IN THE MATTER OF THE APPLICATION
OF CLARIDGE LIMITED FOR A
CASINO LICENSE

Decided: July 1, 1982
Approved for Publication by the Casino Control Commission:
April 8, 1988

SYNOPSIS

Claridge Limited applied to the Casino Control Commission for a casino license. Following a hearing by the Commission, a license was issued.

Claridge Limited is a limited partnership consisting of Del E. Webb New Jersey, Inc. and Claridge Associates. The hearing focused on the qualifications of Webb, which owns four casinos in Nevada. The Commission considered evidence of questionable conduct by Webb which took place in Nevada. While the Commission found that these past deeds raised serious questions as to the applicant's qualification, Webb had experienced many changes since 1981 and its past improprieties would be viewed in the light of new personnel, policies and procedures.

Noting that new management had instituted actions to reverse past problems and that new personnel at top levels of management demonstrated good character, integrity and business ability, the Commission concluded that Webb had established its good character and business ability by clear and convincing evidence.

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BY THE CASINO CONTROL COMMISSION:

I. INTRODUCTION

This matter has been brought before the Casino Control Commission (Commission) pursuant to the application of Claridge Limited for a casino license. The history of Claridge Limited's application, its acquisition of a temporary casino permit in July 1981, and the qualification criteria pertinent to this plenary casino license proceeding are set forth in the Chairman's Instruction to the Commission, which is made part of the record in this casino licensing hearing, and which is incorporated by reference in this opinion.

Claridge Limited is a New Jersey limited partnership consisting of Del E. Webb New Jersey, Inc. (Webb New Jersey) as the managing general partner and Claridge Associates as the limited partner. Webb New Jersey, a New Jersey corporation, is a wholly-owned subsidiary of Del E. Webb Corporation (Webb), which is incorporated in Arizona. Claridge Associates, a New Jersey general partnership, consists of seven individual partners. The approximate ownership interest of each of the partners is as follows: F. Francis D'Addario, 47.6 percent; Chris Bargas, Francis Oneglia, Leonard J. Massello, Irving J. Sherman, and Ernest C. Trefz, 9.5 percent each; and Christian Trefz, 4.8 percent. There were originally three other partners, but they were bought out by Mr. D'Addario in November 1978.

On July 9, 1979, when Claridge Limited was formed, Webb New Jersey assumed a ten percent equity interest, and Claridge Associates maintained a ninety percent equity interest. On November 12, 1979 the limited partnership agreement was amended and restated to provide a fifty percent equity participation by both Webb New Jersey and Claridge Associates.

In September 1979 Webb was indicted by a Federal Grand Jury in Nevada. In July 1981 work was completed on the Claridge Hotel and Hi-Ho Casino and Claridge Limited sought to obtain a temporary casino permit so that the facility could begin operations. Since the
indictment was still pending, and in order to avoid delay in the issuance of the temporary casino permit, Webb New Jersey sold its managing general partnership interest to a new entity, Claridge Management Corporation (CMC). All of the stock of CMC was issued to Jay Kramer, who, together with F. Francis D’Addario, comprised its Board of Directors. In November 1981 Webb was acquitted of the charges against it, and in January 1982 the Commission granted Webb New Jersey the right to reacquire the managing general partnership interest in Claridge Limited, subject to certain conditions. Since that date Webb New Jersey has been managing the casino hotel.

The Division of Gaming Enforcement (Division) issued two investigative reports which, as modified, have been stipulated and admitted into evidence. The Division’s report with respect to Webb outlined several areas of concern. The Division’s report with respect to Claridge Associates detailed the history of that partnership, but did not raise any significant issues with respect to the suitability of the partnership or the partners for licensure. Thus, the hearing before the Commission was devoted mainly to the issues raised concerning Webb. However, before turning to those issues, we will deal briefly with the suitability of Claridge Associates.

II. THE QUALIFICATIONS OF CLARIDGE ASSOCIATES

In its report to the Commission regarding Claridge Associates the Division concluded that each of the seven partners qualifies in all respects to standards applicable to casino key employees. See N.J.S.A. 5:12-85(e). In its summation at the hearing, the Division recommended that the Commission find Claridge Associates to be “a suitable group to hold a casino license in Atlantic City”.

Nevertheless, in its summation the Division also expressed concern over the “unnecessary contact between Mr. D’Addario and Albert Tumbiolo, John Peverini and Sunset Tours”. The Division further opined that “Mr. D’Addario would serve the Claridge casino better if he were to be more careful in the associations he has with persons of questionable background”.

In light of the Division’s concern we find it appropriate to examine Mr. D’Addario’s associations with Tumbiolo, Peverini and Sunset Tours.

From July 1981 to January 1982 the Claridge Hotel and Hi-Ho Casino was operated by CMC, of which Mr. D’Addario was president. During this period D’Addario took an active role in managing
the facility and flew from his Connecticut home to Atlantic City several evenings a week to oversee operations. It was while CMC was managing the facility that D’Addario made the acquaintance of Messrs. Tumbiolo and Peverini, and that Claridge signed a contract with Sunset Tours, a business with which Tumbiolo and Peverini were connected.

Mr. D’Addario testified that in September 1981 he was introduced to Tumbiolo by one of the Claridge casino employees. It was common practice for employees to introduce D’Addario to regular customers. D’Addario subsequently had coffee with Tumbiolo “a few times” and “went out to dinner a couple times”.

D’Addario and Tumbiolo first had dinner on September 16, 1981. On that occasion Tumbiolo introduced D’Addario to Peverini. It was D’Addario’s only meeting with Peverini. D’Addario also had dinner with Tumbiolo on September 18, 1981. On that same date, without D’Addario’s knowledge, Claridge signed a contract for bus tours with Sunset Tours. There is no indication in the record that D’Addario had any subsequent contact with Tumbiolo.

At the September 23, 1981, meeting of the Audit Committee of CMC, Mr. D’Addario requested that the surveillance department accumulate information about Mr. Tumbiolo. Mr. D’Addario testified that he had become “a little concerned” about Tumbiolo and had begun to question the source of the huge sums of money with which Tumbiolo gambled. In late November the surveillance department presented the CMC Board of Directors with a report which stated that Peverini was alleged to have organized crime connections and that Tumbiolo was under investigation as a suspected loan shark. On the basis of that report the Board voted to cease doing business with Sunset Tours and to rescind Tumbiolo’s line of credit at the casino.

On January 5, 1982, the Division issued an investigation report stating that Tumbiolo had established credit at all Atlantic City casinos and that many of the bank accounts listed on his credit application never existed, were closed or were not under his control. As of January 5, 1982 Tumbiolo still owed money to a number of casinos, including $100,000 to Claridge. It should, however, be noted that Claridge was one of the first Atlantic City casinos to rescind Tumbiolo’s credit.

The Commission is always concerned when someone required to be qualified with respect to a casino license has contact with persons of questionable character or reputation. However, in view of the
nature of D'Addario's association with Tumbiolo and Peverini, the manner in which that association arose, D'Addario's action in obtaining information about Tumbiolo's background and CMC's prompt cessation of dealings with Sunset Tours upon receipt of negative information, the Commission does not draw any adverse inference with respect to Mr. D'Addario's qualifications.

Therefore, on the basis of the entire record before us, we concur with the Division that Claridge Associates, Mr. D'Addario, and all of the other partners have established their qualifications by clear and convincing evidence.¹

III. THE QUALIFICATIONS OF DEL E. WEBB CORPORATION

Del E. Webb Corporation was founded as a small construction firm in 1928 by its namesake, Delbert Eugene Webb. The company enjoyed tremendous growth and is now involved in a variety of businesses, including casino gaming. Currently, Webb owns, through its subsidiary the Sahara-Nevada Corporation, four casinos: the Sahara Las Vegas Hotel, the Mint Hotel, the Sahara Tahoe and the Nevada Club, and, through its subsidiary Webb New Jersey, a 50 percent interest in the Claridge Hotel and Casino. An extensive history of the Webb Corporation is recounted in the Stipulation of Facts and need not be repeated here.

In discussing the qualifications of Webb this opinion will deal primarily with those areas which were the subject of significant attention during the hearing. Detailed findings with regard to other licensing criteria will be contained in a separate Resolution.

The areas which received significant attention at the hearing were: (1) political contributions made by Webb to candidates for public office in Nevada, allegedly in contravention of Nevada law; (2) the use of Webb corporate funds to provide escorts or prostitutes to favored casino customers in Nevada, and the mislabeling of these payments in the corporate records; (3) Webb's preparation of false invoices concerning rebates for beer purchases from Schlitz Brewing

¹We note that two former Claridge Associates partners still hold notes from Mr. D'Addario relating to his buyout of their partnership interests. These two individuals, Joseph Pannullo and Benjamin Danzi, have been found to be financial sources required to qualify under N.J.S.A. 5:12-84(b), and the Commission has approved a plan for the termination of their status as financial sources prior to the effective date of the Claridge Limited casino license.
Company: (4) a credit scam in which Webb casinos in Nevada were defrauded of $810,000; (5) a kickback scheme in which Webb was defrauded of over one and a half million dollars by its own employees; and (6) the Federal indictment returned against Webb and one of its employees, James Comer, arising out of a construction project in Nevada.

A. Political Contributions

Webb began making contributions to candidates for public office in Nevada in the late 1960's. The contributions were made only by the Sahara-Nevada Corporation, a fully-owned subsidiary of Webb. In 1977 legislation was enacted in Nevada which required candidates for public office on all levels of government to identify contributors of $500 or more. The statute did not set a limit on the amount which could be contributed and Nevada has no law prohibiting political contributions by publicly or privately held corporations.

As a result of the 1977 change in the law, Keith Ashworth, then vice-president of the Sahara-Nevada Corporation, suggested to its then president, William Dougall, a procedure whereby various Webb subsidiaries would make contributions of less than $500 each, but aggregating more than $500, to a given candidate, without the candidate being obligated to report the contributions under the Nevada election law. The subsidiaries would all be reimbursed by the Sahara-Nevada Corporation. Mr. Dougall specifically asked Mr. Ashworth to research the legality of such activity, and Ashworth sought an opinion from the Nevada Secretary of State. In reply to Mr. Ashworth's inquiry, the Secretary of State, by letter dated June 8, 1978, interpreted the reporting requirement to mean that a parent company and its subsidiary may both contribute up to $500 to a candidate without the necessity of the candidate reporting either contribution. Ashworth took the Secretary of State's letter to be an approval of his proposed plan. However, the parties have stipulated that the letter did not deal with the situation in which the parent company would fund the political contributions of its subsidiaries.

Ashworth recommended approval of his original plan as outlined above, and Doyle Mathia, who had replaced Mr. Dougall as president of the Sahara-Nevada Corporation, approved the contributions outlined in an Ashworth memorandum of August 4, 1978. Robert Johnson, then president, chairman and chief executive officer of Webb, also approved the payments, upon the understanding that the Secretary of State had found the plan acceptable.
It should be noted that Ashworth, Dougall and Mathia are no longer employed by Webb. Johnson is also no longer employed by Webb, but is a person required to be qualified in connection with Claridge Limited's license application by reason of his control of 28.6 percent of Webb's stock. His qualifications are discussed later in this opinion.

The practice of channeling political contributions through subsidiaries was halted in 1979, when counsel for Webb expressed the opinion that it might be a technical violation of the 1977 Nevada election law.

In July 1981 Robert Swanson, the current president, chief operating officer and chairman of Webb, adopted a new policy under which political contributions will only be made upon his written direction, after the receipt of written approval from the Webb Board of Directors and in accordance with law.

B. Payment to Escorts or Prostitutes for Preferred Gaming Patrons

In 1969 Webb casinos began the practice of making payments to escorts or prostitutes for preferred gaming patrons. The casinos would pay the women with money from the casino cage, after a Webb employee filled out a "miscellaneous paid out slip." The slip generally specified air fare or transportation as justification for the payment. This practice first came to the attention of government agencies in 1976 during an Internal Revenue Service audit. Robert Johnson testified that he first learned of the payments during the course of that audit, and that he then sought an opinion from outside counsel as to the legality of the practice. Counsel opined that payments to prostitutes were illegal, but payments to escorts were not. Webb adopted a corporate policy statement which provided, in part, that no corporate funds shall be used for "any purpose which would be in violation of any applicable law". The policy was widely circulated among Webb personnel. Webb management believed that this statement adequately dealt with the prostitution issue, even though the policy statement failed to specifically mention the practice.

In addition, in June 1977, after Nevada adopted an anti-pandering statute, Webb directed the general managers of its casino hotels to cease providing "escort services for certain customers".

The payments for escorts or prostitutes were publicly disclosed by the corporation in its May 7, 1977, Notice to Stockholders and
its Quarterly Report for the period ending March 31, 1977, filed with
the Securities and Exchange Commission.

Despite Webb’s stated policy, it is evident from the record that
payments to escorts or prostitutes continued after June 1977, at least
in the Sahara Las Vegas and the Sahara Tahoe. The reasons that
Corporate policy was disobeyed are unclear from the record. There
is some evidence that the general manager of the Sahara Tahoe, who
is no longer employed by Webb, suggested to the casino manager of
that facility that, rather than lose a good customer, he should continue
the practice. Robert Johnson testified that he was unaware that the
practice was continuing after the June 1977 directive.

In July or August 1979 four employees of the Sahara Las Vegas
instituted a new procedure whereby escorts or prostitutes were paid
from a safe deposit box in the casino cage. The box was opened under
a fictitious name and funded with corporate money which was not
recorded on Webb’s books. The accounts for this box were kept
separately from the other casino books. Upon discovery by Webb
corporate level management in late February 1980, this practice also
ceased. The four employees responsible for setting up the safe deposit
box are no longer employed by Webb, having been given the oppor-
tunity to resign in lieu of being fired.

Robert Swanson testified that since February 1980 there have
been no further payments to escorts or prostitutes. Swanson listed
several ways in which management tries to assure that such payments
will not occur in the future. First, the new Webb corporate code of
ethics, adopted in December 1980, specifically prohibits this practice.
Second, Webb’s internal audit department conducts four surprise cage
counts a year, and the external auditors conduct three surprise cage
counts a year. This is three more counts per year than were performed
prior to 1981. Third, internal security reviews the cage cash payout
slips for any suspicious cash disbursements and also conducts periodic
checks of the safe deposit boxes.

C. Schlitz Beer Rebates

In April 1967 the Joseph Schlitz Brewing Company began a
marketing campaign aimed at large corporate accounts. George Shay,
the supervisor of the Schlitz Special Accounts Department, entered
into a rebate arrangement with Milton Frampton, then vice president
of purchasing for the Sahara-Nevada Corporation. Specifically,
Schlitz paid rebates of fifty cents a case and two dollars and fifty cents
a keg on all Schlitz beer purchased at Webb hotels. The arrangement continued until 1973. During this period Webb received a total of approximately $43,000 from Schlitz. As a result of Schlitz's rebate program, in 1978 a Federal grand jury indicted Schlitz on numerous counts of violating the Federal Alcohol Administration Act (FAAAA) and one count of conspiring to violate the FAAA. Schlitz entered into an offer of compromise with the government in which Schlitz agreed to pay $761,000 in fines.

The United States Attorney involved in the Schlitz case chose not to prosecute Webb for conspiracy in this arrangement. Webb did not violate any Nevada law in accepting the rebates.

Schlitz paid Webb the rebates on a yearly basis, upon submission by Webb of an invoice for the amount due. These invoices, at Schlitz's request, falsely represented the nature of the debt. For example, an invoice dated April 18, 1973 charged Schlitz $8,750 for entertainment during a Friendship Inns Conference. Evidently no such conference took place at the Webb hotels during 1972 or 1973. This expense actually represented price rebates on beer.

The checks received from Schlitz were entered in Webb's books and reported as sundry income for Federal tax purposes. The receipt of these payments was publicly disclosed by Webb in its proxy statement dated May 7, 1977, in the corporation's Quarterly Report to the SEC issued on May 13, 1977, and in its prospectus dated September 28, 1978.

So far as the record reveals only two Webb officials were aware of the false documentation prepared in connection with the rebates, namely, Milton Frampton, vice president of purchasing for the Sahara-Nevada Corporation from 1967 to 1971, and William Dougall, who held the same position from 1971 to 1973. These individuals are no longer employed by Webb. Robert Johnson testified that he was not aware of the rebate arrangement at the time it took place, and there is no evidence that any other officials at Webb corporate headquarters in Phoenix, Arizona had contemporaneous knowledge of the arrangement.

D. Credit Scheme

In February 1979, Anthony Caputo and 15 associates defrauded the Sahara Las Vegas and Sahara Reno casinos of approximately $810,000. This theft was accomplished by converting chips obtained
on credit to cash and then removing the money from the casino without paying off the markers for the credit.

The parties have stipulated that the incident occurred as a result of violations of internal control procedures by certain employees at the hotel casinos. These employees have either been fired or permitted to resign. In addition, the internal control and internal audit procedures themselves have been strengthened in an effort to prevent the occurrence of any such schemes in the future.

E. Food Purchasing Kickbacks

From 1968 through early 1980 the Sahara Las Vegas Hotel was defrauded of over $1,500,000 by two of its employees. James Wahlstrom, a food buyer, and Donald Anderson, an executive chef, defrauded the hotel by requiring kickbacks from food purveyors and by creating invoices for food never received and dividing the subsequent payment with the purveyors.

In 1975 the Sahara Nevada Corporation discovered a substantial increase in food inventory figures and a five percent increase in food costs at the Sahara Las Vegas Hotel. Wahlstrom, fearing an investigation by Webb, resigned without notice. Webb was satisfied that any difficulty in the purchasing department had been corrected by Wahlstrom’s resignation. However, Anderson continued accepting kickbacks, and paying Wahlstrom one-half of the funds collected. In December 1979 Anderson ceased paying Wahlstrom. In February 1980 Wahlstrom contacted Webb officials, offering information with respect to a scandal at the Sahara Las Vegas in return for payment. Upon payment of $5,000, Wahlstrom described the entire scheme and Anderson’s involvement. As a result, Anderson was forced to resign on May 1, 1980.

Following Wahlstrom’s revelations to Webb officials, all information was turned over to the Las Vegas Metropolitan Police Department. In addition, all vendors known to have been involved in the payment of kickbacks were suspended, and the Sahara Nevada Corporation adopted a centralized purchasing procedure to protect itself against such fraud in the future. Saul Leonard, a certified public accountant specializing in hotel casino audits, testified that the new purchasing procedure provides effective internal control over purchasing activities at Sahara Nevada Corporation’s properties.
F. Aladdin Indictment

On September 4, 1979, Webb, James Comer, vice-president of Webb's Nevada contracting division, and six others were indicted by a Federal Grand Jury in Nevada. The indictment was in forty-three counts. The first count, the only one in which Webb and Comer were named, charged all eight defendants with conspiracy to commit mail fraud and wire fraud and to transport in interstate commerce money and property obtained from a scheme to defraud. The trial on count one, which had been severed from the remaining counts, commenced on July 1, 1981, and concluded on November 30, 1981, when the jury returned a not guilty verdict as to all defendants.

The indictment arose out of the construction of a highrise addition to the Aladdin Hotel in Las Vegas. Count One alleged a conspiracy to divert and misappropriate funds of the Central States, Southeast and Southwest Areas Pension Fund of the International Brotherhood of Teamsters (Pension Fund), which provided financing for the construction. It was not alleged that Webb or Comer received any such misappropriated funds. Rather, Count One charged that they facilitated the diversion of funds to Lee Linton, the project architect, Sorkis J. Webbe, counsel for the Aladdin, and the Aladdin Hotel Corporation by concealing such payments as fees, finders fees and commissions.

Selected transcripts and exhibits from the Nevada trial were stipulated and admitted into evidence at the hearing before the Commission. Elliot Richardson, former United States Attorney for the District of Massachusetts and United States Attorney General, studied these transcripts and exhibits and, after being qualified as an expert on criminal prosecutions and business ethics, offered the opinion that "the evidence does not indicate any justifiable basis for calling into question the honesty, integrity and good faith of Del E. Webb Corporation or its officers". In addition, Comer and William Collins, who was executive vice-president in charge of Webb's contracting group at the time of the Aladdin project testified before the Commission about Webb's alleged knowledge of or involvement in the scheme to misappropriate Pension Fund money.

After considering all of this evidence it is clear to the Commission that there was a scheme to illegally divert Pension Fund proceeds, and that Pension Fund money was in fact misappropriated to Lee Linton by means of kickbacks from subcontractors. However, the Commission is not persuaded that Webb or Comer conspired with
Linton or anyone else to defraud the Pension Fund. Nevertheless, as the Division said in its summation, there remains "an open question as to whether various [Webb] officials became aware of Lee Linton's efforts to secure kickbacks," and, despite the existence of FBI and grand jury investigations, chose to remain silent and to ignore the ongoing scheme to defraud the Pension Fund.

During the Nevada trial Kim Gregory, the project manager of one of the potential subcontractors on the Aladdin project, testified that Linton asked him to add a $100,000 kickback to his estimate. Donald Taylor, president of this subcontractor, testified that upon learning this information from Gregory he telephoned Collins and told him: "under the circumstances it would appear that we were not going to be able to do the job". However, Collins testified before the Commission that the information communicated to him by Taylor did not lead him to suspect that a kickback request was involved, and we note that Taylor's company was awarded the subcontract without paying any kickback.

Another subcontractor, Emmett Campbell, testified at the Nevada trial that Linton told him that "sooner or later there would probably be $50,000 added to the contract". Campbell said that he called Robert Whitacre, Webb's manager of purchasing, and asked him, "What's the deal with the $50,000?" According to Campbell, Whitacre responded, "That's handled in Vegas by Mr. Linton". Campbell thereafter went to the FBI and cooperated in its investigation.

Finally, during the construction of the Aladdin project two other subcontractors told Comer that they had "passed some money back to Lee Linton" and that they were going to cooperate with the FBI and seek immunity. Comer testified before the Commission that upon receipt of this information he telephoned Donald Middleton, a Webb attorney who, after consulting with outside counsel, advised Comer that Webb had an obligation to complete the project. Comer also told the Commission that he was aware of the FBI and grand jury investigations in progress during the construction, but he decided that, since Webb had done nothing wrong, it had no obligation to become involved in the investigations.

Since these events occurred Webb's construction division has been abolished, and its construction activities are now handled by Del Webb Construction Services Company, a newly-created, wholly-owned subsidiary incorporated in Arizona. Comer and Collins are no
longer officers of Webb, but are officers of Webb Construction Services. Whitacre is no longer an employee of Webb, but is an employee of Webb Construction Services. During the hearing the Commission ruled that, under the decision in In re Boardwalk Regency Casino License Application, 180 N.J.Super. 324, 349 (App. Div. 1981), certif. granted 89 N.J. 405 (1982), Comer and Collins, as officers of a non-New Jersey, non-gaming subsidiary of Webb, cannot be classified as persons required to qualify in connection with Claridge Limited's license application. The Commission noted that the Boardwalk Regency case is on review by the New Jersey Supreme Court, and reserved the right to reconsider the status of Comer and Collins if there is a change in the applicable law. However, under the present state of the law, Comer and Collins are not persons who may be required to qualify as a precondition to the licensure of Claridge Limited. See N.J.S.A. 5:12-85(c), (d), (e) and -89.

If Comer and Collins were persons required to qualify the Commission would have to decide, inter alia, whether their good character, honesty and integrity had been proven by clear and convincing evidence. While the Boardwalk Regency decision precludes any such consideration at this time, it does not preclude the Commission from deciding whether Comer and Collins, and also Whitacre, are persons of such unsavory character or reputation that Webb's continued association with them reflects negatively on Webb's qualifications. See N.J.S.A. 5:12-89(b)(2). In this regard we must note that their willingness to turn a deaf ear to information which should have alerted them to ongoing illegal activities, and their failure to report that information to the authorities, cannot be countenanced. However, their failures were basically failures of judgment. There is no evidence that these individuals engaged in any illegal activity or sought to facilitate or abet any such activity. Rather, they sought to complete the constructing project without becoming entangled in Linton's kickback scheme or the investigations of that scheme. In addition, there is no evidence that their actions were part of a continuing pattern or practice. In short, we cannot conclude Webb's continued association with them reflects adversely on Webb's qualifications.

One further matter requires comment in this regard. During its summation the Division said that, if Webb is found qualified, it "would object to any participation [by Comer, Collins or Whitacre] in Claridge Limited in any way at all". Counsel for Claridge Limited and Webb has stipulated that his clients will voluntarily comply with the Division's suggestion in this regard.
We have now discussed each of the six issues raised by the Division concerning Webb's qualifications. However, before we can reach any conclusion as to those qualifications two other matters must be considered, namely, the recent personnel and structural changes at Webb and the qualifications of Robert Johnson.

G. Changes in Del E. Webb Corporation since January 1981

The primary thrust of Webb's presentation at the hearing was not a denial that the events described in the subsections A through F occurred, or an attempt to minimize their seriousness. Rather, Webb argued that it is now a new corporation, materially different from the one that existed when the various events discussed above took place.

The past misdeeds of Webb, taken together, are certainly serious enough to cause us to question its qualifications. The Commission is disturbed by the willingness of Webb employees to manipulate corporate records, as they did with respect to the beer rebates and payments to escorts or prostitutes. The payments to females were in themselves violative of Nevada law and are a serious blemish on Webb's corporate character. The lack of corporate controls which opened the corporation to thievery by the Caputo group and by its own employees, the willingness to make political contributions of doubtful legality, and the willingness to remain silent when confronted with evidence of kickbacks during the Aladdin project, are all matters which give this Commission considerable pause. Nevertheless, the Commission recognizes that Webb has experienced many changes since January 1981 and we find it appropriate to view Webb's past improprieties in the light of its new personnel, policies and procedures. See In the Matter of the Application of Bally's Park Place, Inc., for a Casino License, Docket No. 80-CL-2 (1981), at 75-76.

Webb has made substantial changes in personnel in the past eighteen months. Foremost among these was Robert K. Swanson's assumption of the responsibilities of president and chief operating officer in January 1981 and of chairman of the board upon Robert Johnson's retirement in July of that year. Without detailing the extensive testimony presented to the Commission concerning Mr. Swanson, it suffices to say that an impressive array of witnesses described his character, integrity and business ability in the highest terms and that no contrary evidence appears in the record.

In the short time that Mr. Swanson has been with Webb he has made substantial changes. Prior to his arrival the corporation del-
egated total control to the operating group heads and corporate headquarters provided minimal oversight and follow-up. In contrast, Mr. Swanson, while delegating substantial responsibility to the operating groups, continually reviews and oversees their operations.

In addition, Mr. Swanson has brought improved professional management to Webb. Upon his arrival at Webb he was surprised to learn that it did not have an active corporate plan. He has developed such a plan, which he considers essential to the intelligent management of a large corporation, and the Commission was presented with testimony describing Webb's considerable progress in implementing this plan.

In January 1981 Webb also hired Donald Upson, its former external auditor, as director of internal audit. The status of the internal audit department within the corporation was also raised, by naming Mr. Upson as executive vice-president, reporting directly to Mr. Swanson. Webb also created the position of director of security and appointed Carl Freeman, a thirty-year veteran of the Federal Bureau of Investigation, to fill that position. Mr. Freeman was also appointed a vice-president, reporting directly to Mr. Swanson. Upson and Freeman are among 13 new officers recruited by Webb since January 1981. In addition to hiring new people Webb has, as noted at various points in this opinion, removed a number of employees who were involved in the corporate misdeeds of the past.

As previously mentioned, Webb adopted a new corporate code of ethics in December 1980. Each employee is required to sign a representation that he has read and understands the code and will comply with it. Swanson testified that he emphasizes to all Webb officers and employees that violations of the code will be punished by automatic termination, and that a number of employees have been terminated for such violations.

Moreover, as noted throughout this opinion, the corporation has changed specific procedures in areas where problems have occurred.

Finally, we observe that there is no evidence in the record of any continuing improprieties since the personnel, structural and procedural changes outlined above were instituted. In its summation the Division "recognize[d] that the company has made adjustments in the organization and appears to have left behind its past misdeeds and internal disorganization".

The Commission has carefully considered all of the facts surrounding Webb's past improprieties, as well as the recent efforts to remove the malefactors and reorganize the corporation, and has con-
cluded that Webb has established its good character and business ability by clear and convincing evidence.

Before we can rule on the ultimate issue of Webb’s qualifications, however, we must consider the qualifications of Robert Johnson.

H. **The Qualifications of Robert Johnson**

The Del E. Webb Foundation is a non-profit corporation which owns 28.6 percent of the stock of Webb. The Foundation has been treated as a holding company of Claridge Limited, see, *N.J.S.A.* 5:12-26, and the Commission has ruled that Robert Johnson and Robert Alcorn, the sole members and directors of the Foundation, are persons required to qualify in connection with Claridge Limited’s casino license application.

The Division has never challenged Mr. Alcorn’s qualifications, and the Commission finds that his qualifications have been established by clear and convincing evidence.

The Division does challenge Mr. Johnson’s qualifications. Between 1967 and 1981 Johnson was, at various times, president, chief executive officer and chairman of the board of Webb. In its letter-report to the Commission on the qualifications of Johnson, the Division pointed out that it was during this period that the prostitution, beer rebate and political contribution problems occurred. In that report the Division concluded that Johnson “lacks sufficient business ability and casino experience to be a qualifier”.

At the hearing various present Webb officers and board members testified to their experiences with Johnson during the period of his stewardship of the corporation. None of these witnesses questioned Mr. Johnson’s good character, honesty and integrity, although there was some criticism of his ability to manage a corporation of the size and diversity of Webb. In essence, these witnesses said that Webb has reached the stage where it needs a professional manager such as Mr. Swanson at the helm, as opposed to Mr. Johnson, who rose through the corporate ranks from the position of timekeeper on a construction site.

In its summation the Division again pointed out that the beer rebates, prostitution payments and political contributions occurred during the time when Mr. Johnson was the chief executive of the corporation. The Division conceded that there was no proof that Mr. Johnson initiated any of these activities or that they resulted from any evil motive on his part, but argued that they were directly at-
tributable to his nonfeasance and that he must share responsibility for them. The Division objected to the qualifications of Webb "so long as Robert Johnson is directly or indirectly affiliated with" the company.

Mr. Johnson, as a person required to qualify with respect to Claridge Limited’s casino license application, must prove, *inter alia*, his good character, honesty and integrity, and that he "has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency in the particular position involved". *N.J.S.A.* 5:12-89(b)(3). Mr. Johnson has retired from all of the positions which he held with Webb. Although he still has a consulting agreement with Webb, he testified that this agreement is essentially a vehicle for severance payments, and that he is not called upon to contribute in any way to the ongoing activities of the corporation. The Division pointed out in its summation that Mr. Johnson, by reason of his control of the Foundation stock and his personal holdings of .015 percent of the corporate stock, is in "a formidable position which may significantly affect the future of this company". However, Mr. Johnson testified that he has no intention of becoming involved in the company’s business, and that he seeks to be qualified by the Commission in order that he may carry on the charitable work of the Foundation and in order to clear his name of the taint which he believes would result if he resigned from the Foundation in the face of the Division’s objections. Although we accept Mr. Johnson’s testimony, he does remain in a position of potential influence or control and he must establish, in addition to his good character, honesty and integrity, that he possesses business ability commensurate with his present position.

We have already discussed the political contributions, payments to prostitutes and beer rebates, and in each instance have discussed Mr. Johnson’s testimony as to his involvement or lack of involvement. With respect to each of these matters, we find Mr. Johnson’s testimony credible, and in light of his current relationship to Webb, do not find any action or inaction on his part of such a nature as to render him unqualified. Although his managerial skills and judgment were questioned by some witnesses, there is no evidence that he ever acted with evil intent or that he ever disregarded his duties. We also note that when the time came for a change in corporate leadership, Mr. Johnson used his best efforts to effect that change. It was during his tenure as president and board chairman that the new code of corporate ethics was adopted and that Swanson, Upson and Freeman
were hired. In short, we conclude that he has established his qualifications by clear and convincing evidence.

I. Conclusion as to the qualifications of the Del E. Webb Corporation

For all of the reasons stated above the Commission finds that the Del E. Webb Corporation has established its qualifications by clear and convincing evidence.

IV. CONCLUSION

A plenary casino license shall issue to Claridge Limited, subject to the conditions set forth in the Resolution regarding this matter.

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.