

**ANTONIO TUFI,**  
Petitioner,  
v.  
**DIVISION OF GAMING ENFORCEMENT,**  
Respondent.

Initial Decision: August 14, 1980 Final Agency Decision: November 25, 1980

Superior Court, Appellate Division Decision Appears at: 182 *N.J. Super.* 631 (1982)

**SYNOPSIS**

Upon receipt of a notice from the Casino Control Commission that it intended to deny his license application, petitioner requested a hearing and the matter was assigned to an administrative law judge.

The administrative law judge rejected all allegations of alleged association with career offenders, misrepresentations on a "Green Card" application and lack of honest intent to go into business as represented. The judge determined, however, that licensure should be denied based on a finding that petitioner had knowingly lied to customs officials when transporting a large sum of cash into this country.

Upon review, the Casino Control Commission accepted the judge's initial decision with the modification that it rejected that portion of the initial decision in which it was found that petitioner had knowingly violated federal law.

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**Donald G. Targen, Esq.,** for petitioner.

**Frederic E. Gushin,** Deputy Attorney General, for respondent (John J. Degnan, Attorney General of New Jersey, attorney).

**Initial Decision**

**SMITH, ALJ:**

This matter concerns the application of Antonio Tufi to the Casino Control Commission for a key employee license as Director of Research and Development of Gaming Equipment for Resorts International, pursuant to *N.J.S.A.* 5:12-89.

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The Division of Gaming Enforcement contends that Mr. Tufi lacks the good character, honesty and integrity required by *N.J.S.A.* 5:12-89b(2) for licensure as a key employee. It further claims that Mr. Tufi is an associate of a career offender or career offender cartel, requiring disqualification pursuant to *N.J.S.A.* 5:12-86f. Finally, the Division asserts that Mr. Tufi withheld material information from Division investigators.

Mr. Tufi was born in Italy where he attended vocational school. He followed in a brother's footsteps by attending a gambling school in England, whose successful graduates were then recruited by the gaming industry in the Bahamas. He went to Paradise Island in the Bahamas as a boxman in craps. There he became adept at blackjack as well. He also accumulated a respectable knowledge of the design and operation of slot machines and other gaming equipment. Resorts International sought to employ that knowledge by naming Mr. Tufi to a key employee position entitled "Director of Research and Development of Gaming Equipment."

Substantial, credible testimony was produced and largely undisputed concerning Mr. Tufi's performance of his duties for Resorts International in Atlantic City. He was in charge of the installation and maintenance of slot machines. He also instructed employees of the Division of Gaming Enforcement how slot machines worked and how they could be abused. Mr. Tufi earned for himself a reputation for high skill, good character, honesty and integrity among fellow employees at Resorts International and among those employees of the Division of Gaming Enforcement who came into contact with him on a regular basis on the casino floor.

The Division relies on certain specific instances of conduct to support its objections to licensure. They are as follows:

1. Mr. Tufi illegally failed to declare cash to U.S. customs. In May 1976, Mr. Tufi made one of several trips from the Bahamas, where he lived and worked, to Miami, Florida, where he invested in an Italian restaurant. On this particular trip he brought with him \$11,000 in cash to begin his investment.

Federal law requires anyone carrying more than \$5,000 in cash into the United States to declare that money to customs officials. 31 *U.S.C.* 1101. Forms must be filled out by each person before he is permitted to clear customs. One of the questions specifically inquires whether the person is carrying more than \$5,000 in currency. Mr. Tufi responded to that question in the negative. Large warning signs are

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usually posted at airports notifying entrants to the United States of the reporting requirement. There is no eyewitness testimony that the signs were posted on that day in May 1976 when petitioner failed to comply with federal law. Mr. Tufi claims that his failure to report the \$11,000 was a misunderstanding arising from his inexperience in bringing money into the country and his language limitation. Mr. Tufi does speak with a heavy Italian accent. However, after listening to him at length, I am convinced that he has no difficulty reading, writing or speaking the English language.

Mr. Tufi's intention becomes clear in sworn testimony that he gave to Division of Gaming Enforcement investigators in a series of depositions taken during the investigation of the present application.

On August 27, 1979, he testified under oath that he brought the \$11,000 into this country on more than one trip. He asserted that he did not declare the money because it did not exceed \$5,000 in any one trip and it did not have to be declared. However, on September 11, 1979, he clearly admitted his former testimony to be a lie. He lied under oath to the Division investigator so that the Casino Control Commission would be unaware that he violated federal law.

This carefully crafted misrepresentation and subsequent recanting strengthens the probability that Mr. Tufi knowingly failed to declare the \$11,000 he carried into this country. At the same time, it renders low the credibility of his professed ignorance of the requirement to declare currency in excess of \$5,000. I **FIND** that Mr. Tufi knowingly violated federal law by failing to declare \$11,000 in currency upon entrance into the United States. He subsequently lied about it under oath to an investigator of the Division of Gaming Enforcement for the sole purpose of keeping that information from the Casino Control Commission.

In July 1976, Mr. Tufi made another trip from the Bahamas to Miami, this time carrying \$37,000 in cash. He was given the cash by Mr. Manes, his supervisor in the Bahamas, to deliver to James Neal. Mr. Tufi incorrectly declared this money as his own, violating federal reporting requirements. At the hearing, Mr. Tufi first attempted to portray his error as an inadvertance resulting from a misunderstanding on the part of customs officials, who simply assumed the money was his and filled out the form accordingly. That is the scenario proffered by the petitioner in his proposed findings of fact. Mr. Tufi claims that the general confusion was increased by his inability to understand the question that asked if he was carrying the money as anyone's agent or attorney.

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However, on cross-examination by Deputy Attorney General Gushin, Mr. Tufi reluctantly admitted that he was instructed by James Neal to declare the money as his own, well in advance of that trip. In his August 27, 1979, sworn testimony before a Division investigator, Mr. Tufi also attempted to describe the \$37,000 as his own. He developed an elaborate set of false circumstances to explain it; that he saved it from his salary, kept it in a safe deposit box in the Bahamas before the trip and in his wife's house in Miami after the trip. At that point, Sergeant Romanowski, who conducted the deposition, reminded the petitioner of his obligation to tell the truth. Mr. Tufi proceeded to recant his story completely. He admitted that he lied; that the money was not his; that James Neal instructed him to declare it as petitioner's own; that he knowingly did so in compliance with his instructions.

At the hearing, Mr. Tufi claimed that he was confused and ill during the August 27 deposition, resulting in inaccurate testimony. Ill or not, the clarity of Mr. Tufi's testimony at the August 27 deposition is manifest and his attempt to attribute it to confusion is incredible.

I find as fact that Mr. Tufi knowingly lied to customs officers in July 1970, by declaring \$37,000 in cash to be his own, on specific instructions from James Neal.

The intentional violations of federal laws and the subsequent misrepresentations, under oath, concerning them, render it impossible to find that the petitioner has established by clear and convincing evidence that he is a man of good character, honesty and integrity as required by *N.J.S.A.* 5:12-89b2. The false testimony to Division investigators constitutes a failure of the petitioner to reveal facts material to qualification, as well as the supplying of information which is untrue or misleading as to a material fact pertaining to qualification criteria in violation of *N.J.S.A.* 5:12-86b. Each of those conclusions requires denial of petitioner's license.

2. Mr. Tufi was issued a permanent alien registration visa, known as a green card, by the United States Consulate Office on June 10, 1977. Extensive factual and expert testimony and legal argument were presented regarding Mr. Tufi's qualifications for that card and whether or not it should have been issued. However, the issuance of that card constituted a federal administrative determination that has never been challenged in the forums specifically provided for that purpose. The validity of that card cannot be collaterally attacked in this proceeding. The Office of Administrative Law and the Casino

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Control Commission have no jurisdiction to declare that card invalid. Were I or the Commission to determine that the card should not have been issued, it would stand as a valid card, nevertheless. Finally, even if I decided that Mr. Tufi did not qualify for the card, I would not have reached a conclusion relevant to any of the issues found in the Casino Control Act.

Therefore, I will not rule on the issue of the green card's validity, because I see that issue as not properly before me.

The Division contends that Mr. Tufi gave fraudulent information when he applied for the green card. That allegation is relevant to the extent that it sheds light on Mr. Tufi's good character, honesty and integrity.

One of the green card requirements was an investment in a business of at least \$10,000. Mr. Tufi invested at least \$35,000 in an Italian Restaurant known as Tufi's. That restaurant closed 10 days after the issuance of the visa. The Division rests almost exclusively on that event to support its allegation that Mr. Tufi never intended to maintain his investment after he obtained his green card and, therefore, he misrepresented his intent to the United States Government for the purpose of obtaining that card. However, the uncontroverted evidence demonstrates, and I so find that:

1. He personally observed the location of the site and the neighboring business to determine the chances of success.
2. He entered into a two-year lease with an option to renew, which he exercised.
3. He renovated the interior of the existing restaurant at a cost of approximately \$18,000.
4. He distributed business cards and flyers to advertise the business, in addition to newspaper ads.
5. He sought to obtain free parking arrangements and a liquor license.
6. He hired a manager, a cook and a waitress. He ultimately fired the manager and replaced him when it appeared that he was not performing up to expectations.
7. He placed his wife in the restaurant daily and called her each evening from the Bahamas for news of the operation.
8. He came to Miami every 2 weeks to review the operation of the business.

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9. The business was in debt and in need of capital contributions when he closed it.

I conclude that Mr. Tufi made a good faith effort to establish a going business in order to comply with federal law. He certainly harbored a desire to see the business flourish and he would have kept it operating if it did. However, once the green card was issued, he saw no reason to continue to operate a losing business.

I conclude that Mr. Tufi did not misrepresent his intentions to operate a business at the time of his visa application.

The Division also labels the petitioner's promise on his application that he would be the operator of the business as a misrepresentation, because petitioner was not at the restaurant daily. However, it is clear that Mr. Tufi did operate the business in a general sense. The distinction between degrees of absentee ownership and daily operation may be ripe for legal analysis, but I cannot find such distinctions to have existed in Mr. Tufi's mind. I find no misrepresentation here.

I **CONCLUDE** that Mr. Tufi did not defraud the United States Government regarding his investment in and operation of Tufi's Restaurant.

3. Mr. Tufi is allegedly an associate of a career offender or career offender cartel as defined in *N.J.S.A.* 5:12-86f. The Division rests its allegation on Mr. Tufi's relationship with three men: Dino and Eduardo Cellini and James Neal. However, the evidence establishes that Mr. Tufi's relationship with Dino Cellini was almost nonexistent. The facts are found as follows:

1. Dino Cellini was the operator of the London gaming school that Mr. Tufi attended.
2. Mr. Tufi saw Dino Cellini for a few minutes in Rome in late 1972 or early 1973 during a visit to Eduardo Cellini.
3. Dino Cellini is now dead.

The foregoing is the sum and substance of Mr. Tufi's connection with Dino Cellini. I **CONCLUDE** that petitioner's former association with Dino Cellini is not inimical to the policies of the Casino Control Act or to gaming operations.

Regarding Eduardo Cellini, I find:

1. He was casino manager of the Paradise Island Casino from 1968-1970.
2. Mr. Tufi knew him during that time through his employment.

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3. Mr. Tufi bought stock in a corporation headed by Eduardo Cellini, as did many employees of the casino.
4. On a trip to Italy, in late 1972 or early 1973, petitioner paid a brief courtesy call on Mr. Cellini at his home in Rome.
5. Eduardo Cellini's telephone number appeared in Mr. Tufi's personal telephone book.
6. Mr. Tufi last saw Eduardo Cellini briefly in the office of James Neal in 1977.

I **CONCLUDE** that Mr. Tufi has a casual acquaintance with Eduardo Cellini arising out of his employment. His association was no greater than that of Resorts International, Cellini's employer. The Commission has already reviewed that relationship in depth and determined that it was not a disqualifying one. The Commission further observed that an association through employment is not necessarily an association inimical to the policies of the Casino Control Act or to gaming operations. Therefore, I **CONCLUDE** that the petitioner's association with Eduardo Cellini is not a disqualifying one.

Mr. Tufi's relationship with Mr. Neal is more extensive. I find the following facts:

1. He met Mr. Neal between 1968 and 1970 when they both worked for Paradise Island.
2. Mr. Tufi asked Neal if he could recommend an attorney to handle Tufi's immigration application to the United States. Neal recommended his own attorney, James Sabatino of Miami.
3. Tufi employed Sabatino who, together with Neal, convinced petitioner to lease a restaurant owned by Neal. Neal then became Tufi's landlord.
4. Neal persuaded the petitioner to carry \$37,000 in cash into this country for Neal, declaring it as Tufi's own. This transaction has been described in detail.
5. The restaurant investment turned out to be a poor one. Petitioner lost money and Neal profited.

Because Neal was able to convince Mr. Tufi to violate the law on Neal's behalf, it is important to analyze whether Neal is a career offender or a member of a career offender cartel. A career offender cartel is defined by the statute as any group of persons who operate together as career offenders. The primary question then is: What evidence has the Division produced to establish that Mr. Neal's behavior has been pursued in an occupational manner or context for the

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purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State? The answer is none.

The problem with the evidence is not that it is hearsay, but that it carries no probative force. Memoranda from one person out of court to another person out of court, that they have "learned" things from unidentified fourth and fifth persons whose opportunity to observe the facts is totally undescribed, do not carry sufficient weight to support findings.

Further, the vague linking of Neal's name to others with notorious reputations does not make Neal a career offender. The statutory definition must be met.

The closest evidence of criminal conduct by Neal is his admission to Ernest Tiberino, formerly of the IRS, that he had engaged in book-making sometime prior to 1948, but not since. There is no evidence of the duration of the bookmaking activity; whether it was a solitary lark or a continuing enterprise. It ceased thirty-two years ago, when Mr. Tufi was a 6-year old boy in Italy.

I recognize that a license in the casino industry is a privilege and that the burden of establishing qualifications is on the applicant by clear and convincing evidence. Nevertheless, a hearing is also a matter of statutory right. Findings of fact must be based upon evidence produced at the hearing that carries probative force relevant to the issues set forth in the statute. I cannot find from the evidence before me that James Neal is a career offender. Therefore, petitioner's relationship with Mr. Neal is not disqualifying.

4. Mr. Tufi allegedly committed an assault and battery on Ruth Speed, with whom he lived, on two occasions. The entire testimony to support this allegation comes from detectives who spoke to Miss Speed, and from municipal court complaints that she signed.

However, Miss Speed subsequently told a Division investigator it had all been a misunderstanding and she had nothing derogatory to say about Mr. Tufi. She also withdrew both municipal court complaints.

Miss Speed did not testify at the hearing. Mr. Tufi denies the allegation. He points out Miss Speed's anger over his refusal to ask his wife for a divorce as motivation for the false charges.

Based upon that evidence, I cannot find that Mr. Tufi assaulted Ruth Speed.

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5. Mr. Tufi failed to disclose his ownership of stock in the T.E.E.I. Corporation, headed by Eduardo Cellini, on his Personal History Disclosure Form. The Division asserts that this failure was intentional in an attempt to conceal Mr. Tufi's connection with Eduardo Cellini. Mr. Tufi attributes the failure to inadvertence. I find Mr. Tufi's explanation to be credible. I do not believe that Mr. Tufi foresaw, at the time he prepared his application, that an innocent investment would pose an obstacle to licensure. I **FIND** that he considered his investment in T.E.E.I., which was done in concert with many casino employees, to be innocent.

Therefore, I **FIND** that Mr. Tufi did not intentionally fail to disclose his ownership of T.E.E.I. stock.

The Casino Control Commission has held that a mere inadvertent failure to disclose facts does not constitute a disqualification under *N.J.S.A.* 5:12-86b.

For the reasons set forth in the first objection discussed in this opinion, it is hereby **ORDERED** that the petitioner's application for licensure be denied.

This initial decision may be affirmed, modified or rejected by the Casino Control Commission, which by law is empowered to make the final decision in this matter.

**FINAL DECISION BY THE CASINO CONTROL COMMISSION:**

A hearing having been conducted in the above-captioned matter before the Honorable Norman D. Smith, administrative law judge of the Office of Administrative Law; and the Commission having considered the entire record of the proceedings and the initial decision of the administrative law judge, the exceptions and objections filed on behalf of the Division of Gaming Enforcement and the applicant; and the Commission having resolved at its public meeting of November 5, 1980, to adopt the initial decision as modified herein and to deny the application for licensure;

It is on the 25th day of November 1980, **ORDERED** that the initial decision of the administrative law judge be and hereby is adopted by the Commission except as modified below; and

It is further **ORDERED** that the portion of the initial decision in which it is found that the applicant knowingly violated federal law be and hereby is rejected by the Commission; and

It is further **ORDERED** that the application of Antonio Tufi for licensure as a casino key employee be and hereby is denied for the

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

It is further **ORDERED** that copies of this Final Order be served upon the applicant and the Division of Gaming Enforcement within 10 days of the date hereof.