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

v.
PLAYBOY-ELSIMORE ASSOCIATES, t/a PLAYBOY HOTEL AND CASINO OF ATLANTIC CITY; JOANNE MARIE ROGERS, CAGE MANAGER; CHRISTOPHER R. GIBBONS, CASINO COMPTROLLER; WILLARD C. HOWARD, JR., FORMER VICE-PRESIDENT OF CASINO OPERATIONS; AND HENRY M. APPLEGATE, III, VICE-PRESIDENT OF FINANCIAL SERVICES,
Respondents.

Decided: October 10, 1984
Approved for Publication by the Casino Control Commission:
    July 8, 1988

SYNOPSIS

The Division of Gaming Enforcement filed a complaint against respondents alleging several violations of the Casino Control Act and Commission regulations. The matter was transmitted for a hearing to the Office of Administrative Law, where the parties agreed to a stipulation of facts. On motion of the parties, the case was then returned to the Commission for a decision.

The facts of the case are similar to those in an earlier case involving the Sands Hotel and Casino. [The decision in the earlier case, Division of Gaming v. Greate Bay and Patricia DiGiacomo, is also included in this volume of N.J.A.R. and is referred to in this decision as the “Sands” case.] A group of gamblers from Hong Kong spent three days at respondent casino. Upon arrival, they presented $1.9 million in checks as cash equivalents to be placed on safekeeping deposit. The group had an arrangement whereby they pooled funds; the amount credited to each individual therefore did not necessarily correspond to specific cash equivalents and all deposits were recorded as “cash.” The deposits were accepted in a meeting room, rather than the casino cage area. Some of the checks did not comply with the regulatory definition of cash equivalent. Some of the checks were not verified before the patrons were permitted to gamble against them. Respondent licensee reimbursed the group for airfare in the amount of
$77,400. This expense was not reported in the daily complimentary service report to the Division or in the quarterly complimentary service report to the Commission, although it was included in other reports.

In deciding the case, the Commission applied the conclusions and penalties determined in its earlier decision involving the same group of gamblers at the Sands. For accepting cash equivalents outside the cage area, failing to properly record customer deposit forms, failure to verify cash equivalents, accepting non-conforming instruments and failing to report complimentary services, respondent licensee was fined a total of $186,000. Individual respondents, employees of the casino involved in the transactions, were also sanctioned.

One issue that was not decided in the Sands case or in any previous Commission decision was whether bank checks made payable to an individual and then endorsed in blank could be accepted as cash equivalents. The commission determined that such instruments are not cash equivalents within the definition of N.J.A.C. 19:45-1.1. A cash equivalent must be made payable to the casino licensee, "bearer" or "cash." A check endorsed by the payee cannot be considered "bearer paper" because of the effect of a forged endorsement on the validity of the instrument. Because of the strict regulatory limitations on cash equivalent transactions in casinos, the Commission ruled that instruments made payable to a specified payee and endorsed in blank could not be accepted as cash equivalents.

In a separate opinion, Commissioner Jacobson said, as he had in a separate opinion in the Sands case, that monetary sanctions against the respondent casino were not sufficient to deter future violations by respondent or other casino licensees. He recommended instead closing the casino for at least 24 hours as an appropriate penalty.

Marilu Marshall, Esq., for respondents Playboy-Elsinore Associates,
Joanne Marie Rogers, Christopher R. Gibbons and Henry M.
Applegate, III

Steven R. Bolson, Esq., for respondent Willard C. Howard, Jr.
Kevin F. O'Toole, Deputy Attorney General, for Division of Gaming
Enforcement
BY THE CASINO CONTROL COMMISSION

The Division of Gaming Enforcement (DGE) filed a complaint against respondents Playboy-Elsinore Associates,1 Joanne Marie Rogers, Christopher R. Gibbons, Willard C. Howard, Jr., and Henry M. Applegate, III with the Commission on January 18, 1983. That complaint alleges that the respondents committed a number of violations of the Casino Control Act and Commission regulations in connection with a group of gamblers from Hong Kong ("Hong Kong group") which visited the Playboy casino during the period of August 12 to 15, 1982. A notice of defense and request for a hearing was filed on behalf of all respondents with exception of respondent Howard on February 24, 1983. Counsel on behalf of Mr. Howard filed a notice of defense and a hearing request on March 11, 1983. A prehearing conference was held before Hearing Commissioner Joel R. Jacobson on May 12, 1983. Thereafter, on June 15, 1983, the Commission transferred the matter to the Office of Administrative Law (OAL) for the conduct of a hearing.

In the OAL, all the respondents and the DGE agreed to a stipulation of facts. The parties made a motion for the Commission to recall the case from the OAL on November 15, 1983. That order was signed by Chairman Read on November 29, 1983, and the matter was thereafter returned to the Commission on December 29, 1983.

By letter dated February 16, 1984, the parties were asked to address several legal issues raised as a result of an initial review of the stipulation of the facts. The parties were also requested to brief the issue of the appropriate sanction(s). Marilu Marshall, Esq., counsel for all respondents except Howard, filed her letter brief on March 12, 1984. The DGE filed its brief on March 22, 1984. There has been no written response from counsel on behalf of Mr. Howard.

A second prehearing conference was held on April 17, 1984, in order to clarify certain factual issues raised by the stipulation of facts.

Oral argument of counsel for all respondents and the DGE on the appropriate sanction, if any, to be imposed was heard at the Commission’s public meeting of September 12, 1984. In support of its contention that no sanction should be imposed under section 130, the respondents presented testimony from Robert Maxey, Chief Executive Officer of Elsinore.

1. On June 5, 1984, Playboy-Elsinore Associates changed its name to Elsinore Shore Associates. The casino licensee was not altered in any other respect.
STATE OF NEW JERSEY

DIV. OF GAMING V. PLAYBOY-ELSINORE ASSOCs. ET AL.

CITE AS 11 N.J.A.R. 192

FACTS

We accept the stipulation of facts filed by the parties on January 13, 1984. The essential facts for purposes of this decision are as follows. On the morning of August 11, 1982, Playboy management personnel, including respondents Rogers and Gibbons, were advised that a group of oriental gamblers known as the "Hong Kong group" were expected to arrive at the Playboy Hotel and Casino on the following day, August 12, 1982. In anticipation of their arrival, a meeting was held at approximately 8:30 P.M. on August 11, 1982, involving respondents Howard and Rogers, as well as Jerry L. Cook, casino credit manager, Barry C. Rubinson, director of casino marketing, Howard S. Moskovitz, credit executive, and Su-Min (Frank) Hsu, casino host. Respondent Howard made contact with the Hong Kong group through a relative of Mr. Hsu and was informed by them that the group intended to present cash equivalents to be placed on safekeeping deposit at Playboy. Mr. Howard made arrangements to pick up copies of the checks to be presented so that they could be forwarded to credit clerks for verification in advance of the group's arrival. Respondent Rogers advised respondent Gibbons that copies of the checks would be arriving late that evening and would be verified by cage personnel the following morning, August 12, 1982.

Upon her arrival at Playboy on the afternoon of August 12, 1982, Rogers reviewed the copies of the checks and discovered that, in addition to bank checks, there were also cage disbursement checks from several Las Vegas casinos. She then contacted Gibbons and apprised him of this fact, questioning whether the casino checks were to be accepted as cash equivalents when presented. Gibbons then met with respondent Applegate, who was then vice-president of financial services, and expressed the same concerns. The matter was discussed between respondents Applegate and Howard and, afterwards, Applegate told Gibbons that the casino checks were to be accepted as cash equivalents if verified and authorized by the credit department. Gibbons so advised Rogers, noting that acceptance was contingent upon the credit department's verification and authorization.

Ms. Rogers was approached at approximately 5:00 P.M. by Howard Moskovitz, casino credit executive, who inquired whether it was possible to use one of the meeting rooms in the casino hotel facility, known as the Margate Suite, for the arrival of the Hong Kong group and the processing of their safekeeping deposits. Mr. Moskovitz was concerned because of the large number of people in the Hong Kong
group and the fact that they did not speak English. Rogers contacted Gibbons and "advised him that this would be done." Casino cage personnel proceeded to the Margate Suite with safekeeping deposit documents which had been prepared in advance.

The Hong Kong group arrived at approximately 7:30 P.M. and was directed to the Margate Suite. Present at that time were respondents Howard and Rogers, Messrs. Cook, Moskovitz, Rubinson and Hsu, Carol A. White, executive casino host, Richard Dennis Yin, credit executive, various casino cage personnel and one security officer.

Seventy-five checks were presented by the Hong Kong group in the Margate Suite totalling $1.9 million. Of those checks, 13 were drawn on cage disbursement accounts of various Las Vegas casinos. Moreover, five checks made payable to Tony Lau, tour escort, were accepted. Furthermore, 16 of the checks accepted had not been verified. Respondent Rogers was advised by Jerry Cook, credit manager, that the Hong Kong patrons would be allowed to gamble against the unverified checks.

The Hong Kong group gambled at Playboy from the evening of August 12, 1982, to August 15, 1982. The group then moved to the Sands to gamble until August 18, 1982. As part of the settling of the safekeeping deposits, the 16 bank checks totalling $660,000, which had not been verified were returned to the Hong Kong group. In addition, eight Playboy-Elsinore Associates casino cage disbursement account checks were issued, all of them payable to Kam Yiu-Lau, one of the leaders of the group. Mr. Lau also requested reimbursement for the airfare for the entire group. Respondent Howard advised respondent Rogers that 43 members of the Hong Kong group would be reimbursed $1,800 each for airfare. Respondent Rogers issued a check payable to Kam Yiu-Lau in the amount of $77,400 for this purpose. The licensee acknowledges that it failed to report the $77,400 complimentary travel expense on either its daily complimentary service report to the DGE for August 1982 or its quarterly complimentary service report dated September 30, 1982, filed with the Casino Control Commission. It was reported among other items in the Playboy's

2. The DGE charged that the corporate respondent had violated the Casino Control Act and Commission regulations by accepting two checks as "cash equivalents" which were made payable to "Winston Y.C. Ming" and "Chan Wai-Ho, Anthony" in Count IV, paras. 24 and 25 of the amended complaint. As part of the stipulation of settlement, the DGE withdrew that allegation.
statement of income as a casino expense in the quarterly report filed with the Commission for the quarter ending September 30, 1982, as well as the casino licensee's "complimentary services schedule" for the twelve-month period ending December 31, 1982.

After the group's departure, cage personnel discovered that they had miscalculated the safekeeping deposit refund in the amount of $10,000. On August 16, 1982, respondent Howard contacted Kam Yiu Lau at the Sands Hotel and Casino, advised him of the miscalculation and requested that he return the overpayment. Cage personnel also contacted Playboy's depository bank, the First National Bank of South Jersey, and requested that a stop payment order be issued on Playboy check #0352 made payable to Kam Yiu Lau in the amount of $85,500. Mr. Lau had presented this check to the Sands on August 15, 1982, as a cash equivalent to be placed on deposit. To resolve this problem, Mr. Lau placed an additional $85,000 on deposit with Greate Bay for which he received a receipt. He then returned to Playboy where, in exchange for this receipt and an authorization for the return of the Playboy check to Playboy, he received $75,500. It appears that the stop payment order was issued too late and was ineffective. Greate Bay was paid the full $85,500 on the deposited check. On August 24, 1982, respondent Rogers appeared at the Sands casino cage, and, in exchange for the receipt issued to Mr. Lau and his letter authorizing release of the cancelled check to Playboy, she received a check made payable to Playboy-Elsinore Associates in the amount of $85,000. However, the complaint does not charge any violation of the Act or Commission regulations occurred as a result of this incident.

This case presents many of the same issues as were involved in State v. Greate Bay Hotel and Casino and Patricia DiGiacomo, Docket No. 83-17 (1984) (hereafter referred to as "the Sands case" or simply "Sands") which involved the same group of patrons. Hence, the disposition of this case is in large part controlled by our decision in the Sands case. We will therefore approach this case in a similar fashion, addressing each count of the complaint seriatim, although the determination of appropriate sanctions if any, will be reserved until after the merits vel non of the alleged violations are determined.

ACCEPTANCE OF CASH EQUIVALENTS OUTSIDE THE CAGE AREA (COUNT I)

The corporate respondent admits that it accepted $1.9 million in
checks as cash equivalents outside the cage area from the Hong Kong group on August 12, 1982.

In the Sands case we expressed at some length the seriousness with which we view the practice of conducting such transactions outside of the secured area known as the "cage." The thrust of that holding was that neither business interests nor consideration of patron convenience can supplant the statutory and regulatory constraints binding upon all casino licensees. The regulations are not unclear or vague on this point.

We find that the casino licensee violated N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.15(b), -1.24(a) and -1.25(e) in accepting $1.9 million in checks as cash equivalents from the Hong Kong group in the Margate Suite.

**FAILURE TO PROPERLY RECORD CUSTOMER DEPOSIT FORMS (COUNT II)**

The corporate respondent admits that it failed to record accurately the nature of the patron safekeeping deposit received when it prepared 48 customer deposit receipts for the Hong Kong group. On each customer deposit form, cage personnel were directed by respondent Joanne Rogers to indicate that cash was accepted from the group rather than cash equivalents. The corporate respondent indicates that "cash" was marked on the forms by cage personnel because they were unable to cross-reference check numbers and payees to the corresponding receipts in equal amounts in following the allocation system requested by the group.³

The result of the actions here was the obscuring of the audit trail for these customer deposits. As the Division notes in its brief, the

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³ The DGE has not alleged in this complaint that the so called "pooling procedure" which in part contributed to this violation was unlawful. We do not determine the propriety under the Act and regulations of such procedures. However, we are deeply concerned that the acceptance, pooling and redistribution of the Hong Kong group's safekeeping assets occurred without any written authorization by the members who originally held the funds. In fact, the inability of cage personnel to correlate the assets presented with the allocations requested by the group leader resulted in the improper recording of the transaction on the customer deposit forms. However, as we stated at the outset, the Division has not alleged that pooling practice is unlawful so that we need not render a decision on that issue in this case.
documents at issue here provide no record of any checks having been received from the Hong Kong group. We agree that "[b]y preparing inaccurate and unreliable documentation there was a clear potential to cover up the true nature of the entire Hong Kong episode. Therein lies the enormous risk to the integrity of the regulatory process the violations of Count II created."

Consistent with our determination in Sands, we find that the corporate respondent has committed 48 violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.25(h)(5).

**FAILURE TO VERIFY CASH EQUIVALENTS (COUNT III)**

The corporate respondent admits that it accepted 16 checks as cash equivalents without verifying the validity of those checks prior to their acceptance in violation of N.J.A.C. 19:45-1.25(e). It appears that Playboy had a procedure in place in which it would call the issuing bank to confirm the issuance of the check to the patron involved prior to permitting the patron to gamble against such funds. In fact, the majority of the checks accepted were verified in this manner by use of photocopies provided to casino personnel the day before the arrival of the group. The 16 checks at issue in this Count of the complaint were not among the copies provided to the casino licensee. Although the checks were returned to the gamblers at the time they reconciled their accounts and left Playboy on August 15, 1982, those funds were made available to them to gamble against during their stay at Playboy.

Because of the corporate respondent's admission on this issue, it is not necessary for the Commission to interpret N.J.A.C. 19:45-1.25(e) to outline what verification procedures would have been necessary under the circumstances in this case. We find that the corporate respondent breached N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.25(e) in failing to verify 16 cash equivalents prior to their acceptance.

**ACCEPTANCE OF NON-CONFORMING INSTRUMENTS (COUNT IV)**

There are two distinct charges made in this Count of the complaint. The first concerns the 13 checks which the corporate respondent admits it accepted as "cash equivalents" that were drawn on accounts of various Las Vegas casinos constituting violations of N.J.S.A. 5:12-99, N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a). It is evident
from the factual stipulation that casino management was aware that the Hong Kong group intended to present casino checks to be placed on deposit as cash equivalents, and further they were aware that such checks did not fit within the definition of cash equivalent as defined by N.J.A.C. 19:45-1.1.

Again, we have already dealt with this issue in the Sands decision. We there held that the acceptance of 26 non-conforming checks worth a total of $1,348,650 was essentially a loan from the casino to the patrons, a practice that is unambiguously condemned by section 101 of the Casino Control Act. N.J.S.A. 5:12-101. See also N.J.A.C. 19:45-1.24(a). By the same token the record here establishes that the corporate respondent committed 13 violations of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a). Moreover, the decision to take this action in contravention of the statute and Commission regulations was made at a meeting of high-level management personnel, specifically, the vice-president of financial services (Applegate) and the vice-president of casino operations (Howard). Such a circumstance warrants special consideration in the penalty phase of this decision.

The second aspect of this count concerns the five additional checks which the DGE alleges were accepted in violation of sections 101 and 99, and N.J.A.C. 19:45-1.24 when the corporate respondent accepted five checks made payable to Tony Lau totalling $280,000. This presents an issue not decided in the Sands case. While similar checks made payable to Mr. Lau were presented to the Sands, the corporate respondent in that case stipulated that such checks were non-conforming and therefore violative of the Act and pertinent Commission regulations. Here, however, we have no such stipulation. The issue then is one of first impression. For reasons hereafter stated, we find that the five checks in question do not conform to the definition of cash equivalent because they are not made payable to the casino licensee, "bearer" or "cash" and the instrument is neither a certified check, cashier's check, treasurer's check, recognized traveler's check, recognized money order or recognized credit card.

Section 101(a) contains a broad prohibition relating to the extension of credit and check cashing. The ensuing subsections contain several exceptions to the general prohibition, but nevertheless impose strict conditions on advancing credit and cashing checks to facilitate gambling. See Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598, 603 (App. Div. 1981). One of those exceptions, Section 101(b), provides that:
Nothing in this subsection shall be deemed to preclude the establish-
ment of an account by any person with a casino licensee by a deposit
of cash or recognized traveler's check or other cash equivalent, or
to preclude the withdrawal, either in whole or in part, of any amount
contained in such account. [Emphasis added.]

In keeping with the Legislature’s imposition of strict controls over
credit for gaming purposes (Salomone, supra. at 607), we have strictly
defined and interpreted the exceptions and imposed detailed regu-
lations where necessary. See N.J.A.C. 19:45-1.25, -1.26, -1.27, -1.28
and -1.29; In the Matter of the Petition of Boardwalk Regency Corpora-
tion to Amend N.J.A.C. 19:45-1.1 (order dated November 15, 1982).
See also State v. Comdata Network, Inc., Docket No. 80-CXI-1 & 2

Four of the checks made payable to Tony Lau were issued by the
Hang Lung Bank Ltd. drawn upon its corresponding or commercial
account at Irving Trust Company in New York. The remaining check
was issued by Hang Lung Bank Ltd. on its commercial or correspond-
ing bank account at Bank of America in San Francisco, California.
This kind of check on which the bank is the drawer and a second
bank is the drawee is known as a bank check. White & Summers,
Handbook of the Law Under the Uniform Commercial Code, §17-5
(1972) at 578.

The list of instruments to be considered cash equivalents in N.J.A.C.
19:45-1.1 does not include bank checks. Moreover, there are distinc-
tions between bank checks and the instruments contained in the cash
equivalent definition which mitigate against a finding that they should
be included within that list of instruments acceptable as cash
equivalents. The instruments presently included within the Com-
mission regulation are generally recognized as being substitutes for
cash. These instruments are as liquid as cash because they represent
guaranteed obligations of the bank or other financial institution rather
than that of an individual or non-financial entity. At least one court
in New Jersey has noted a distinction between cashier's checks, one
of the instruments designated in the definition, and bank checks. The
court states:

... a bank check is, in effect, an ordinary check since it is not
accepted when issued and may be dishonored by the bank upon
which it is drawn when it is presented for payment. National Newark

Since bank checks are not accepted upon issuance and do not
represent guaranteed obligations of the bank they do not provide any of the protections of a cashier's check. Thus, a bank check offers no more protection at law than an ordinary personal check. The holder of a bank check, other than a certified check, has no recourse against the drawee bank when that bank wrongfully dishonors the instrument. N.J.S.A. 12A:3-409. The only recourse of the holder of the bank check is against the drawer. With regard to the five checks at issue here, the only legal action the casino could institute on a dishonored check would be against the drawer bank, Hang Lung Bank Ltd. There would not be any action available by the casino against the American banks. Of course, if the drawer bank refuses payment based upon a forged endorsement, the casino would have an action against the forger. N.J.S.A. 12A:3-419(2). Thus, we hold that bank checks are not cash equivalents within the definition of N.J.A.C. 19:45-1.1.

There is yet another feature about these five checks that requires discussion. Cash equivalents under Commission regulations are required to be made payable to the casino licensee, “bearer” or “cash”. The DGE suggests in its brief that a check which is endorsed in blank by the payee is converted into “bearer paper.” Under this analysis a check which is made payable to the patron and endorsed in blank becomes a check made payable to bearer and, absent any other deficiency, would comport with the definition of cash equivalent.

We understand that casino licensees have been operating under the assumption that this interpretation is correct. We now hold to the contrary.

The reasons for our strict construction of the statute and regulation in this area were stated at the outset. We perceive a crucial difference between a conforming cash equivalent instrument made payable to “bearer” and one which is converted to a bearer instrument by virtue of the endorsement in blank by the payee. That difference is the effect of a forged endorsement on the validity of the instrument. For example, a cashier's check made payable to “cash” or “bearer” does not require an endorsement to negotiate the instrument. On such instruments even a forged endorsement will not restrict its negotiability. Similarly, there is no endorsement necessary on a cash equivalent made payable to the casino, and the original drawee bank would have no defense against a cashier's check properly signed by a bank officer but stolen from the original remitter.

However, under the Uniform Commercial Code, a forged signature cannot legally bind the person whose name is forged unless that person ratifies the forger's endorsement. N.J.S.A. 12:3-404(1). The possessor
of such an instrument has no right to enforce payment by any party to the check. Santos v. First National State Bank of New Jersey, 186 N.J. Super. 52, 72 (App. Div. 1982). Further, if a party mistakenly pays a check with a forged endorsement, that party can collect against the person who first cashed the check. See N.J.S.A. 12A:3-419; Brady on Bank Checks (4 Ed. Bailey, 1969), §15.10 at 46. In short, requiring the endorsement of a patron in order to convert a check made payable to a patron to a “bearer” check involves more risk than accepting a check made payable to the casino licensee, “cash” or “bearer.” Under our strict limitations on cash equivalent transactions, failing a change in the regulation or statute, we reject the practice of accepting otherwise valid cash equivalent instruments made payable to a specified payee and endorsed in blank as cash equivalents pursuant to N.J.A.C. 19:45-1.1.

Therefore, we find that the acceptance of five bank checks payable to Tony Lau was in violation of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.1 and 1.24(a).

**FAILURE TO REPORT COMPLIMENTARY SERVICES TO THE REGULATORY AUTHORITIES (COUNT V)**

The casino licensee admits that it failed to report the $77,400.00 payment to the Hong Kong group for complimentary airfare reimbursement to the DGE as part of the daily complimentary services report required by N.J.A.C. 19:45-1.2(c)(3). Further, it admits that it failed to include this expense in its quarterly complimentary service report to the Commission as required by N.J.A.C. 19:45-1.9(c)(1). The airfare reimbursement was included in Playboy’s statement of income as a casino expense in the quarterly report filed with the Commission.

As we stated in Sands, failure to keep the Commission and Division apprised of compliments through existing reporting requirements undermines the regulatory and enforcement functions of the agencies. Effective monitoring over junket and complimentary services mandates that these reports be filed. There is no indication that the corporate respondent attempted to comply with the reporting requirements. We deem it to be a very serious violation of N.J.A.C. 19:45-1.2(c)(3) and -1.9(c)(1).

**PENALTY DETERMINATION**

Section 129 provides the Commission with a variety of sanctions available to it that may be imposed for violations of the Act and
regulations. These include the revocation or suspension of a casino's license or certificate of operation; restitution or cease and desist orders; issuance of reprimand or censure and the imposition of monetary civil penalties. Moreover, these penalties may be imposed individually or in combination. It is evident that the Legislature wished to empower the Commission with wide discretion regarding the enforcement of the Act. "Of paramount importance is a need for flexible civil sanctions. The Commission should be clearly empowered to devise the remedy best suited to the offense. To this end, there should be emphasis on alternative or cumulative sanctions." Second Interim Report, Staff Policy Group on Casino Gambling, (February 17, 1977) at 54. The Commission's power concerning monetary penalties was specifically considered:

Regarding monetary penalties, the Commission should be empowered to pose a range of fines; however, it must be emphasized that penalties must be of sufficient magnitude to eliminate the possibility that a penalty becomes simply a cost of doing business in this State. Furthermore, the Commission should be empowered to levy a monetary fine in lieu of more drastic action. A monetary penalty of sufficient magnitude would provide the desired deterrent effect and should also provide a stimulus for effective completion of any disciplinary proceedings. [Id. at 54-55.]

The Act also provides standards that we are required to consider in determining the appropriate sanction in any disciplinary action brought before us. Those standards include:

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

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

c. Any justification or excuse by the licensee or registrant;

d. Prior history of the particular licensee or registrant involved with respect to gaming activity;

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

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. [N.J.S.A. 5:12-130.]

These standards incorporate some of the traditional goals adopted by society for imposing sanctions for misconduct. Though there are obvious limits to the analogy, some reference to concepts developed
in the field of criminal law is appropriate. Four goals have often been articulated to justify punishment: retribution, deterrence, both of the offender and others, rehabilitation of the offender and protection of the public through isolation of the offender. See e.g., State v. Ivan, 33 N.J. 197, 199 (1960). Incarceration and rehabilitation have little or no relevance in this administrative context. However, retribution and deterrence are both articulated in the statute, specifically in section 129(5) which provides for civil penalties "to punish misconduct and to deter future violations . . ." These aims work in conjunction with the overall purposes of the Casino Control Act and, in particular, the maintenance of the public confidence and trust in the credibility and integrity of the regulatory process and casino operations. The relationship between the need to punish misconduct appropriately and the maintenance of the public's trust in the integrity of the regulatory process is evident. Particularly in a highly sensitive industry such as gaming, breaches of the law mandate an equally severe rebuke. Lesser penalties would depreciate the seriousness of the breach. Cf. United States v. Bergman, 416 F. Supp. 496 (S.D.N.Y. 1976), M.P.C. §7.01(1)(c). However, such "just deserts" will always be tempered by the idea of blame-worthiness, recompense and proportionality. United States v. Bergman, supra at 500.

Deterrence is not limited to its effect upon the respondent alone. It is directed also to those who may follow thereafter. State v. Ivan, Supra at 202. The deterrent effect on others is a significant aid to the regulators of casino gaming as it is in the field of criminal law.

The corporate respondent, through the testimony of Robert Maxey, has raised other considerations for the Commission to weigh in determining the proper sanction in this case. He has argued against any sanction for misconduct, contending "there is not one thing that this licensee can do differently than it has already done and which it began to do prior to any knowledge that this problem even existed." This argument may mitigate the severity of a sanction but does not obviate the need for punishment.

Mr. Maxey also questioned the significance of any deterrent effect within the casino industry by the application of sanctions against the corporate respondent. He indicated that in the face of severe sanctions, casino personnel might be more inclined to hinder an investigation or conceal actions and violations of the Act and regulations. We would hope that Mr. Maxey, and all other persons required to meet the exacting qualifications of casino key employee licensees, are well
aware of the continuing duty imposed upon all licensees, registrants and qualifiers under the Casino Control Act to cooperate with and provide any assistance required by the Commission and the Division, as well as to inform the regulatory authorities of any acts which they believe constitute a violation of the Casino Control Act. N.J.S.A. 5:12-80(d) and (g). Any action in conscious derogation of this duty would be dealt with most severely by this Commission.

Mr. Maxey also argued that the corporate licensee has done everything it can do to remedy the situation and that it did so willingly and to its own economic detriment. On cross examination by the DGE attorney, he acknowledged that the changes were made in order for the casino licensee to function properly. As we stated earlier, remedial efforts are recognized in the determination of the proper sanction. However, participation in casino operations as a licensee is a revocable privilege and is conditioned upon the “proper and continued qualification of the individual licensee ... and upon the discharge of the affirmative responsibility of each such licensee ... to provide ... any assistance and information necessary to assure that the policies declared by the Act are achieved.” N.J.S.A. 5:12-1(8). If the licensee does not continue to operate properly, at whatever economic cost, it cannot continue to hold a license.

With these considerations in mind, we have weighed the proper penalty to be imposed against the corporate respondent. They are as follows.


This is an extremely serious violation. A multi-million dollar transaction took place in an unsecured, unmonitored hotel suite, with no attempt to notify or involve the regulatory agencies ordinarily present. There is very little if anything to distinguish this case from the Sands matter. The conduct of the corporate respondent here is no less serious than that taken by the Sands personnel. It merits an equally severe sanction. Consistent with the Commission’s analysis in the Sands case, the acceptance of the checks in the hotel suite is deemed to be one violation. We assess a $50,000 civil penalty against the corporate respondent for acceptance of the Hong Kong group’s funds as a cash equivalent deposit in the Margate Suite.

2. Count II—Customer Deposit Forms.

Again, the facts and circumstances of this case are virtually identical to those in the Sands case. The effect of inaccurately describing the transactions on the customer deposit forms was to obscure if not conceal the entire transaction which took place in the Margate Suite.
Moreover, the inaccurate records are responsible, in part, for the problems encountered later when the casino sought to refund the proper amount of money to the Hong Kong group. Consistent with the Sands case, we find that each form that was inaccurately prepared constitutes a separate and distinct violation under the statute and regulations. Therefore, we assess a civil penalty of $1,000 per violation for 48 violations in the preparation of 48 inaccurate customer deposit forms. The total fine for the violations assessed under Count II is $48,000.

3. Count III—Cash Equivalent Verification.

Although a serious attempt was made to verify the checks to be offered as cash equivalents, the corporate respondent nevertheless accepted 16 checks worth $660,000, and made no attempt at prior verification of them as required by the Act and Commission regulations. We acknowledge the effort to verify as many checks as possible. To the extent that compliance with the law is laudatory, the personnel involved are to be congratulated. However, in a strictly regulated industry, compliance is required and therefore expected. We therefore conclude that a penalty of $1,000 per violation, the same as that imposed upon the Sands for identical violations, is the appropriate penalty.


The corporate respondent accepted 13 checks drawn on accounts at various Las Vegas casinos in violation of section 101 of the Act. Acceptance of each of these checks is a separate and distinct violation. The decision to accept these checks was a conscious and deliberate one on the part of the management level employees for whose conduct the corporate respondent is responsible. In the Sands case, similar violations were sanctioned at the rate of $3,000 per check. However, considering the positions of the personnel and the deliberate nature of the action taken, we believe that a more stringent sanction should be assessed against the corporate respondent here. Therefore, for the acceptance of 13 casino checks, a civil penalty of $4,000 per violation will be assessed.

We have also found that the acceptance of the five bank checks made payable to Mr. Lau was improper because bank checks, as defined earlier in this opinion, are not included within the types of instruments set forth in N.J.A.C. 19:45-1.1, and further because such checks were not made payable to the casino licensee, bearer or cash. An endorsement in blank is insufficient to convert an instrument to bearer paper for purposes of the regulation at issue. Nevertheless, in
view of the near universal misconceptions among the industry and
the regulators on this issue, we find it inappropriate to impose any
sanction for these violations. See N.J.A.C. 5:12-130(b) and (c).
5. Count V—Complimentary Reports.
Such failures tend to preclude or at least hinder the essential regu-
latory functions of both the Commission and the Division of Gaming
Enforcement. Any violation which undermines valid law enforcement
and regulatory purposes merits a harsh sanction. Accordingly, we
assess a $10,000 civil penalty against the corporate respondent for
violating N.J.A.C. 19:45-1.2(c)(3) and an additional $10,000 for viol-
ating N.J.A.C. 19:45-1.2(9)(c)(1).

LIABILITY OF INDIVIDUAL RESPONDENTS

1. Joanne Marie Rogers
Ms. Rogers was employed at the time of the incident as the casino
cage manager and licensed as a casino key employee. As cage manager
she was responsible for the control, accounting and reporting of all
casino cage transactions. As we noted in the Sands case, the person
who holds the position of casino cage manager is required to have
extensive casino industry experience and a thorough knowledge of the
Casino Control Act and regulations that relate to the casino opera-
tions and internal controls. She is expected to maintain compliance
with the Act and regulations and monitor those within her authority
in doing the same. It is evident from the Stipulation of Facts that
respondent Rogers had a crucial role in the failure of the cage to
comply with accounting and internal control procedures in the accep-
tance of the checks from the Hong Kong group. It is also evident
that Ms. Rogers sought the advice and authority of her superiors
before taking crucial steps in this episode. For example, when review-
ing copies of the checks to be presented by the Hong Kong group,
respondent Rogers discovered that cage disbursement checks from Las
Vegas casinos were included among the proffered checks. She con-
tacted respondent Gibbons, the casino controller, who, after consul-
tation with other members of casino management, directed Rogers
to accept the cage disbursement contingent upon phone contact and
verification with each credit department of those casinos.

It is unclear from the Stipulation whether respondent Rogers, at
the request of a casino executive, made the decision to transfer cage
personnel up to the Margate Suite. The Stipulation indicates that
respondent Rogers again contacted her superior, respondent Gibbons,
and “advised him that this would be done.”
Ms. Rogers was the highest ranking cage officer in the Margate Suite at the time the checks were accepted. It was under her instructions that cage personnel prepared the customer deposit receipts which did not accurately describe the transactions. Respondent Rogers acknowledged that she instructed the cage cashiers to circle "cash" because of the inability to cross-reference check numbers and payees to the corresponding check receipts in equal amounts. She advised her superior of this procedure after the preparation of the customer deposit forms was completed.

As cage manager, it is respondent Rogers' responsibility to determine whether a cash equivalent has been verified and may be accepted by the casino. Upon acceptance, a patron may gamble against that cash deposit. N.J.A.C. 19:45-1.25. When presented with 16 unverified checks in the Margate Suite, respondent Rogers did not exercise her authority in rejecting those checks prior to verification but rather sought the direction of Jerry Cook, credit manager, as to whether the patrons would be allowed to gamble against those 16 checks. This indicates some confusion in respondent Rogers' judgment as to who has the authority to authorize gambling against cash deposits. For the casino credit manager to make that decision is clearly an incompatible function.

It is evident from the record that respondent Rogers was directed by her superiors to take actions which constituted the violations in this complaint. However, she cannot be absolved from all responsibility. Casino key employees have an obligation to abide by their responsibilities as licensees as well as achieving the monitoring aims of the corporate employer. We are also aware that respondent Rogers is not currently employed in the casino industry in Atlantic City. Upon consideration of all the above circumstances, we assess a $500 civil penalty against Ms. Rogers.

2. Christopher R. Gibbons

At the time of the violations, respondent Gibbons was casino controller and a key licensee. He supervised all cage and internal control functions as well as other financial aspects of the corporate respondent. Within the corporate structure, he was respondent Rogers' immediate supervisor.

On August 12, 1982, respondent Gibbons was advised of the inclusion of 16 cash disbursement checks from Las Vegas casinos among the group of checks to be presented by the Hong Kong group. He discussed this problem with his supervisor, respondent Applegate. Gibbons was advised by Applegate to accept the casino checks as cash
equivalents if verified and authorized by the Las Vegas casino credit departments. Respondent Gibbons so advised Joanne Rogers.

Respondent Gibbons was also aware that respondent Rogers had removed the cage functions up to the Margate Suite and was advised that cage personnel had inaccurately recorded the safekeeping deposits received in the suite. He was not present in the Margate Suite during these transactions and there is no indication in this record that he was advised that sixteen checks were accepted prior to verification by cage personnel.

Respondent Gibbons is a high ranking financial officer within the corporate structure of the casino licensee. As such, he must be held to a high degree of responsibility. It appears from the record that at least on one occasion he requested guidance from his superior and was told to take actions which resulted in a violation of the statute. When advised that his subordinate was involved in activities contrary to the regulatory structure, he took no action to correct or remedy the situation. Such disregard for the regulatory system is unacceptable.

In our view a suspension of respondent Gibbons' casino key employee license for seven days and a $1,000 civil penalty are appropriate. During the period of suspension, Mr. Gibbons shall not engage in any activities for which a license or registration is required. For this time period, he may not receive any remuneration from his employer, including salary, vacation or sick leave, nor be compensated in any other manner. We so order.

3. Henry M. Applegate, III

At the time encompassed by the complaint, respondent Applegate was vice president of financial services of the corporate respondent. His responsibilities included the monitoring of all financial aspects of the corporation including both the hotel and casino cage functions. He is the highest ranking financial officer named in the complaint.

From the stipulated facts, it is apparent that Mr. Applegate made the decision to accept 13 casino checks as cash equivalents in violation of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25. There is no evidence that he was made aware of subsequent violations involving cage personnel. However, all of these functions were under his authority by virtue of his position. The Division argues in its complaint that through his supervising authority, respondent Applegate should be held accountable for these violations. We agree.

Respondent Applegate was involved in the initial stages of the visit of the Hong Kong group. He made the decision to accept checks from them in violation of section 101. From his actions, explicitly or im-
plicitly, came the message to accommodate these gamblers without regard to the regulatory restraints.

To sanction this conduct, we suspend respondent Applegate’s casino key employee license for a period of 14 days and assess a civil penalty of $5,000. Mr. Applegate is subject to the same restrictions outlined with reference to Mr. Gibbons during his suspension period. However, we must take note that Mr. Applegate is no longer employed by the corporate respondent. Rather, he is now employed by another casino licensee, Golden Nugget Operating Company (GNOC). While it is not our intention to visit any harm upon GNOC, some disruption of its normal operation may be anticipated by the temporary loss of a high-level management official such as Applegate. As is the case when any employee credential is suspended, Mr. Applegate will not be permitted to perform any function for which a valid license is required. However, should GNOC encounter a situation where information of which Mr. Applegate is the sole repository is needed, or some other emergent situation arises, GNOC personnel may contact Mr. Applegate during the period of his suspension to secure such information as they may require. However, if such contact is made, the conversation must be memorialized in writing and made available for inspection by the DGE and the Commission upon request.

4. Willard C. Howard

At the time of the events cited in the complaint, respondent Howard was vice president of casino operations and the holder of a casino key employee license. Mr. Howard’s functions related to casino gaming operations and he had no authority under Commission regulations over any cage function.

Mr. Howard’s active participation throughout the transgressions at issue here is established in the record. He arranged to have copies of the Hong Kong group’s checks transmitted to the cage for verification prior to the Hong Kong group’s arrival. He, along with respondent Applegate, made the decision to accept the cash disbursement checks from the Las Vegas casinos. He was the highest ranking member of casino management present in the Margate Suite when the highly irregular transactions described above occurred.

Presently, Mr. Howard is not employed at any operating casino in Atlantic City. In view of all the circumstances, we find that a $5,000 civil penalty is an appropriate sanction to impose against respondent Howard, and we so order.
CONCLUSION

Based upon our findings and conclusions as set forth above, the Commission assesses civil fines against the corporate respondent totalling $186,000 for the violations charged in counts I-V. The individual respondents are sanctioned in the following manner: Joanne Marie Rogers—$500 civil penalty; Christopher R. Gibbons—seven-day suspension and a $1,000 civil penalty; Henry M. Applegate, III—fourteen-day suspension and a $5,000 penalty; and Willard C. Howard—$5,000 penalty.

Commissioners Thomas and Zeitz respectfully dissent to the penalties imposed on respondents Applegate and Howard.

SEPARATE OPINION OF
COMMISSIONER JOEL R. JACOBSON

Initially, I join with the majority of the Commission in its findings of facts and conclusions of law in this case. I am in complete agreement with the findings and sanctions to be imposed upon Joanne Marie Rogers, casino cage manager, Christopher Gibbons, casino controller, Willard C. Howard, former vice president of casino operations, and Henry M. Applegate, III, vice president of financial services. However, I am of the opinion that the penalty levied against the casino licensee is inadequate to deter future violations by it or any other casino licensee in Atlantic City.

As has already been indicated, this case is quite similar to the case previously decided by the Commission entitled State v. Greate Bay Hotel and Casino Inc. and Patricia DiGiacomo, which I will refer to hereafter as the Sands case. Both cases involve the same group of patrons and the same types of regulatory violations.

In the Sands case, the casino licensee accepted 48 checks totalling approximately $2.6 million and some $300,000 in U.S. currency outside of the security of the cashiers' cage in a fourth floor conference room. Here, Playboy-Elsinore accepted 75 checks totalling approximately $1.9 million outside of its cage in the Margate Suite.

In the Sands case, cage personnel failed to properly record the nature of 32 customer deposit receipts; here, Playboy failed to record 48 of such receipts.

In the Sands case, 22 checks were accepted as cash equivalents without being verified prior to acceptance; here, 16 checks were accepted by Playboy without proper verification.

In the Sands case, 26 checks were accepted as cash equivalents that
did not comport with the requirements of a cash equivalent; here 18 such checks were accepted by Playboy.

In the Sands case, travel reimbursements made to the “Hong Kong” group totalling $325,000 were not reported to the Commission and Division as required. Here, Playboy failed to report $77,400 in travel reimbursements paid to the same group.

Although as this brief comparison indicates, both casino licensees, in the two cases, are guilty of the same types of regulatory violations, the most distressing similarity between the two cases is the total disregard for regulatory requirements that occurred in order to foster the licensee’s business interests. When a choice had to be made between complying with the regulatory requirements imposed by this State and the perceived pecuniary benefits that could be derived from violating those requirements, both casino licensees came to the same conclusion—the requirements and regulatory control of this State were expendable.

As I stated in dissenting to the penalty imposed by the majority in the Sands case, “...[f]inancial penalties, easily computed by casino managers as a cost of doing business, do not serve as an effective deterrent to continued violations.” “[W]here compliance with regulatory structure is concerned, the only way to close their fiscally-focused eye is to close the casino’s door.” (Sands, Dissent).

When, as in the present case, high executive officials, such as the casino controller and vice president of financial services, are willing to make regulatory compliance subordinate to pecuniary gain, there is no question that the attitude of the casino licensee, itself, toward complying with the requirements of this State is clearly implicated. In my view, the only method of changing this attitude, of assuring that the authority of this State is clearly recognized and of deterring future violations of this kind is to sanction the casino licensee beyond the mere imposition of additional costs. This Commission should demonstrate to the casino industry that the requirements of this State are paramount; that casino gambling was not authorized for the exclusive pecuniary benefit of those who own and operate these facilities; and that the casino license they hold is a privilege conditioned on their willingness and ability to operate under strict and rigorous regulatory control.

In my estimation, the one way in which these lessons can be learned by an industry motivated by greed is for the Commission to remove any possibility of pecuniary gain that can be derived from the violation of the restrictions imposed by this State. As I indicated in the Sands
case, monetary penalties simply do not assure that result. Instead, this Commission should order the casino closed for at least 24 hours. During this period, all casino personnel shall report to their regular shifts, at which time management shall review with them the requirements of the Casino Control Act and the Commission regulations, emphasizing the need for compliance with these requirements.

While I also agree with the comments made by the majority in response to Mr. Maxey's testimony, I would like to offer an additional comment about his approach.

Periodically, Mr. Maxey responds to some compulsion to lecture both the Division of Gaming Enforcement and the Casino Control Commission on how to perform their jobs. As he offers his persistent criticisms, it becomes obvious that Mr. Maxey's problems are more geographic than substantive. He, obviously, has difficulty in understanding how regulatory climate can be affected by latitude and longitude.

The reality is that Mr. Maxey now happens to be in, not Nevada, but New Jersey, where "machismo" is not sufficiently terrifying to compel a state-imposed collapse of vigorous regulatory authority.

In my opinion, this sanction addresses the underlying causes of the violations at issue here. These types of violations will cease "only when employees of the casinos are made aware of the overriding regulatory concerns [and of] their individual responsibilities." (Sands, Dissent).