IN THE MATTER OF THE APPLICATIONS OF GREATE BAY HOTEL AND CASINO, INC. AND AMERICAS—NEW JERSEY MANAGEMENT INC. FOR PLENARY CASINO LICENSES

Decided: May 7, 1982
Approved For Publication By The Casino Control Commission: April 8, 1988

SYNOPSIS

Greate Bay Hotel and Casino, Inc. applied to the Casino Control Commission for a casino license to operate the Sands Hotel and Casino. Following a hearing by the Commission, a license was issued.

One area of concern was whether deficient internal controls in applicant's casino in Puerto Rico reflected on applicant's business and casino experience. The Commission found that these practices had been improved, even though the practices did not violate Puerto Rican casino law. In addition, applicant had demonstrated during its temporary license to operate in Atlantic City that it could comply with New Jersey's internal control requirements. Therefore, the evidence regarding the Puerto Rico casino did not justify an adverse finding with respect to applicant's qualifications.

Another area of concern was transactions between the Koffmans (major stockholders in a corporation which indirectly owns applicant) and Morris Shenker, a person of questionable reputation. From 1966 through 1980, the Koffmans had made loans totalling $15 million to Shenker and companies connected with Shenker. However, the Commission determined that the loans and other transactions with Shenker were normal business transactions and the evidence did not reveal anything improper. Therefore, the circumstances did not justify an adverse finding with respect to the good character of the applicant.

Accordingly, the Commission concluded that the applicant had established by clear and convincing evidence its qualifications.

John Walker Daniels, Esq.; Nicholas Casiello, Jr. Esq., and Esther R. Sylvester, Esq., for Greate Bay Hotel and Casino, Inc. Martin L. Blatt, Esq., for Jack, Edward and William Pratt; Richard and Burton Koffman and PPI Corporation
BY THE CASINO CONTROL COMMISSION:

I. INTRODUCTION

This matter was brought before the Commission pursuant to the application of Greate Bay Hotel and Casino, Inc. (Greate Bay) for a casino license. Greate Bay acquired a temporary casino permit in August 1980 and, following transfer of a controlling stock interest, acquired a second such permit in May 1981. Greate Bay operates the Sands Hotel and Casino under the temporary permit.

Two investigative reports of the Division of Gaming Enforcement (Division) which, as modified, were stipulated and admitted into evidence at the hearing before the Commission, identified certain areas of concern with respect to Greate Bay’s application. One potential problem noted and further explored at prehearing conferences was the existence of a “consulting agreement” between Greate Bay and Inns of the Americas, Inc. The question arose whether this agreement was in reality a contract to manage the casino within the meaning of N.J.S.A. 5:12-82(b) and (c). This issue was resolved during the hearing by means of an agreement to create a new corporation which would enter into a contract to manage the hotel and casino and which would meet all of the applicable statutory requirements, including application for separate casino licensure. The new corporation, Americas—New Jersey Management, Inc. (Americas—New Jersey), has been created, has entered into a contract to manage the hotel and the casino, and has applied for a casino license.

The Commission has reviewed the management contract in accordance with the requirements of N.J.S.A. 5:12-82(b) and (c), as well as N.J.S.A. 5:12-104(b), and has approved the contract. Thus, the issues now before the Commission are whether to grant plenary casino licenses to Greate Bay and Americas—New Jersey.
II. LICENSURE OF GREATE BAY

The history of Greate Bay's license application is set forth in the Chairman's Instruction to the Commission and need not be repeated at length here. That Instruction has been given to the Commissioners and made part of the record of the casino license hearing, and is incorporated by reference in this Opinion. The Instruction also sets forth the qualification criteria for a casino license, and it is thus also unnecessary to detail those criteria here.

The rather complicated corporate origin and ancestry of Greate Bay, as described in detail in the Division's investigative reports, also need not be recounted here. For purposes of this opinion it suffices to say that Greate Bay is now a wholly-owned subsidiary of Greate Bay Casino Corporation, a publicly-traded company; seventy-three and two-tenths percent of the stock of Greate Bay Casino Corporation is in turn owned by Greate Bay Hotel Corporation; seventy-eight percent of the stock of Greate Bay Hotel Corporation is owned by PPI Corporation; and PPI Corporation is fifty percent owned by Inns of the Americas, Inc. and fifty percent owned by Burton and Richard Koffman.

In discussing Greate Bay's application, this Opinion will deal only with those areas which were the subject of significant attention during the hearing. Detailed findings with regard to other licensing criteria are contained in a separate proposed Resolution.

The areas which received significant attention at the hearing were: (1) a finding by the Nevada Gaming Commission that Thrift Credit Corporation, Burton Koffman and Milton Koffman were unsuitable as lenders to A.E.S. Technology Systems, Inc. and M & R Investment Company and as equity holders in A.E.S. Technology Systems, Inc.; (2) operation of the Condado Holiday Inn casino in alleged violation of Puerto Rican gaming laws; (3) internal control problems at the Condado Holiday Inn casino; and (4) the Koffmans' relationship with Morris Shenker and the Teamsters Central States, Southeast and Southwest Areas Pension Fund. In its summation, the Division described the first two issues as having been satisfactorily resolved during the hearing, and identified the last two as the major areas of continuing concern. In its summation, the Division also stated that it was interposing no objection to the licensure of Greate Bay.

Obviously, as the Division recognized in its summation, it is the Commission's responsibility to independently evaluate the entire record and to determine the qualifications of the business entities and
natural persons required to qualify with respect to any casino license application. This was done in the present case by each Commissioner.

A. NEVADA FINDING OF UNSUITABILITY

On April 16, 1980, the Nevada Gaming Control Board recommended to the Nevada Gaming Commission that Thrift Credit Corporation, a Koffman controlled entity, Burton Koffman, and Milton Koffman, the uncle of Burton Koffman and Vice President of Thrift Credit, be required to file an application for a finding of suitability as lenders to A.E.S. Technology Systems, Inc. and M & R Investment Company and as equity holders of A.E.S. Technology Systems, Inc. On April 24, 1980, the Gaming Commission upheld the Board's recommendation and required that the application be filed.

On September 10, 1980, the Gaming Control Board recommended to the Gaming Commission that Thrift Credit, Burton Koffman and Milton Koffman be found unsuitable as lenders and equity holders because the application required by the April 24 order had not been filed. On September 18, 1980, the Gaming Commission made a finding of unsuitability as to Thrift Credit, Burton Koffman and Milton Koffman. The finding was based on the failure of Thrift Credit and the Koffmans to file the application required by the April 24 order.

On October 20, 1980, counsel for Thrift Credit and Burton and Milton Koffman petitioned the Gaming Commission for a rehearing and a recision of the finding of unsuitability. In response to that petition, the Gaming Control Board advised the Gaming Commission that it had no objection to the rehearing because the failure to submit the required application was the result of a misunderstanding and did not involve an attempt to conceal information from the Board or the Commission. On October 23, 1980, the Nevada Gaming Commission unanimously voted to rescind the finding of unsuitability and to allow Thrift Credit and Burton and Milton Koffman to submit the required application. Thrift Credit, Burton Koffman, Milton Koffman and Richard Koffman were subsequently approved for licensure in Nevada.

In its summation in the present case, the Division urged the Commission to find that the determination of unsuitability in Nevada "was based upon the failure to file and not upon any findings of fact", and concluded that Greate Bay had "met [the] issue".

The Commission has considered all of the evidence relating to
the determination of unsuitability and subsequent recision of that
determination, and concludes that that evidence does not reflect
adversely upon the character or integrity of Thrift Credit Corporation
or the Koffmans.

B. PUERTO RICAN GAMING VIOLATIONS

The Condado Holiday Inn, located in San Juan, Puerto Rico,
has been owned by Koffman interests and by a subsidiary of Inns
of the Americas, Inc., and has been managed by a subsidiary of Inns
of the Americas, Inc., since approximately 1975. It is part of the
"casino group" of Inns of the Americas, along with the Sands Hotel
and Casino in Atlantic City and the Sands Hotel and Casino in Las
Vegas, Nevada. The Condado Holiday Inn has been fined by Puerto
Rican gaming authorities for violations of a regulation prohibiting
advertising of casinos. In addition, in 1981, the casino director, Ruben
Causa, was investigated by Puerto Rican gaming authorities for uni-
laterally imposing and collecting a $700.00 "fine" from a patron who
had attempted to cheat the casino of $700.00 by making an illegal
bet.

Maria Soto, a Puerto Rican attorney with expertise in that
jurisdiction's gaming laws, testified that the advertising violations for
which the Condado was fined resulted from an overly technical read-
ing of the applicable regulation and were in fact unjustified. Specifi-
cally, she explained that the fines resulted from (1) an incident in
which a labor union representing casino employees, acting without
the knowledge of the hotel management, placed a newspaper
advertisement, containing a picture of a roulette wheel, in order to
congratulate the hotel on the opening of a new wing; (2) the inclusion
of the word "casino" on the hotel's stationery; (3) an incident where
a hotel guest took a brochure which contained pictures of the casino
from his room to the lobby and handed it to a government inspector;
and (4) an incident in which Hugh Andrews, general manager of the
hotel and president of the Puerto Rican Hotel Association, held a
press conference protesting the government's action in eliminating
one-third of the slot machines in Puerto Rico.

Ms. Soto, who represented the Condado Holiday Inn with respect
to these charges, opined that they did not constitute actual violations
of the advertising proscription, and that the fines were paid in order
to preserve the hotel's relationship with the gaming authorities and
to avoid the costs of litigation.

In its summation in the present case, the Division offered the
opinion that "the Applicant has met the [advertising] issues in a reasonable and satisfactory manner".

With respect to the "fine" imposed by casino director Causa, the resolution of the "official examiner" who heard and decided the matter on behalf of the Puerto Rican gaming officials was accepted into evidence. The examiner concluded that the individual who had been "fined" had in fact attempted to cheat the casino. The examiner further concluded that Mr. Causa had "exceeded his powers when he imposed a fine", and that "[e]ven though there is no administrative ruling as to how to handle this particular situation, there is no justification for said action." Finally, the examiner found that there was no intention by Mr. Causa to personally benefit, in view of the fact that he deposited the "fine" in a drop box of the casino and immediately notified the Puerto Rican gaming inspector on duty. The examiner's ultimate conclusion was that suspension of Mr. Causa's license to work in casinos was not justified.

The Commission is, of course, sensitive to any evidence that a license applicant or related entity has exhibited disrespect of regulatory authorities, especially those concerned with gaming. However, in view of the nature of the alleged transgressions of Puerto Rican regulations, and of the overall record of regulatory compliance compiled by the Inns of the Americas "casino group", neither the advertising incidents nor the Causa "fine" provide a basis for denial of Greate Bay's application.

C. INTERNAL CONTROLS WITHIN THE CASINO OF THE CONDADO HOLIDAY INN, PUERTO RICO.

In its investigative report to the Commission, the Division identified the internal controls within the casino of the Condado Holiday Inn as an area of concern. The Division investigated the operation of the Puerto Rican casino as part of its inquiry into whether Greate Bay possesses sufficient business ability and casino experience to establish the likelihood of the maintenance of a successful, efficient casino operation in Atlantic City. N.J.S.A. 5:12-84(d).

The Division's report also raised questions concerning junket practices of the Condado Holiday Inn. However, the Division's concerns in this regard were never substantiated through testimony at the hearing, nor did the Division mention this issue in its summation. Thus, the Commission concludes that the junket practices do not warrant further discussion.

With respect to the internal control system of the Condado Hol-
iday Inn casino, the Division alleged that there were deficiencies in several areas, including a lack of camera surveillance on the casino floor, certain procedures at the gaming tables, certain credit and marker control procedures, failure to discard used dice, and the access of the casino director to the soft count room. In the Division’s closing statement, these alleged internal control deficiencies were termed “somewhat troublesome”.

In considering this issue we must give significant weight to Greate Bay’s record of compliance with New Jersey regulations. The Commission staff submitted a report reviewing the compliance of Greate Bay’s Atlantic City casino with New Jersey accounting and internal control regulations. The report concludes that Greate Bay generally complies with the Commission’s operational regulations, and that any deviations are not of such significance as to affect its licensure. The success of Greate Bay in complying with the strict internal control regulations of New Jersey supports a finding that Greate Bay possesses the ability to properly manage its Atlantic City Casino.

In addition, during the hearing, Stephen Hyde, Senior Vice-President of Inns of the Americas, Inc., testified regarding the internal and accounting controls in the Condado Holiday Inn casino. The Division was very impressed with Mr. Hyde’s testimony, as were we. Mr. Hyde stated that the internal controls now in place in Puerto Rico are adequate considering the small size\(^1\) and limited capacity\(^2\) of the casino.

Mr. Hyde also addressed the Division’s concern about marker control. He testified that he knew of only one lost marker, which was presently being paid off, even though no instrument existed. Moreover, Mr. Hyde stated that the Condado has no problem with false markers.

Mr. Hyde’s testimony that the present controls are sufficient is bolstered by the fact that the current management has turned the formerly bankrupt Puerto Rican casino hotel into a very successful operation.

It should be noted that the present internal controls in the Condado Holiday Inn casino do not violate Puerto Rican law. Puerto

\(^1\)The casino in the Condado Holiday Inn consists of only 25 gaming tables. The casino floor is approximately 6,000 square feet. In comparison the floor of the applicant’s casino in Atlantic City is 32,000 square feet.

\(^2\)By mandate of Puerto Rican law, maximum bets at the casinos are low. For example, the maximum bet at blackjack and craps is $200.00.
Rican gaming law requires that each casino possess some form of internal controls for the protection of the public, but leaves to the discretion of management the type of system to be instituted.

In addition to the Division's investigative report, internal controls at the Condado Holiday Inn casino are also discussed in a report from the hotel's auditor. The Division has requested that the Commission require, as a condition of Greate Bay's licensure, that the Division's report and the auditor's report be "reviewed" and that "efforts be made to comply with the recommendation of those two reports".

We find imposition of this condition unnecessary. A majority of the suggestions made in the auditor's report have already been implemented, including a television monitoring system in the soft count room, prenumbered, three-part marker forms, physical control of markers by the hotel accounting office, and documentation of inter-table chip exchanges involving two different games.

Furthermore, the Puerto Rican casino has voluntarily adopted suggestions made by the Division. Even before the Division report was made available, the Puerto Rican casino's management instituted several procedures derived from remarks made by the Division investigators in their tour of the casino in May 1981. Among these reforms are the documentation of the removal of chips from the storage cabinet, removal of furniture from the soft count room, the fanning of money by the croupier in view of the supervisor when a patron buys chips at the table, and a clearing of the hands motion when the croupier leaves the table.

Mr. Hyde testified that other suggestions were not adopted because they were not necessary in view of the limited size of the casino operation and because they would not be cost effective.

In light of the willingness of management to adopt the controls suggested by the auditor's report and the Division, it is unnecessary to compel them to re-examine and make further efforts to comply with the reports in question. This Commission has every reason to believe that the management of the Condado Holiday Inn will institute all procedures which will contribute to the efficient and secure running of the casino.

In view of all the evidence presented to the Commission, we find that the internal controls of the Condado Holiday Inn casino do not justify an adverse finding with respect to the business ability and casino experience of Greate Bay's present management.
D. THE KOFFMANS'S RELATIONSHIP WITH MORRIS SHENKER AND THE TEAMSTERS CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND.

An area of concern identified in the Division's investigative report is the relationship between the Koffmans and Morris Shenker. The Division also expressed concern over the Koffmans' transactions with the Teamsters Central States, Southeast and Southwest Areas Pension Fund (Pension Fund). The Division in its summation characterized the Koffmans' association with Shenker and the Pension Fund as the "serious issues" in this hearing. However, the Division also stated that the testimony of Burton Koffman had "reasonably and satisfactorily met these issues" and that it would have no objection to licensure of Greate Bay if certain conditions regarding Shenker and the Pension Fund were imposed. These conditions will be discussed later in this Opinion.

The Division's concern over these associations stems from the Casino Control Act's requirement that all applicants and persons required to be qualified must demonstrate their good character, honesty and integrity. N.J.S.A. 5:12-84(c) and 89(b)(2). The Koffmans' association with persons of bad character or reputation might reflect negatively upon their own character or reputation. See In Re Boardwalk Regency Casino License Application, 180 N.J. Super 324, 335-337 (App. Div. 1981), certif. granted 89 N.J. 405 (1982).

The Division has implied that Morris Shenker may be a person of bad character or reputation, so that a relationship with him would throw a negative light upon the Koffmans. Mr. Koffman testified, both at the hearing before the Commission and elsewhere, that he was aware that in some circles Mr. Shenker was thought to have a "questionable background" and was "persona non grata". Mr. Koffman also testified that he was advised by his attorneys and others not to do business with Shenker and that in September 1980 he in fact ceased having business dealings with him. The Commission is concerned when any casino license applicant or related person or entity has dealings with persons deemed to be, in Mr. Koffman's words, of "questionable background." Thus, while we make no findings as to either Mr. Shenker's character or his reputation, we will nonetheless consider in some detail the evidence concerning transactions between the Koffmans and Mr. Shenker, one of which also involved the Pension Fund.
1. AMERICAN MOTOR INNS TRANSACTIONS

Morris Shenker is a criminal attorney who gained national attention representing James Hoffa and various organized crime figures. Currently, Shenker holds a controlling interest in the Dunes Hotel and Casino, Inc. of Las Vegas, Nevada. As a result of this ownership interest, Shenker is licensed in the State of Nevada.

Burton Koffman met Morris Shenker in 1965 while Mr. Koffman was in St. Louis attending a charitable function. During the six months prior to this meeting, Mr. Koffman had been actively searching for long-term financing for American Motor Inns (AMI), a company controlled by the Krisch family. The Koffmans had previously made loans to AMI and arranged loans for AMI with third party lenders. Burton Koffman mentioned AMI’s need for a long-term loan to Mr. Shenker during their initial meeting in St. Louis and Shenker replied that he thought he could place the loan with the Teamsters Central States, Southeast and Southwest Areas Pension Fund. Later, through Shenker’s intervention, the Teamsters loaned AMI approximately $6.5 million. Thrift Credit Corporation, a commercial lending company owned by the Koffmans, received a $100,000 fee for its efforts in arranging the loan. It should be noted that this was the only loan which the Koffmans have placed with the Pension Fund.

At approximately the same time the loan was placed, AMI granted an option to the Koffmans to purchase 100,000 shares of AMI stock at $3.50 per share. The market price of the shares at that time was $3.00. The stock later underwent a 2 to 1 reverse split so that the option covered 50,000 shares at $7.00 per share. According to testimony at the hearing, the Krisches were motivated to grant this option by a desire to repay the Koffmans for the many financial services provided over the years. The placement of the Teamsters loan was only one of these many services. It should also be noted that the Koffmans paid $3,000 for the option.

The Teamsters Pension Fund was also granted an option to purchase AMI stock. The Teamsters’ option was for 50,000 shares at $11.50 per share. The terms of the Koffmans’ option were considerably more generous than the terms of the Teamsters’ option. However, Mr. Koffman testified that the Teamsters’ option was granted several years after the Koffmans’ option, at a time when the market price of the stock was higher.

When Burton Koffman decided to exercise the option, Joel Krisch requested that he meet with the Teamsters. Mr. Koffman
understood that an anti-dilution agreement between the Teamsters and AMI might prevent the Krisch family from releasing the 50,000 shares of AMI stock covered by the Koffman option, unless the Teamsters consented to such release. Mr. Koffman testified that he agreed to meet with the Teamsters in order to request permission to exercise his option.

When Koffman met with the Pension Fund Board of Trustees, the Board took the position that it was unfair that the Koffmans' option could be exercised for a lower price than the Teamsters' option. Mr. Koffman attempted to explain that an option price generally bears a relation to the market price, and that the Teamsters' option had been granted at a time when the market price had risen. The Board, however, insisted that Koffman make a "concession". Mr. Koffman then agreed to pay Teamsters $115,000. Mr. Koffman testified that his decision to make the payment resulted from a business judgment that it was worthwhile to pay $115,000 so that he could realize over a million dollars profit on the exercise of his option. He said that he did not think it was a viable alternative to fight the Teamsters in court for the right to exercise his option, explaining: "I don't think anybody wins going to court because of the time, the effort, the expense". Mr. Koffman also testified that he felt intimidated by the Teamsters.

After considering all the evidence presented with respect to the AMI loan and options, including Burton Koffman's explanation for his decision to make the $115,000 "concession", we find no basis to conclude that there was wrongdoing on Mr. Koffman's part.

2. **LOANS TO MORRIS SHENKER**

From 1966 through September 15, 1980, Burton Koffman, Thrift Credit Corporation and other companies under the control of the Koffman family made a number of loans, totalling approximately $15 million, to Morris Shenker and companies connected with Mr. Shenker. An examination of the terms of these loans reveals that they were made at interest rates above the prime rate or at the maximum rate allowed under the applicable usury laws. Some of these loans, however, warrant a closer examination, either because they are still outstanding or because the Division raised specific questions with regard to them.

3. Other evidence in the record indicates that the amount was $112,500.
a. Murrieta Hot Springs Loan
On February 28, 1973, Rusar, Inc., a Koffman controlled company, lent $2,000,000 to Murrieta Hot Springs. Murrieta Hot Springs was a California corporation controlled by Morris Shenker and Irving Kahn, which operated a resort complex. The loan, with a 10 percent interest rate, was secured by mortgages on the property, including mortgages on a number of mobile home pads. The loan is in default and $407,449.92 is still outstanding. Rusar, Inc. has foreclosed on a majority of the collateral which secured the loan but has not as yet foreclosed on several of the mobile home pads. Burton Koffman testified that these pads are appreciating in value, so that it would be disadvantageous to sell the property at the present time. The loan is currently accruing the "normal rate" of interest.

b. Participation Loan With Valley Bank of Nevada
On February 22, 1979, Thrift Credit Corporation, a Koffman controlled company, purchased a $4.4 million share of a loan made by Valley Bank of Nevada to M & R Investment Company, a Shenker controlled entity. The loan, with an interest rate of 12 percent, was secured by first and second mortgages on the Dunes Casino Hotel in Las Vegas. The loan is being paid according to terms; as of October 28, 1981 the outstanding balance of the loan was approximately $1.6 million.

c. Atlantic City Loan I
On July 27, 1979, Koffman controlled companies loaned the Dunes Hotel and Casino of Atlantic City, a company connected with Shenker, $3.5 million. The loan was secured by a first mortgage on Atlantic City property, and the guarantees of the Dunes Hotel and Casino, Inc. of Las Vegas and Morris Shenker, individually. The maturity date of the loan has been extended several times, and in consideration of one such extension the Dunes paid an extension fee. The interest rate for the loan is 4 percent above prime. The outstanding balance of the loan, as of October 28, 1981, was approximately $1.5 million.

d. Atlantic City Loan II
On October 2, 1979, Milbar Consultants, a Koffman owned entity, purchased notes payable by Dunes Hotel and Casino of Atlantic City to DFS Construction Company. The notes were purchased at a discount, but are payable by the Dunes at the face amount of
$2 million. The notes, which are secured by a second mortgage on the Dunes property in Atlantic City, bear an interest rate of 2.5 percent above prime but not less than 15 percent. The balance payable of the notes, as of November 30, 1981, was approximately $225,000.

e. Personal Loans From Burton Koffman to Morris Shenker

On October 25, 1979 Burton Koffman lent approximately $260,000 to Morris Shenker. It is unclear from the record what the original rate of interest was on the loan. On February 24, 1981, however, the interest rate was set at 2.5 percent above prime in consideration for an extension of the maturity date of the loan. The loan was secured by 53,800 shares of Dunes Hotel and Casino, Inc. of Las Vegas stock. The loan was repaid in full on April 23, 1981.

On May 7, 1980 and September 15, 1980, Burton Koffman made loans of $421,000 and $165,000 respectively to Morris Shenker. The original notes for both of these loans set an interest rate of 1 3/4 percent above the prime interest rate; but on February 24, 1981, in consideration for an extension on the loans, the interest rate on both loans was increased to 1 1/2 percent above prime. Both loans were secured by 53,800 shares of Dunes Hotel and Casino, Inc. of Las Vegas stock. Both loans were repaid in full on April 23, 1981.

During a May 7, 1971 interview conducted by the Internal Revenue Service, Burton Koffman was questioned concerning a $50,000 loan made to Morris Shenker on December 31, 1966 and repaid on February 20, 1967. The record is unclear as to what interest, if any, was paid on this loan. Mr. Koffman stated during the IRS interview that he had no recollection of this loan; neither could he recall this loan when being interviewed by Division investigators. In light of all the evidence presented at the hearing concerning the subsequent course of dealing between the Koffmans and Shenker, we have no reason to suppose that this loan was anything other than an arms length business transaction.

A careful examination of the record, as developed by the Division and the Applicant, has not revealed anything improper in any of the loan transactions between Shenker and the Koffmans. According to Burton Koffman, the loans were “normal business transactions” and a majority of the loans were profitable. Although extensions were granted in many of the loans, extension fees were often paid. Moreover, Burton Koffman testified that granting extensions is a common practice among secondary lenders. The decision not to foreclose on certain collateral securing the Murrieta Hot Springs loan was
based on a business judgment that the market value of the collateral was increasing and it would be more profitable to sell the property at a later date.

It should also be noted that Burton Koffman testified that in September 1980 the Koffmans decided to stop dealing with Mr. Shenker. Indeed, the last Koffman loan to Mr. Shenker was in September 1980.

We have carefully reviewed the relevant testimony and numerous exhibits with regard to the Koffmans' loans to Shenker, including those not specifically mentioned above. Based upon the evidence presented at the hearing, we find that the circumstances of these loan transactions do not justify an adverse finding with respect to the character, honesty or integrity of the Koffmans, Koffman related entities, or Greate Bay.

3. **CONTINENTAL CONNECTOR CORPORATION STOCK TRANSACTIONS**

On or around May 29, 1974, Burton Koffman received a telephone call from Morris Shenker, informing Koffman that a block of 60,000 shares of Continental Connector Corporation (CCC) stock was available on the market. Shenker was a major shareholder of CCC, which is now traded as Dunes Hotel and Casino, Inc. Relying on Shenker's tip, Koffman purchased, through a broker, an 80,000 share block of CCC stock the next day at $7.25 per share. This price appears to have been slightly below market price, which the Wall Street Journal quoted at $7.50—7.875 for the week of June 3, 1974. The week after Koffman's purchase Morris Shenker announced his intention to make a tender offer for CCC stock at $11.00 a share. This tender offer, however, was never made.

The Securities and Exchange Commission, while investigating Continental Connector Corporation, interviewed Burton Koffman regarding the above-described stock purchase. Mr. Koffman himself was never investigated or accused of wrongdoing by the SEC. At the SEC interview, as well as during the present hearing, Mr. Koffman stated that in his May 29, 1974 telephone conversation with Shenker, Shenker never mentioned his intention to make a tender offer for CCC stock. We find Mr. Koffman's testimony credible, as apparently did the SEC, and find that this transaction does not justify an adverse finding with respect to his character.

On December 12, 1977, Burton Koffman entered into an option agreement to sell 80,000 shares of CCC stock for $11.00 per share
to M. Arthur Shenker, Jr., son of Morris Shenker. The agreement called for an initial payment of $25,000 and monthly payments of $12,000 until the option was exercised. It is unclear from the record what the market value of CCC stock was at that time. During 1978, however, the market value of the CCC stock rose above the $11.00 option price. After the price rose, Burton Koffman sold or donated to charity approximately 13,000 shares of CCC stock. The sale of the stock meant that Koffman would be unable to produce the full 80,000 shares of stock as required by the option agreement. When questioned at the hearing about his divestiture of the 13,000 shares, Burton Koffman replied that he thought he could recover the deficient number of shares, by buying the stock on the market when the price dropped, thereby covering the option and making a profit.

However, the price of the stock did not fall. Rather, in July of 1980, the price of the stock rose above $14.00. The option agreement stated that if the market value of the stock rose above $14.00, Mr. Shenker, Jr. must exercise it immediately, or lose the right to buy the stock at the specified price. Even though Shenker, Jr. was in default of the option as of July 1980, Koffman agreed to extend the option, in order to allow him time to arrange financing. Thus, when Mr. Koffman spoke to Shenker Sr. and requested that the option not be exercised for the full 80,000 shares, “he didn’t object too much”.

The option was exercised on September 20, 1978 for 60,000 shares. After the option was exercised, Mr. Koffman still possessed approximately 7,000 shares of CCC, which he disposed of over the following year.

Nothing in the record implies that the option agreement was anything but an arm’s length transaction. Accordingly, it does not provide a basis for any adverse finding with respect to Burton Koffman or any Koffman related entities.

4. CONDITIONS WITH REGARD TO MORRIS SHENKER AND THE TEAMSTERS PENSION FUND.

The Division in its summation suggested that licensure of Greate Bay be subject to certain conditions concerning Morris Shenker and the Teamsters Pension Fund.

First, the Division requested the Commission to require:

... that the Koffmans or their entities that they control have no new business or financial dealings directly or indirectly with Morris Shenker or a Shenker related company or a Shenker controlled company ...
The evidence presented to us at this hearing was insufficient to justify imposing this condition. We have not made any finding with respect to Mr. Shenker's character or reputation. Further, Burton Koffman testified that in September, 1980, the Koffman family decided to cease doing business with Morris Shenker.

Second, the Division requested that the Commission impose the following condition:

... that they [the Koffman family] proceed toward the collection of the outstanding Murrieta Hot Springs loan and in the event the matter cannot be resolved amicably, that they initiate legal action to collect the debt.

Since no evidence was presented indicating that the Murrieta Hot Springs transaction was improper, or that the subsequent collection efforts should be viewed with suspicion, we find it necessary to dictate the manner in which the Koffmans should proceed toward collection of the outstanding balance of this loan.

Third, the Division requested that the Commission:

... impose a condition that the Koffmans or Koffman controlled companies have no new business [sic] or financial dealings directly or indirectly with the Central States Southeast-Southwest Teamsters Pension Fund or companies which they control ... 

We noted in our opinion in In the Matter of the Application of Playboy-Elsinore Associates for a Casino License, 81 CL 3 (1982), at 20, that there is now substantial supervision of the administration of labor pension assets, including those of the Teamsters Central States, Southeast and Southwest Areas Pension Fund. Thus, the Commission finds it necessary to impose any conditions in regard to the Pension Fund.

E. CONCLUSION

In light of all the foregoing facts and conclusions, this Commission is satisfied that Greate Bay Hotel and Casino, Inc. has established by clear and convincing evidence its qualifications.

III. LICENSURE OF AMERICAS—NEW JERSEY MANAGEMENT, INC.

As noted earlier in this opinion, Americas—New Jersey is a recently created corporation, formed for the purpose of managing the Sands Hotel and Casino. Under N.J.S.A. 5:12-82(b)(3) Americas—New Jersey must hold a casino license.
There are no contested issues concerning the licensure of Americas—New Jersey. It has no independent corporate history. It is a wholly owned subsidiary of Inns of the Americas, Inc., which, as a holding company of Greate Bay, has been thoroughly investigated by the Division and has been qualified by the Commission. The incorporators, directors and officers of Americas—New Jersey are all persons who are required to qualify and who have been qualified as a condition of Greate Bay’s licensure.

The Commission is satisfied that Americas—New Jersey Management, Inc. has met all applicable statutory requirements to receive a casino license as manager of the Sands Hotel and Casino.

IV. CONCLUSION

Accordingly, plenary casino licenses shall issue to Greate Bay Hotel and Casino, Inc. and Americas—New Jersey Management, Inc., subject to the conditions contained in the Resolution regarding this matter which is numbered 82-272.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey Courts.