IN THE MATTER OF THE CONTRACT
BETWEEN SEYMOUR ALTER AND
RESORTS INTERNATIONAL HOTEL, INC.

Decided: April 18, 1984
Approved for Publication by the Casino
Control Commission:
July 8, 1988

SYNOPSIS

Seymour Alter and Resorts International had entered into a contract by which Alter was to provide consultant services. Pursuant to its authority under N.J.S.A. 5:12I-104(b), the Commission ordered that the contractual relationship had to be terminated because of Alter’s prior disqualification under Section 86(c) of the Casino Control Act.

Alter had been associated with Resorts at the time Resorts applied for a casino license. Resorts was licensed with the condition that Resorts would not be associated with Alter until such time as he was licensed as an employee. Alter’s application for a casino key employee license was subsequently denied because of statutory disqualifying offenses. Resorts could therefore no longer employ Alter and entered into a severance agreement with him which included a pension, health insurance and other benefits for Alter. The Commission approved only two aspects of the severance agreement, those which reimbursed legal expenses and continued health insurance coverage.

Resorts later agreed to a consultancy contract with Alter, subject to Commission approval. The agreement was informally approved by the Commission Chairman, responding to a letter from Alter’s attorney, but the Chairman later ordered the parties to show cause why the contract should not be terminated.

At the hearing before the Commission, Alter argued that the Commission was equitably estopped from terminating the consultancy contract because of the Chairman’s earlier approval. The Commission concluded that estoppel did not preclude consideration of the contract. The Chairman’s informal resolution of the question was not a full and fair treatment of the issues raised, since there was no factual hearing or legal argument. The Chairman’s response was not such a complete and thorough decision as to estop reconsideration by the entire Commission. In addition, estoppel would prevent the Commission from carrying out the central policy of the Casino Control
Act, which is to prescribe unsuitable persons from participating in the casino industry.

Alter also objected to the use of certain evidence in prior proceedings which resulted in his application for a key employee license being denied. The Commission declined to address the merits of the issue, saying any attack on the underlying basis of Alter's disqualification was foreclosed by res judicata. The issue was fully considered and disposed of in prior proceedings.

Finally, the Commission determined that Alter would not be approved as a vendor because the reapplication regulation, N.J.A.C. 19:41-8.8, barred his seeking any licensure, qualification or approval for five years from the date he was denied a casino key employee license. Alter would have to be approved as a vendor before the Commission could approve the consultancy contract with Resorts. However, he could not apply for licensure until the five-year period under the reapplication provision was completed. The restriction would not expire until May 1, 1985.

Accordingly, the Commission concluded that unless and until Alter is found qualified for licensure, he cannot enter into any contract with a casino licensee that is subject to Commission approval. The existing agreement between Alter and Resorts was ordered terminated.

Morgan E. Thomas, Esq., and
Leonard H. Wallach, Esq., for Seymour Alter
Richard Weinroth, Esq. for Resorts International Hotel, Inc.
James F. Flanagan, III, Deputy Director, for the Division of Gaming Enforcement

INTRODUCTION

BY THE CASINO CONTROL COMMISSION

This matter concerns a contract between Mr. Seymour Alter and Resorts International Hotel, Inc., entered into on November 7, 1983, by which Alter is to "provide on an exclusive basis his services to Resorts as a general consultant on hotel matters" in return for $36,000 annual compensation. The ultimate question is whether Alter, who had been denied a casino key employee license in May 1980, should be allowed to engage in such a contractual relationship with a casino licensee or whether such contract should be terminated by the Commission pursuant to its authority under the Casino Control Act (Act),
N.J.S.A. 5:12-1 et seq.¹ For the reasons hereafter stated, we hold that the contractual relationship must be terminated by reason of Alter's prior disqualification under the criteria of Section 86(c).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Alter was associated with Resorts or the parent company from 1965 through 1978. Although he served as a consultant for part of that period, he became employed as Director of Real Estate and Retail Sales for Resorts in connection with its venture into casino gaming in Atlantic City. Following Resorts' application for a casino license, the Division of Gaming Enforcement (Division) conducted the required background investigation. In its report on Resorts' qualifications, the Division raised the issue of the propriety of Resorts' relationship with Alter based upon his involvement in bribery of State Liquor Authority officials in New York and his alleged involvement in procurement of prostitutes for Bahamian customs officials during a visit to Las Vegas. In response to the Division's concerns, Resorts suspended Alter without pay in December 1978. Resorts was licensed with the understanding that it would have no association with Alter until such time as he was licensed as an employee.

Alter had applied for a casino key employee license on March 7, 1978. The Division objected to his licensure and an administrative hearing was conducted by the Office of Administrative Law (OAL) which issued an Initial Decision recommending that Alter's application be denied. By Final Decision dated May 20, 1980, In the Matter of the Application of Seymour Alter for a Casino Key Employee License, Docket No. 79-EA-60 (1980), the Commission modified in the Initial Decision and denied Alter's application for a casino key employee license based upon the findings that he had:

(1) committed acts, although not prosecuted, constituting the statutory disqualifying offense of bribery pursuant to Sections 86(g) and (c) of the Act;
(2) failed to prove his good character, honesty and integrity pursuant to Section 89(b) (2) of the Act based upon his participation in the bribery scheme, his participation in the procurement of prostitutes for Bahamian customs officials visiting Las Vegas and his providing deliberately false testimony regarding these matters.

¹. Throughout this opinion provisions of the Act may be cited by section number only. The complete citation may be obtained by adding the prefix, N.J.S.A. 5:12-.
The Commission’s decision was affirmed in an unreported decision of the Appellate Division dated June 24, 1981.

In September 1981, Resorts informally proposed to the Commission and the Division the following terms of an agreement it had reached with Alter:

(1) to provide him or his estate with a guaranteed annual pension of $35,000 per annum up to a minimum of $175,000;
(2) to continue his health insurance coverage;
(3) to pay the legal expenses incurred on his casino key employee license application and in connection with his testimony before the Securities and Exchange Commission;
(4) to forgive his debt of $21,224.03; and
(5) to pay his relocation expenses to Florida.

On November 2, 1981 Resorts filed a petition for a declaratory ruling as to the propriety of the above “severance terms” in accordance with Sections 63(a) and (b) and 104(b) of the Act. In addition, Resorts proposed that any further charges to the company by Alter would be offset against his pension and that he would refrain from gambling in any Resorts casino. Thereafter, Alter filed a petition with the Commission seeking approval of the same proposal, denominated by him as a "retirement plan."

By order dated January 5, 1982, the Commission permitted Resorts to reimburse Alter for certain legal expenses and to continue his health coverage. All other provisions of the proposal were denied.

On April 15, 1983, Alter filed a petition to make early reapplication as a casino hotel employee pursuant to N.J.A.C. 19:41-8.8(g). The Division strongly opposed the petition in a letter dated June 20, 1983. The matter was argued at the Commission’s meeting of July 27, 1983, but following numerous adjournments, Alter withdrew the petition by letter dated October 18, 1983, prior to a ruling thereon by the Chairman.

By letter dated September 26, 1983, Alter’s counsel advised Chairman Read of Alter’s desire to be placed on the Master Vendor List as a consultant to Resorts. In response, the Chairman, by letter dated October 25, 1983, advised counsel “... it will not be necessary to place this matter down for decision at a public hearing at this time.” The Chairman also directed a letter dated October 25, 1983, to Robert Peloquin, President of Intertel, an affiliate of Resorts, advising “that the Casino Control Commission, at this time, will not object to Mr. Alter’s entering such a relationship with Resorts . . .” Thomas R. O’Brien, Director of the Division of Gaming Enforcement, issued a
letter dated October 14, 1983, to Mr. Peloquin to the same effect, reserving "the right to file objections should current circumstances change."

A copy of the consulting agreement dated November 7, 1983, between Resorts and Alter was filed with the Commission on November 15, 1983. In pertinent part, the agreement requires Alter to provide his services as a general consultant on hotel matters to Resorts for a term of one year. In exchange, Alter is to be compensated $36,000 per annum, payable monthly, plus expenses. Under the contract, Alter continues to receive health insurance coverage. The agreement specifically recites that Alter is an independent contractor rather than an employee of Resorts and that the consultancy agreement is subject to review and approval pursuant to the New Jersey Casino Control Act.

On November 17, 1983, Resorts filed a Vendor Registration form with the Commission on behalf of Alter.

By letter dated January 23, 1984, Chairman Read advised Resorts and Alter that, despite his informal approval of the consultancy contract, the validity and propriety of the agreement were rendered doubtful due to both the events leading to the denial of his casino key employee license application and the Commission's disposition of Alter's "retirement" petition. The Chairman ordered the parties to show cause before the Commission on February 1, 1984, why the contract should not be terminated immediately.

By letter dated January 24, 1984, Alter's counsel sought to adjourn the return date of the order to show cause until March. His request for an extension was denied by the Commission. Thereafter, Alter's counsel appealed the Commission's denial and filed a motion for stay. On January 27, 1984, the Honorable John W. Fritz, P.J.A.D., denied the motion for stay.2 Alter's counsel then applied to the New Jersey Supreme Court for a stay of the return date of the order to show cause. On January 30, 1984, the Honorable Alan Handler, Jr., orally ordered the Commission to refrain from hearing the matter until no earlier than March 1, 1984, conditioned upon the immediate and continued suspension of the contract until completion of proceedings before the Commission.3

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2. The appeal was subsequently dismissed with prejudice by order dated March 22, 1984.
3. Alter's counsel consented to the suspension of the contract by Justice Handler and accepted the suspension as a condition of the order.
On February 3, 1984, a prehearing conference was held and several legal issues were identified. Without prejudice to the right of the parties to raise any additional issues which they perceived, the prehearing conference order framed the following questions:

1. Whether the Commission is estopped from considering and terminating the contract by virtue of the Chairman's letters, dated October 25, 1983, to Morgan E. Thomas, Esq., and to Robert D. Peloquin;

2. Whether Mr. Alter may now relitigate the underlying events which led to the Commission's final decision and order of May 20, 1980, finding him unsuitable as a casino key employee based upon, among other things, his involvement in an attempt to bribe New York liquor authority officials;

3. Whether the regulation governing reapplication by natural persons, N.J.A.C. 19:41-8.8, applies to one, such as Mr. Alter, who has been found disqualified under Section 86 (N.J.S.A. 5:12-86) in connection with a casino key employee license application and who subsequently seeks to act as a vendor to a casino under an agreement within the purview of Section 104(b) (N.J.S.A. 5:12-104(b));

4. Assuming the reapplication regulation does apply to this case, whether the presumptive five-year bar began to run in December 1978 when Mr. Alter was suspended by Resorts without pay or from May 20, 1980, when the Commission found him unsuitable to be a casino key employee and disqualified under Section 86;

5. Assuming that the reapplication regulation does not apply or that the presumptive five-year bar has expired, whether the Commission has discretion under Section 104(b) to allow Mr. Alter to continue under the contract notwithstanding his disqualification under Section 86 and, if so, whether the Commission may consider any information other than the terms of the contract itself, the type of services to be rendered and the nature of the previous disqualification.

At the prehearing conference and by letter dated February 13, 1984, Alter's counsel sought the Commission's consent to a modification of Justice Handler's order to permit resumption of the consultancy agreement pending resolution of the administrative proceedings. By letter dated February 17, 1984, the Commission denied the request.

On March 7, 1984, Alter filed both a petition for leave to file application for approval as a contract vendor for Resorts and a petition for leave to file early reapplication for a casino employee license.

On March 17, 1984, Alter filed a brief in response to the order to show cause. The Division filed a letter-memorandum in lieu of formal brief dated April 4, 1984. No response has been filed by Resorts.
By letter dated April 2, 1984, Alter provided the Commission with a copy of a Verified Complaint and Order to Show Cause which was filed with the United States District Court in Camden on Thursday, April 5, 1984. By order dated April 5, 1984, the District Court denied the application for an order to show cause and for temporary restraints. Alter's subsequent motion for a preliminary injunction was denied by the United States Court of Appeals for the Third Circuit by order dated April 10, 1984. The complaint remains pending.

On April 10, 1984, the Commission heard oral argument on the legal issues enumerated in the prehearing conference order and also received certain items of evidence, which were admitted without objection. Additional documents were received into evidence at the Commission's meeting of April 18, 1984, again without objection. Prior to entertaining the arguments of counsel at the April 10 proceeding, the Chairman read a statement outlining the pertinent procedural history and facts of the case. Counsel for Alter augmented the Chairman's summary with information pertaining to his claim that the Full Faith and Credit Clause of the United States Constitution barred consideration of Alter's immunized testimony before a New York State Grand Jury in 1963, but otherwise accepted the Chairman's summary as accurate. At the conclusion of the presentations of counsel for Alter, Resorts and the Division, we reserved decision.

Having duly considered the entire record in this matter, we now conclude that the subject contract must be terminated. A discussion of the issues which led us to this conclusion follows.

I. ESTOPPEL

Our initial inquiry is whether we are legally barred from considering, or as the respondent would have it, reconsidering the contractual relationship by virtue of the principle of estoppel. Alter argues that the Commission is equitably estopped from terminating the contract relying upon then Judge (now Justice) Handler's opinion in Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super 99, 109-110 (App. Div. 1975), aff'd 69 N.J. 599 (1976). He asserts that the Commission's order of January 5, 1982, and the Chairman's letters of October 25, 1983, which he characterizes as "modifications of the original denial of licensure," cannot now be "relitigated" because no new or substantial facts or evidence have developed."

The Division suggests there is no merit to Alter's assertions, citing the qualifying language in the Chairman's October 25 letters and the
Commission's inherent power to reconsider "any licensing or approval matter . . ."

We agree with Alter that the Appellate Division opinion in Trap Rock v. Sagner, Supra, sets forth the guiding principles:

The application of res judicata, collateral estoppel and kindred doctrines in the setting of an administrative proceeding is tempered by recognition that a particular administrative agency may have continuing regulatory responsibilities over the areas within its jurisdiction . . . It is fitting, therefore, that, subject to statutory restrictions, such an administrative agency, in appropriate circumstances, have the power to reassess or reconsider its actions in order to perform fully its responsibilities as a regulatory body [citation omitted]. In this sense, the power to reconsider, to rehear and to revise determinations may be regarded as inherent in administrative agencies [citations omitted]. This power to reappraise and modify prior determinations may be invoked by administrative agencies to protect the public interest and thereby to serve the ends of essential justice [citation omitted].

It does not follow, however, that in exercising the necessary and appropriate power to reconsider [a prior ruling, the agency is] free to disregard completely issues that were fully and fairly resolved prior thereto. The power to reconsider must be exercised reasonably, with sound discretion reflecting due diligence, and for good and sufficient cause [citations omitted].

. . . Even in the context of a reopened hearing in an administrative agency proceeding there is a proper use of res judicata or, more precisely, collateral estoppel. These principles should be invoked discriminately to serve the ends of administrative justice [citations omitted]. A balancing of such factors as new developments or even new evidence of old developments, the advantages or repose, party reliance, the thoroughness of the earlier decision and the showing of illegality, fraud, mistake and the like should be considered [citations omitted]. [133 N.J. Super at 109-110].

Alter's claim as stated in his brief and amplified at oral argument is that the January 5, 1982, order and the Chairman's letters of October 25, 1983, so modified the Commission's 1980 decision to deny his application for licensure as to constitute a determination that he is presently qualified to do business with Resorts on a contract basis. In addition, Alter argues that the testimonial letters admitted into evidence at the original casino key license proceeding and admitted into evidence at this proceeding further buttress the conclusion that he is presently qualified.

The testimonial letters have no bearing on the estoppel issue. Nor, we hold, do they have any impact on any other issue we are presently
called upon to decide. These letters were adequately and appropriately considered in the initial license proceeding. Indeed they, along with the passage of time since the 1962 bribery, were given "the greatest possible weight." But, in the final analysis, they were not deemed sufficient to overcome the evidence of unsuitability. Obviously, the adverse finding against Alter on his key employee license application is the root of our concern with the existing contract. It surely cannot be a bar to our present inquiry.

We also find the order of January 5, 1982, to present no obstacle to our consideration of the propriety of the subject contractual relationship. That order resulted from Resorts' and Alter's joint petition for permission to enter into an agreement whereby Resorts would make certain payments to Alter and would forgive certain debts owed it by Alter. In the order, the Commission allowed Resorts to pay for certain legal fees incurred by Alter and to maintain him on Resorts' health program, but denied all other relief, including the payment of a $35,000 annual pension. Rather than offering any aid to Alter's estoppel claim, we view the January 5, 1982, order as a reaffirmance of Alter's unsuitability in the sense that it implicitly forbids any economic relationship between the two parties other than that expressly permitted. Specifically, the legal fees were allowed in recognition of the fact that they were incurred at a time prior to the ultimate determination of unsuitability; the health benefits were allowed only as a gesture of humane concern for a seriously ill man. We categorically reject the suggestion that those determinations in any way mitigated the prior findings of unsuitability. In point of fact the continued disqualification was not at all contested by the parties in that proceeding, much less considered or "modified" by the Commission.

Thus, Alter's claim for estoppel rises or falls on the efficacy of the Chairman's October letters. Taken at face value, the letters do not purport to address the qualifications of Mr. Alter. To place them in proper perspective one must consider the precise request to which the Chairman was responding. In a letter dated September 26, 1983, Alter's counsel requested "approval by the Commission for [Mr. Alter's] name to be placed on the Master Vendor's List as a consultant for Resorts International Hotel." Counsel made two inquiries:

... I would like to ascertain whether or not the Commission would have any objection to Resorts International Hotel placing Mr. Alter's name on the Master Vendor's List or if the Division of Gaming Enforcement would have any objection to this request.

I would also like to know if this matter requires a decision at a
public hearing and if so, I would appreciate your immediate advice of the time and place for a hearing if one is required.

In his response to Alter’s counsel, the Chairman advised “... it will not be necessary to place this matter down for decision at a public hearing at this time.” In the letter to Resorts the Chairman stated that “The Casino Control Commission, at this time, will not object to Mr. Alter’s entering such a relationship with Resorts, but it is my understanding that the Division of Gaming Enforcement has reserved its right to file objections with us in the future should current circumstances change. We will, of course, entertain such objections if they are ever filed with us.”

In stating that it was not necessary for the question of the propriety of the proposed contractual relationship to be decided at the public hearing and that the Commission would not object pending a response from the Division, the Commission, through the Chairman, was essentially rendering an opinion on the issue of whether the reapplication regulation (N.J.A.C. 19:41-8.8) applies to requests from one previously found not qualified for licensure who subsequently seeks to act as a vendor under Section 104(b). The thrust of this informal opinion, though not expressed in those terms, was that the reapplication regulation did not apply. Upon reflection, we now unanimously find that this view is erroneous. For reasons to be stated in more detail later in this opinion, we hold that the reapplication regulation does apply in the circumstances presented here.

The question we must first resolve is whether this mistake raises an insurmountable barrier to the full Commission’s formal consideration of the propriety of the consultancy contract. Considering our purpose as regulators of a sensitive industry, the paramount public policy declarations expressed in the Act, the unique circumstances of this case and the weight of legal authority, we are convinced that it does work.

In point of fact, the letters constituted an erroneous interpretation of Commission regulations and procedures and nothing more. But, even if we assume *argumento* that those letters constituted a determination of the Commission to the effect that Alter was presently qualified to contract with Resorts, no claim of estoppel should preclude further review by the full Commission. It is beyond cavil that this Commission, like any administrative agency with continuing regulatory responsibilities, has the inherent authority to reconsider and revise such determinations. *Trap Rock*, supra, 113 N.J. Super. at 109. This
authority, however, must be exercised reasonably, with sound discretion and due diligence for good and sufficient cause. *Ibid.*

In this instance, we are concerned with an individual whose qualifications for licensure were thoroughly explored at a three-day contested case hearing in August 1979. In its final decision, the Commission painstakingly laid out the reasons for its conclusion that Alter was disqualified. It is important to bear in mind that the bases for disqualification were not limited to acts which occurred many years prior to the hearing. Rather, the Commission found that Alter had “in many instances given deliberately false testimony in the hearing,” indicating Alter had not, as of 1979, “purged himself of the cavalier and manipulative attitude toward government processes . . .” Thus, we are concerned with a man whose unsuitability is predicated upon conduct as recent as August 1979. The possibility of an individual found plainly unsuitable in May 1980, now doing business with a casino licensee gives abundant good cause for our reconsideration. But it must readily be conceded that no new developments or new evidence has been presented to warrant this action. Rather, it was the Chairman’s subsequent doubts concerning the validity and propriety of the consultancy contract which was the genesis of the January 23, 1984, letter directing the parties to show cause why the contract should not be terminated immediately.

Of the factors cited in *Trap Rock, supra*, 133 N.J. Super. at 110, only repose and party reliance offer any possible support for estoppel. Conceivably Alter could assert that but for the letters indicating that neither the Commission or the Division would oppose any objection, he would not have entered into the contract with Resorts and would not have expected to obtain income under it. However, the weight attributable to these factors is minimal for no such claim has been advanced by Alter, nor has Resorts claimed its operations will be in any way hindered were we to now terminate the contract. Similarly, no allegation of any substantial change in Alter’s economic position or lost opportunities in anticipation of completing the contract has been made. Moreover, Alter, and presumably Resorts, have benefited from the performance of the contract to the time of its suspension.

Any weight to be given the policies of justifiable reliance and repose is further diminished in this instance by consideration of the “thoroughness of the earlier decision.” *Ibid.* It cannot be seriously contended that the Chairman’s informal resolution of the questions posed constitutes a full and fair treatment of the issues raised. Those letters were issued without benefit of briefing, argument or formal
deliberations, much less a plenary factual hearing with attendant due
process considerations. One need only contrast the prior proceeding
which resulted in the denial of Alter’s application for licensure to
realize that the Chairman’s October letters did not constitute such a
complete and thorough decision as should serve to estop our re-
consideration. Surely, too, the parties were aware that the letters were
not of the same force and thoroughness as a final Commission de-
cision. Indeed, the contract itself was made expressly dependent on
Commission approval. Moreover, it is fair to expect that persons
employed in this highly sensitive and closely regulated business will
recognize, as we do, that the central public policy provisions of the
Act proscribe unsuitable persons from participating in the casino
industry. See, e.g., N.J.S.A. 5:12-1(b), (6), (7), (9): see also, N.J.S.A.
5:12-64, 86 and 104.

Considering all of these factors, we conclude that the balance over-
whelmingly favors rejecting the principle of estoppel in this instance.
To do otherwise would impair our ability to respond to the legislative
command to assure that there be no material involvement, directly
or indirectly with licensed casino operation by disqualified or un-
suitable persons. See, N.J.S.A. 5:12-64. Therefore, we conclude that
estoppel poses no bar to our reconsideration of Alter’s ability to
contract with Resorts.

II. THE NEW YORK GRAND JURY TRANSCRIPT

Alter argues that the Commission should not have considered the
transcript of his testimony before a New York Grand Jury given under
grant of immunity in the original license hearing and further, we infer,
that this proceeding is somehow tainted by that prior utilization of
compelled, immunized testimony. His attack is predicated upon the
lack of authentication of the grand jury transcript and upon the full
faith and credit clause of the U.S. Constitution.

The issues of admission and use of the transcript were fully con-
sidered and disposed of by both the ALJ and the Commission and
we see no reason to permit relitigation of them now.

This situation presents the classic case for application of res judi-
cata. “When an administrative agency is acting in a judicial capacity
and resolves disputed issues of fact properly before it which the parties
have had an adequate opportunity to litigate, the courts have not
hesitated to apply res judicata to enforce repose.” United States v. Utah
Construction & Mining Co., 384 U.S. 394, 421-22 (1966). See also,

In Winner, supra, the Court stated the policy reasons supporting res judicata, collateral estoppel and the like: "... finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness ..." and noted that these judicial doctrines have an important place in the administrative field. 82 N.J. at 32-33. Alter had a full and fair evidentiary hearing replete with due process protections at every stage of the proceedings. He was represented by an attorney of considerable ability and renown. He had notice of the reasons for the Division's objection to his licensure. He exercised his right to a hearing and had the opportunity to testify, call witnesses and present evidence on his behalf. He was entitled to and, indeed did, file exceptions and objections to the Initial Decision rendered by the OAL. His counsel argued his position before the Commission's final action on Alter's application for licensure. Moreover, Alter exercised his right to appeal and the Commission decision was affirmed by the Appellate Division. In view of these procedural protections, we find no basis to disturb this decision almost four years later. See, New Jersey State Parole Board v. Woupes, supra; Davis, supra, §21:2 at 49. Moreover, with respect to Alter's claim that full faith and credit was never raised or considered in the prior proceedings in connection with the use of the grand jury transcript, our review of the record reveals that this is not so. That argument was, in fact, advanced by Alter's then counsel, refuted by counsel for the Division and considered by the ALJ. Similarly, the lack of authentication of the transcript was also considered and rejected by the ALJ. Indeed, though Alter's counsel maintained an objection to the admissibility of the transcript on other grounds, its accuracy was stipulated. The fact that neither the ALJ nor the Commission expressly mentioned these matters in their respective written opinions is of no moment. The claims were implicitly rejected by the admission of the transcript into evidence. Although not required to do so, we note in passing that we are in complete accord with the Commission's earlier disposition of this issue.

We therefore conclude that any attack on the underlying basis of Alter's disqualification is foreclosed by res judicata.
III. **APPLICABILITY OF THE REAPPLICATION REGULATION**

*N.J.A.C. 19:41-8.8* provides in pertinent part:

(a) Any natural person required to be licensed, qualified or approved under the provisions of the Act or regulations of the Commission whose licensure, qualification, or approval is ... denied ... on the basis of that person's failure to satisfy the affirmative qualification criteria of the Act, or due to a Commission finding that such person is disqualified under the criteria of Section 86 of the Act, or both, may not, except as otherwise provided in subsections (b), (f) and (g) of this section, reapply for licensure, qualification or approval until five years have elapsed from the date of said denial ...

As previously indicated, we are of the unanimous view that this regulation applies to the situation at hand. Alter was denied a casino key employee license in May 1980, for having engaged in conduct equivalent to bribery and for otherwise failing to demonstrate that he possessed the requisite good character, honesty and integrity, principally by virtue of his deliberately false testimony. *N.J.S.A. 5:12-86(c)* and (g) and 89(b)(2). Therefore, as a natural person, Alter is prohibited from seeking any licensure, qualification, or approval for five years from the date of denial unless he is granted permission to make early reapplication pursuant to subsection (g) of the regulation.4 In our opinion, the “approval” language contained in the reapplication regulation governs this case. Whether he seeks licensure or registration as an employee or approval as a vendor, it is his individual

4. *N.J.A.C. 19:41-8.8(g)* provides:

Any natural person whose licensure, qualification or approval has been denied or revoked and who is barred from reapplication for five years by subsection (a), (b)5 or (b)7 of this section may petition the Chairman to permit early reapplication at any time. The petition shall be verified and supported by affidavits and shall include written argument for the relief sought. It shall state with particularity any grounds upon which revocation or denial was based, and the facts and circumstances which warrant early reapplication. Upon receipt of such petition, the Chairman shall offer the Division an opportunity to state its position in writing. Based upon the petition and any written submission from the Division, the Chairman may either:

1. Summarily deny the petition; or
2. Grant the petition if he finds that there exist extraordinary facts and circumstances warranting early reapplication.
qualifications which are at issue and which have previously been found lacking by this Commission. Section 104(b) envisions the review of every contract that fits within the ambit of the statute. The contract between Alter and Resorts is plainly one which concerns “the realty of, or any business or person doing business with or on the premises of, [the] casino hotel facility.” N.J.S.A. 5:12-104(b). Of course, given the number and varied nature of the contracts between casino licensees and the multitude of vendors, actual Commission review of every such contract is physically impossible. This realization, arrived at in the earliest days of the Commission, gave rise to the concept of the master vendor list and related measures designed to accomplish review of specific contracts as the need arose. In any event, the crux of the matter is that any contract within 104(b), including that one at issue here, is subject to Commission approval, and the qualifications of the persons involved in such contracts, like Alter, are subject to Commission review. Therefore, denial of Alter’s application for a casino key employee license requires that he first comply with the reapplication procedures before he seeks Commission approval of the consultancy contract.

We find no merit in the suggestion, which was deemed acceptable by the Division and adopted by Alter at the hearing, that the five-year restriction be deemed to have been triggered by Alter’s suspension without pay by Resorts in December 1978 and has therefore run its course. The regulation expressly states that a disqualified person may not reapply for approval “until five years have elapsed from the date of said denial.” In this instance, the five year restriction will expire on May 1, 1985. Until that date, Alter may not seek licensure, qualification or approval from this Commission unless he first obtains permission for early reapplication pursuant to N.J.A.C. 19:41-8.8(g).

Alter presently has two petitions for early reapplication pending before the Commission. As was indicated at oral argument, those petitions will be acted upon after we receive the position of the Division of Gaming Enforcement in accordance with the procedure established by the regulation. N.J.A.C. 19:41-8.8(g).

5. As previously noted, a prior petition for early reapplication was withdrawn in October 1983.
IV. THE EXISTING CONTRACTUAL RELATIONSHIP

Having determined that Alter cannot gain approval of this or any other contract with a casino licensee unless and until he has complied with the terms of the reapplication regulation, the only remaining question is whether there exists any reason why we should not exercise our discretion to terminate the contract pursuant to Section 104(b) of the Act. Section 104(b) provides:

Each casino licensee shall be required to present to the commission any written or unwritten agreement regarding the reality of, or any business or person doing business with or on the premises of, its casino hotel facility. Such agreement shall be reviewed by the commission on the basis of the reasonableness of its terms, including the terms of compensation, and of the qualifications of the person involved in the agreement with the casino licensee, which qualifications shall be reviewed according to the standards enumerated in section 86 of this act. If the commission does not approve such an agreement or association, the commission may require its termination.

Every agreement with a casino hotel shall be deemed to include a provision for its termination without liability on the part of the licensee, if the commission shall disapprove of the business or of any person associated therewith, by reason of a finding that said business or person is unsuitable to be associated with a casino enterprise in accordance with the regulations promulgated under this act. Failure expressly to include such a condition in the agreement shall not constitute a defense in any action brought to terminate the agreement. If the agreement is not presented to the commission in accordance with commission regulations, or the disapproved agreement or association is not terminated, the commission may pursue any remedy or combination of remedies provided in this act.

Alter’s claim of rehabilitation since the 1980 finding of disqualification would be relevant here. But the claim is unsubstantiated due to the absence of any evidentiary proceeding subsequent to the prior determination of unsuitability. This follows from the fact that Alter must first obtain approval for early reapplication in order to assert that he is now fit for the contractual relationship in question. Thus, any determination of his present fitness must await the outcome of the petitions for early reapplication.

Alter further asserts that, in contemplating termination of this contract with Resorts, we should consider the impact of the constitutional prohibition against impairing the obligation of contracts, citing Article I, §10 of the United States Constitution. We note that the
essentially identical provision in the New Jersey Constitution is equally relevant. *N.J. Const.* (1947), Art. IV, §VII, par. 3. However, we find neither to constitute cause for staying our hand in this instance.

To the extent that invocation of these provisions is an attack on the constitutionality of Section 104(b) which expressly authorizes termination of such contracts as are not approved by the Commission, we have often noted and always followed the principle that administrative agencies are without authority to overturn their own enabling acts. *See, e.g., Montana Chapt. of Ass’n of Civ. Tech. Inc. v. Young, 514 F.2d 1165 (9 Cir. 1975); Finnerty v. Cowen, 508 F.2d 979 (2 Cir. 1974); In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54 v. Danziger, Docket No. 81-LO-1 (Commission decision September 28, 1982); In the Matter of the Application of Martin et al. For Relief, Docket No. 78-EA-21 (Commission decision June 16, 1980), mod. In Re Martin, 90 N.J. 295 (1982).*

Notwithstanding the limitations on our power, we do think appropriate to do as Alter requests, i.e., consider the impact of the constitutional provisions in the exercise of our discretionary authority to terminate the contract in question.

The contract clause, a significant constitutional check on state legislation in the early years of our nation, "receded into comparative desuetude with the adoption of the Fourteenth Amendment," only to be "revived" in recent years. *Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 241 (1978); Fidelity Union Trust Co. v. N.J. Highway Auth., 85 N.J. 277, 286-87 (1981).* Although the clause appears literally to proscribe any impairment, the courts have consistently recognized that the prohibition is not absolute. *United States Trust Co., New York v. New Jersey, 431 U.S. 1, 21 (1977); Home Building and Loan Ass’n v. Blaisdell, 290 U.S. 398, 428 (1934); Berkley Condo. Ass’n Berkley Condo. Residences, 185 N.J. Super. 313, 319 (Ch. Div. 1982)." "First of all, it is to be accepted as a commonplace that the Contract Clause does not operate to obliterate the police power of the States." *Allied Steel, supra, 438 U.S. at 241.* The Casino Control Act and the vast regulatory authority vested in this Commission is an exercise of the legitimate police powers, i.e., the sovereign right of the government "to protect the lives, health, morals, comfort and general welfare of the people." *Ibid.*

Yet even the exercise of valid police power is subject to some limitations under the contract clauses. As with many such matters, the extent of the limitations is a matter of balancing the respective interests of the parties on the one hand and the public interest on

In this instance, we believe no balancing of interests is required because the subject contract expressly provides that it is "specifically subject to review and approval pursuant to the [N]ew Jersey Casino Control Act." But even if we were to engage in a balancing of the competing interests, Alter's are clearly inferior to the interests of the public as expressed in the Casino Control Act. The Legislature unequivocally proclaimed its concern over unsuitable persons conducting business with casino licensees. *See* Sections 64, 86 and 104(b) of the Act. For the reasons we have already discussed, Alter is a disqualified person by virtue of the prior findings of this Commission which remain in full force and effect. In view of all the circumstances, we find it appropriate to terminate the contract immediately and we so order.

**CONCLUSION**

In summary, we find no bar to our reconsideration of the contract between Alter and Resorts by reason of estoppel. Further, any claim that the May 1980 determination of Alter's disqualification was improper by reason of the admission and use of the New York State Grand Jury transcript is barred by *res judicata*. We also find that the reapplication regulation applies to Alter's proposed contractual relationship with Resorts, and that the five-year restriction from reapplication will not expire until May 1, 1985. Prior thereto, unless and until he successfully petitions for early reapplication and is thereafter found presently qualified, Alter cannot enter into any contract with a casino licensee that is subject to our approval. The existing agreement between Alter and Resorts is terminated.

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.