 1977, the Court ordered that "pursuant to Section 17(b), Penal Code, the offense is deemed to be a misdemeanor."

Several witnesses testified concerning the petitioner's reputation for good character, honesty and integrity. Rabbi Aaron Krauss testified that he has known the petitioner for approximately three years. In his opinion, the petitioner is a man of integrity and responsibility. The petitioner's conviction under the California Conflicts of Interest law and the petitioner's involvement in illegal gambling from 1947 until 1972 did not affect the Rabbi's opinion.

William H. Schauman, Casino Administrator for the Sands Hotel and Casino in Atlantic City, testified that he has known the petitioner since 1979. At that time, the petitioner was training casino personnel in dealing and surveillance. According to Mr. Schauman, the petitioner is highly respected in the casino industry for his integrity.

Neither the petitioner's lengthy involvement in illegal gambling, nor his California conflict of interest conviction, affected Mr. Schauman's opinion.

Also testifying on behalf of the petitioner was Gary L. Gardner, Vice President of Intertel, a subsidiary of Resorts International. Mr. Gardner first met the petitioner in 1978, when the petitioner worked in a security capacity for Resorts International. According to Mr. Gardner, the petitioner performed very well under extraordinarily trying conditions and Mr. Gardner had no concern in regard to the petitioner's honesty. He characterized the petitioner's reputation in the casino industry as very good. The petitioner's California conflict of interest conviction and the petitioner's 25-year involvement in illegal gambling did not affect Mr. Gardner's opinion.

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

The material factual disputes in this matter concern the petitioner's conduct which resulted in his conviction under California's conflicts of interest law. At the first hearing session, the petitioner offered several stipulations of fact which were initially consented to by the Division of Gaming Enforcement. As previously discussed, the discovery of the reported California decision concerning the petitioner caused the Division of Gaming Enforcement to withdraw its consent.

The factual disputes concerning the petitioner's employment as a Deputy Purchasing Agent for the County of Los Angeles involve the petitioner's assertions that the vendor Eola Book Services, Inc. was the lowest bidder on contracts let by the county and that all contracts let were on an open competitive bidding basis and were signed by additional parties other than the petitioner.

At the second hearing session in this matter, the petitioner testified that Eola Book Services, Inc., was awarded contracts by the County of Los Angeles as the lowest bidder. The petitioner had no knowledge of a contract being awarded to this vendor when another vendor had a lower bid. The petitioner asserted that at least one of his superiors was required to review and approve each contract which he arranged.

The testimony of the petitioner contrasts sharply with the factual analysis set forth by the California Court of Appeal in the matter of People v. Sobel, supra, (Exhibit

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J-3). In its affirmance of the petitioner's conviction under the California conflict of interest statute, the California Court of Appeal held:

> In the instant case, the evidence was ample to support the conclusion that the defendant had the opportunity, whatever his job classification, to direct a steady flow of Los Angeles County business and money to a concern in which he was interested, personally, and that he did so. His activities in this regard constituted the type of conduct the legislature desired to discourage.

The Court of Appeal specifically referred to numerous purchase orders introduced into evidence by the prosecution in the trial of the petitioner. These purchase orders were negotiated by the petitioner with the Eola Book Services, Inc., from July 1972 to December 1971. Some of these purchase orders had been approved by the petitioner's superiors and some had not (Exhibit J-3 at page 535). The Court of Appeal also referred to an audit of some of the formal bidding contracts the petitioner had negotiated with Eola Book Service, Inc. This audit established that Eola Book Service, Inc., had been awarded a contract when another vendor had actually turned in a lower bid.

At the hearing, the petitioner testified that he had no financial connection with Lois Eola. The petitioner denied that he had signed two signature authorization cards for bank accounts established by Eola Book Service, Inc., in Nevada and in California. The signature cards showed that the persons authorized to draw on the accounts were Lois Eola and a certain "M. Stewart." Although the petitioner denied that he had signed the bank account authorization cards, he did acknowledge that he had at one time used the name "M. Stewart" as a writer's pseudonym. Nevertheless, in its affirmance of the petitioner's conviction, the California Court of Appeals specifically referred to the testimony of the Questioned Documents Examiner of the Los Angeles County District Attorney's Office. It was the opinion of this handwriting expert, after reviewing an exemplar of the petitioner's signature and various documents bearing the signature of "M. Stewart" that the petitioner's signature and that of "M. Stewart" were written by the same person.

In light of the ample evidence reviewed by the California Court of Appeal in support of its affirmance of the petitioner's conviction under the California Conflict of Interest statute, the petitioner's credibility must be questioned. Conflicting explanations offered by the petitioner as to the purpose of a $700 check which he had received from the Eola Book Service, Inc., further place in doubt the petitioner's credibility. In short,

the petitioner's denial of involvement in conduct which would constitute a violation of the California Conflict of Interest Law is simply not believable.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter, I additionally **FIND** that the petitioner utilized his position as an employee of Los Angeles County to award contracts to Eola Book Service, Inc., a concern in which he was personally interested. I further **FIND** that the petitioner awarded some contracts to Eola Book Service, Inc., even though another vendor had actually submitted a lower bid. Finally, I **FIND** that some of the purchase orders negotiated by the petitioner with Eola Book Service, Inc., were not approved by the petitioner's superiors.

CONCLUSIONS OF LAW

Pursuant to section 89 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino key employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 89 incorporates by reference the disqualification criteria set forth in section 86 of the act. Pursuant to section 86c, the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction of an enumerated statutory disqualifier from licensure. Pursuant to section 86g, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

It is the position of the Division of Gaming Enforcement that the petitioner's conviction under the California Conflict of Interest Law is equivalent to the enumerated New Jersey disqualifier of official misconduct, pursuant to N.J.S.A. 2C:30-2. The petitioner contends that his California conviction is not the equivalent of a conviction under N.J.S.A. 2C:30-2, and that, in any event, his California conviction is the subject of a valid California Order of Expungement and, thus, cannot be used as grounds for automatic rejection of his license application.

Section 1090 of the California Conflicts of Interest Law provides, in part, that county employees shall not be financially interested in any contract made by them in their official capacity. Section 1097 of the same act provides, in part, that every person prohibited by the laws of California from making or being interested in contracts who

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willfully violates any of the provisions of such laws is punishable by a fine of not more than $1,000 or by imprisonment in the state prison.

In New Jersey, N.J.S.A. 2C:30-2 provides, in part, as follows:

> A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another. . .;
>
> a. He commits an act relating to his office but constituting an unauthorized exercise of his official function, knowing that such act is unauthorized or he is commiting such act in an unauthorized manner. . . .

It is undisputed that the petitioner was a public servant commiting an act relating to his office when he arranged for the County of Los Angeles to do business with Eola Book Service, Inc., while serving as an Assistant Deputy Purchasing Agent for the county. It is clear from the disputed and undisputed facts found in this matter that the petitioner acted with a purpose to gain a benefit for himself and for Eola Book Service, Inc., and that his act was performed in an unauthorized manner. Finally, it is clear from the findings of disputed and undisputed fact concerning the petitioner's conduct that the petitioner knew that he had committed an act relating to his office in an unauthorized manner. Thus, all of the material elements necessary to obtain a conviction pursuant to N.J.S.A. 2C:30-2 are present in the conduct of the petitioner while he was serving as an Assistant Deputy Purchasing Agent for the County of Los Angeles.

On the basis of the foregoing discussion and the specific findings of disputed and undisputed fact, I **CONCLUDE** that the petitioner has committed acts which would constitute the offense of official misconduct, contrary to the provisions of N.J.S.A. 2C:30-2, an enumerated disqualifier from licensure, pursuant to N.J.S.A. 5:12-86c(1). Since the conduct of the petitioner is that proscribed by N.J.S.A. 2C:30-2, an enumerated disqualifier from licensure, even though the conduct has not been prosecuted under the criminal laws of New Jersey, pursuant to N.J.S.A. 5:12-86g, it is unnecessary to reach the petitioner's contentions concerning the elements of the California Conflict of Interest law and the effect of the petitioner's California expungement.

The petitioner offered credible testimony to establish that he has a reputation for good character, honesty and integrity. However, based upon the entirety of the relevant and credible evidence in the record, and with specific reference to his California misconduct and his 25-year career in illegal gambling, I must **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, that he actually possesses the degree of good character, honesty and integrity requisite for licensure as a casino key employee, within the meaning of section 89b(2) of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, Stewart M. Sobel, for licensure as a casino key employee, be **DENIED**.

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

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

July 1, 1983
DATE

Joseph R. Fidler
JOSEPH R. FIDLER, ALJ

Receipt Acknowledged:

July 5, 1983
DATE

Bernadette T. Fricia
CASINO CONTROL COMMISSION

Mailed to Parties:

July 7, 1983
DATE

Ronald L. Lukens/sbo
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

JOINT EXHIBITS:

J-1 Personal History Disclosure Form

J-2 Letter of the Division of Gaming Enforcement, dated January 22, 1982, as deleted and amended

J-3 Decision in the matter of People v. Sobel

FOR THE PETITIONER:

P-1 Petition and Writ of Habeas corpus

P-2 Transcript of Preliminary Hearing

FOR THE RESPONDENT:

R-1 Transcript of Sworn Interview

WITNESSES

FOR THE PETITIONER:

Robert Clem

Aaron Krauss

William H. Schauman

Gary L. Gardner

Stewart M. Sobel

FOR THE RESPONDENT:

None