STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

PUBLIC MEETING NO. 91-20

Wednesday, June 26, 1991
Atlantic City Commission Office
Tennessee & Boardwalk
Atlantic City, NJ 08401
10:45 a.m.

BEFORE:

STEVEN P. PERSKIE, CHAIRMAN
VALERIE H. ARMSTRONG, VICE CHAIR
W. DAVID WATERS, COMMISSIONER
FRANK J. DODD, COMMISSIONER
JAMES R. HURLEY, COMMISSIONER

PRESENT FOR THE CASINO CONTROL COMMISSION:

BARBARA A. GALLO, PRINCIPAL RESEARCH ANALYST
KAREN G. BIACHE, ADMINISTRATIVE ANALYST
DARYL W. NANCE, ADMINISTRATIVE ANALYST
THOMAS FLYNN, PUBLIC INFORMATION OFFICER

ON BEHALF OF THE COMMISSION STAFF:

JOHN R. ZIMMERMAN, ASSISTANT GENERAL COUNSEL
ANTONIA Z. COWAN, ASSISTANT COUNSEL
DAVID C. MISSIMER, COUNSEL I
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STEVEN M. INGIS, COUNSEL I
LEONARD J. DIGIACOMO, COUNSEL II
O. LISA DABREU, COUNSEL II
RUTH S. MORGENROTH, COUNSEL III
MARY S. LAMANTIA, COUNSEL IV
LON E. MAMOLEN, COUNSEL IV
SETH H. BRILIAN, COUNSEL IV
KELLY L. CAMPBELL, ASSISTANT COUNSEL
BERNADETTE FRIGEN, PARALEGAL TECHNICIAN
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The record will reflect the motion carries unanimously.

(All Commissioners present voted in favor of the motion)

CHAIRMAN PERSKIE: Are there any other questions counsel?

All right. Thank you very much.

MS. GALLO: Item No. 16, "State versus Trump's Castle Associates."

Mr. DiGiacomo.

MR. DIGIACOMO: Chairman and Commissioners, good afternoon.

CHAIRMAN PERSKIE: Wait until we have everybody here. I couldn't tell what was going on. Good afternoon, Mr. DiGiacomo. What do you have for us today.

MR. DIGIACOMO: This item was last before the Commission a week ago. The parties have recently submitted a supplemental stipulation of facts for the Commission's consideration. Counsel are here to present the matter to the Commission at this time, Mr. Auriemma on behalf of the Division and Mr. Fusco on behalf of Trump's Castle Associates.

CHAIRMAN PERSKIE: Let me indicate that we have some dialogue I think that we want to
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engage in with counsel which we will do. It is then
the Commission's intention so that nobody is
surprised, we will take a brief recess after whatever
dialogue we are going to now have and we will take a
brief recess to convene and discuss the matter and
then hopefully resolve it this afternoon right after
that recess.

When we last met in connection with
this matter the Commission essentially addressed a
couple of concerns, one was that the parties address
themselves to a supplement to the stipulation that was
originally filed with a view to identifying the who or
when and how of the details of the matter, and we have
received in response to that a supplemental
stipulation dated today. We also addressed in that
context a request that the Division identify today for
us the basis for its parent determination and not to
seek to proceed in any fashion with respect to any of
the individuals who might have participated in any
fashion in connection with the matter. Those were the
questions that I think we raised at the last hearing.

I will invite each of you to respond as you see fit to
whatever you think is appropriate.

Mr. Fusco.

MR. FUSCO: I realize that the
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Commission just received the supplemental stipulation, but--

CHAIRMAN PERSKIE: We have had the opportunity to review it.

MR. FUSCO: It speaks for itself and--

CHAIRMAN PERSKIE: Well, it does and it doesn't. Sort of does, uses an interesting phrase. It says TCA executive management. We don't have anybody by that name on our files.

MR. FUSCO: Mr. Chairman, if I may, being aware obviously of the dialogue and remarks that occurred at the last time that the Commission was considering this on the 20th, to state the obvious, this is a settlement agreement and stipulation of facts. The transaction occurred. There was dialogue with the Division. The Division took a position that there was a violation. As a result of that certain things occurred. Mr. Fred Trump filed certain forms and that was processed through and Trump's Castle agreed to enter into this settlement agreement.

Had we not reached the settlement agreement we would have contested the issue. There are two issues in my view. One issue is the casino cage alleged violation and the other is a financial
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source alleged violation. The casino cage violation comes down to a question of whether or not under the existing statute, regulations and internal controls it is permissible for any casino but for Trump's Castle specifically to engage in a front money transaction with a representative of the depositor. It is clear and I believe even your staff would advise you of the fact that the statute, regulations and the internal controls don't address it. That is in our view a litigable issue. I am not presumptuous enough to say what the Commission would decide. It is clearly litigable. It is not addressed.

The violation, to the extent that exists is that there. It is not provided for in the internal control submission and therefore we have agreed with the Division in this stipulation to agree that that is a violation. I submit that if we contested this we would not agree and I think a reasonable question exists there.

As far as the financial source violation, this transaction occurred in the casino cage in the context of the regulations which governed that. So in the view of the licensee that is proper. The procedures that are proper were followed there.

The Division took the position that,
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the reasonable position, that this is also a financial
source transaction. That's the way they are going to
color it and if that is so the financial source must
be prequalified under the rules which govern the
financial source. There are no terms to this front
money deposit and removal of chips other than those
which attend that transaction under the law of the
State of New Jersey. There are no terms to it. There
was for a period of time a condition imposed by the
Commission that those chips would not be redeemed
until a point in time when Mr. Trump was qualified.
He has been qualified and that condition no longer
exists. So we submit that and the position of the
licensee would be but for this settlement that there
is not a violation, now, I'm not so presumptuous
enough, of financial source concerns. The Commission
is the arbitrator of that, not the parties. The
parties though evaluated their position. I only speak
for one party, Trump's Castle Associates, and our view
is that on the basis of that evaluation of what the
legal circumstances are, we entered into this
agreement.

The agreement is everything that it
says it is which is a complaint against the licensee
and no other persons. We have stipulated the fact
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that my client is in a position to be comfortable to stipulate and that's the judgment that it made. It made it respectfully. That's the judgment. Here's the stipulation.

I will answer any question, but that's where we are.

CHAIRMAN PERSKIE: Let me hear from the Division first and then we will see what the Commission wants to do.

MR. AURIEMMA: Good afternoon. The supplemental stipulation you have today was an attempt to provide the Commission with additional information in an amendment to attempt to address some of the concerns specifically raised by Commissioner Waters and Commissioner Armstrong last week. Obviously it is not a unilateral document. It is not the Division which can unilaterally give in the posture of this particular case at this point in time unilaterally present facts. We are bound by some borders within a particular stipulation. There were discussions over the past week and this stipulation was the result. It is what it is and that is, as Mr. Fusco said, as far as the Castle was willing to stipulate, and would not go any further and there were discussions as to other items, but this is what is before the Commission at
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this point in time and it is the best that I on behalf
of the Division could present to you at this point
given the posture of this case. So I hope you would
consider it within that particular context.

With respect to the question of the
Division and why we chose again to only prosecute, if
you will, the licensee Trump’s Castle as opposed to
any particular individuals, I am going to refer to
what I said last week and supplement it in this way.

First, at the time this whole
transaction was reviewed back in January and February
of early this year by the Division, by the director, a
determination was made to proceed with a complaint.
The decision was made at that particular point in time
to only charge the licensee Trump’s Castle. That’s
not to say that there could not necessarily have been
individuals charged. I am neither saying that they
could be charged or not charged. The decision was
made at that point in time to only charge those
individuals—excuse me, to only charge the licensee.
We have reviewed that particular decision since and we
will remain bound by it. We believe that it was
appropriate in this particular case to only charge the
licensee Trump’s Castle. We do that based upon our
prosecutorial discretion and based upon the fact that
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in this particular case we saw an opportunity to
resolve the matter relatively quickly, with a
stipulation of facts, with a complaint, with a
settlement agreement and focused on the real issue
which we believe to be whether or not Fred Trump was
to be a financial source and was qualified as a
financial source or focus to that particular
investigation. That is the basis for the Division's
decision.

CHAIRMAN PERSKIE: All right, thank
you, sir.

Does anybody on the Commission have
any questions of either attorney?

COMMISSIONER WATERS: I just want to
go back not to your point, Mr. Fusco, on page seven of
your stipulation.

CHAIRMAN PERSKIE: This is the new
stipulation?

COMMISSIONER WATERS: The old one,
the original one. Would you compare what's--what
appears there at I guess item A with your earlier
discussion as to whether you agree there was or was
not a violation.

MR. FUSCO: We stipulate in our
stipulation that the financial source provisions
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referred to here were violated. That we have
stipulated to.

COMMISSIONER WATERS: Am I wrong that
I heard you saying something different earlier?

MR. FUSCO: No. I said that as part
of the agreement overall that's reached here, meaning
that the licensee was charged and the facts are set
forth as they are, in the context of that the licensee
agreed to not contest whether or not the financial
source provisions are applicable and were violated not
to contest it. I only said before when I addressed
the Commission that had we not stipulated and
litigated, our position is that they are not violated
and that would be our position.

COMMISSIONER WATERS: Oh, if you had
proceeded to contest it, you are not attempting to
deny there were violations though?

MR. FUSCO: The stipulation accepts
the fact. I am not at all in anyway and I don't mean
to be read that way at all.

COMMISSIONER WATERS: Okay. It
wasn't clear to me.

VICE CHAIR ARMSTRONG: Mr. Fusco, I
have a couple questions. The original stipulation
notes the fact that both transactions were videotaped,
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the transactions were videotaped.

MR. FUSCO: Yes, ma'am.

VICE CHAIR ARMSTRONG: Am I correct in assuming that the Commission's inspection staff was not notified that the transactions were going to take place and they were going to be videotaped?

CHAIRMAN PERSKIE: You mean before they took place?

VICE CHAIR ARMSTRONG: Right. Before the tape rolled, was our inspection staff notified?

MR. FUSCO: I don't know the answer to the question. I only know that both transactions were videotaped from the point of the fill being bought out to the table to ultimately the chips being distributed to Mr. Schneider, but I do not know. The answer is I don't know the answer to that question.

VICE CHAIR ARMSTRONG: Do you know Mr. Auriemma?

MR. AURIEMMA: I may have once known but I do not know as I sit here today.

VICE CHAIR ARMSTRONG: I assume that if you don't know that then, Mr. Auriemma, presumably the Division wasn't notified that it was about to take place?

MR. AURIEMMA: No, the Division was
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not.

MR. AURIEMMA: So if I read the second stipulation or the supplemental stipulation correctly, the first time the Division or Commission were notified about this was after it happened on December 19, 1990, anyone from the Commission or Division was notified about it?

MR. AURIEMMA: I believe that's accurate, yes.

VICE CHAIR ARMSTRONG: Okay.

CHAIRMAN PERSKIE: Anybody have any other questions of either counsel?

Okay, we will recess. We will reconvene probably hopefully by about 3:00 and finish the matter

(At which time a break was taken from 2:43 p.m. to 3:12 p.m.)

CHAIRMAN PERSKIE: We will reconvene and I note the presence of the entire Commission.

This again is the matter of State versus Trump's Castle Associates. The Commission pursuant to its authority has considered the matter in closed session over the course of the last half hour. It can safely and fairly be said that we have different perspectives and points of view with respect
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to the subject. I will express my own point of view and then make a motion and I am sure there will be some comments with respect to the motion in one fashion or another.

This is, in my view, actually I find myself thinking in terms that I used to with some regularity down the street. There is one aggravating factor that is very important to me and there are a couple of mitigating factors that I view in terms of how to respond to this proposed stipulation and settlement. The aggravating factor relates to the nature of the violation and I, for one, have no difficulty with describing this with or without an agreement to do so as a violation of the financial source regulation. There is no question in my mind but that there is no other possible interpretation that could be placed on these facts with the acts here committed with the intent that they were other than to have what in effect is a financial source arrangement, and it clearly was not structured as such pursuant to statutory procedure.

While there are some mitigating factors, which I will mention in a moment with respect to that, this is among the single most important of the statutory protections that have been built. The
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advancing of a financial interest from someone who is not qualified to do so is intricate, fundamental part of our regulatory process. This, for example, is to be distinguished from what I would describe as a generic problem at a table with a chip fill slip not being correctly filled out or a credit authorization not being properly signed or something of that nature that I would call important but of some secondary focus. That's the aggravating factor from my point of view.

I am satisfied that there are two factors that are present here that need to be evaluated. First, I am satisfied that there was no intention whatsoever to hide these facts or to have it done in secret. I think the Division has concluded that as well. I am satisfied there is no record that we can--could use to conclude that advance permission or information was given or sought, but they taped it and free and full disclosure was immediately and promptly and fully made and I am--and that's an important factor to me. The fact that there was never any attempt to hide this or to make a secret of it or to cover it up.

And, secondly, while it is certainly clear in my mind that there was a financial source
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problem, it was unique in the sense that it was first one incident that took place admittedly over a day and-a-half or so, but one incident, one transaction with one individual who while not licensed as a financial source which creates the violation was nevertheless in close—known to the authorities, known to the licensee, and someone who when the time came for us to do it we had no difficulty at all on the Division’s affirmative recommendation concluding he was qualified as a financial source. This is not exactly the same thing as going and finding the Joe Fusco Loan Company someplace and not knowing who they were or the David Arrajj loan company different from the Steven Perskie Loan Company.

In any event obviously there is a balance there. As far as I’m concerned with a couple of important asterisks that balance process leads me to be able to accept the essential outline and structure of this proposed settlement even though if I were doing it all on my own I might do it differently.

There are a couple, however, important asterisks and my motion will be to accept the proposed settlement as modified given that it is before us as a proposed stipulation and settlement and
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given that I propose to modify it, the parties will have the opportunity to accept or reject the settlement as modified except that I will direct that that be done before the close of business today and the Commission staff be notified as to whether it is accepted or not. Failing acceptance of the modified settlement if it is approved by the Commission the matter will be referred to a hearing on all of the issues raised in the matter and that hearing will be held as I will assign it before one of the Commissioners as a hearing officer.

I would modify--I would therefore move to accept the proposed stipulation and settlement with the following modifications:

First, as to the Commission, the settlement of the complaint against Trump’s Castle Associates will be considered as without prejudice to the authority of the Division to file if it chooses to do so any complaints against any individuals that might have been involved in the transaction.

Second, along the balancing lines that I have previously outlined given my emphasis and priority on the seriousness of the regulatory violation, I will modify the proposed fine to be in the amount of $65,000.
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With those two modifications I would move to accept the settlement as offered.

COMMISSIONER HURLEY: Second.

CHAIRMAN PERSKIE: Comment or discussion?

Who wants to go first?

Vice Chair having seniority.

VICE CHAIR ARMSTRONG: Mr. Chairman, I will support the motion, but there are some things that I just personally feel I have to say here.

Number one, I would agree that the fine as stipulated of $30,000 is not enough but I can certainly live with the recommendation of the $65,000.

I guess though based on what we have been told here not only in the stipulation, the amended stipulation, but what we have been told on the record, and based on what we haven’t been told that I almost look at Castle as an entity as almost an innocent bystander to this whole situation. This was something which happened, we know happened that was deliberate, people did it, people planned it, they carried it out and we still don’t know who those people are, and I want to make something clear, I am not, and I certainly hope that if the motion passes and if it is ultimately accepted by the parties that
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consideration is given to finding out, to really
getting to the truth of the matter and finding out
what happened here and who participated and I want to
make clear here, I am not supporting that concept
because we should be out on a witch hunt, but you
know, we put people through the paces here and the
regulatory process day in and day out, week in and
week out. There are 50,000 employees in this industry
that we hold to the highest standards and the way this
entire matter was handled as far as the settlement is
I think an affront to those 50,000 employees. It is
an affront to the service worker who is caught in the
employee locker room smoking a joint and who gets his
license revoked or suspended, to the cage cashier who
steals five dollars. Those people are accountable to
us and they are accountable to us in detail to tell us
what happened and to acknowledge it. Here we have
violations, purported violations committed by
individuals and we still don’t know who they are and
they are violations of a very, very serious nature and
I guess the fact that there was not an attempt to hide
this transaction, the fact that it was videotaped to
me is not a mitigating factor. I guess I look at the
deliberateness of the violations here as being an
extremely aggravating factor and I am not happy really
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with how this whole situation has been handled and I am monumentally disappointed that the Division of Gaming Enforcement has not pursued this matter to the fullest extent that it could be pursued.

That's basically all I have to say at this point.

CHAIRMAN PERSKIE: Commissioner Waters.

COMMISSIONER WATERS: Yes, Mr. Chairman. I guess this brings to the peak one of my concerns that I have had for a number of years and I voiced it internally in conversations with the other Commissioners and members of staff. I guess I have always been uncomfortable with the fact that my reputation and welfare so many times depends on the actions of people over whom I have no control and in this instance the Division of Gaming Enforcement. Up to this point in time though I have learned to live with that and I have seen no indication of any instance whereas--where I was as uncomfortable as I am in this one. I think this is unfortunate that I reach that point. What we have been told by the Division in this instance is that they know the individuals who were involved in this affair and they choose not to file a complaint.
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Commissioner Armstrong covered in her remarks, I have sat here week after week and at times have ended up finding some clerk teller or some other person who violated a regulation, was not an integrity matter as such, but violated a regulation and stands responsible for it. In this instance we know that the people involved are not just the average run of the mill employees in the house. I guess it's probably this appearance of a double standard that is being demonstrated by the Division of Gaming Enforcement that if it's just an average employee a complaint is filed very quickly, comes in here and handled and if the person is found to have violated a regulation they have to stand accountable for that action and are fined, suspended and whatnot. This instance where we are climbing higher into the corporate hierarchy it's pretty evident, and I don't know why, there is a reluctance on the part of the Division to follow that same standard in dealing with those people occupying those positions.

When I came on this Commission I took an oath to do those things necessary to uphold the principles of the Casino Control Act. I think it's a sad commentary that the Division of Gaming Enforcement doesn't share that view and for an unknown reason
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doesn't do what it would normally do in these circumstances.

As I indicated in closed session, I am going to support the motion that's been made since it applies only to the corporate entities in the penalty that's been assessed, but I guess it's greater than disappointment to me. I think it's an outrage that the Division of Gaming Enforcement would take this position and fail to carry out what I understand to be its responsibility to enforce the provisions of the Casino Control Act.

Thank you.

CHAIRMAN PERSKIE: Commissioner Dodd.

COMMISSIONER DODD: In 13 years of casino gaming in Atlantic City this transaction is probably the most unique singular action that has ever taken place out of tens of billions of dollars that have been moved around Atlantic City one way or another, and I think the statute is silent on this particular transaction. We bump into a loophole here and there and I believe this possibly is one of them. The intent, as has been said by my colleagues, wasn't an attempt at subterfuge to get around a regulatory system, it was meant to avoid the new financial
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structure within The Trump Organization of who got
what first, if you put in money then you had to get
behind the first bondholder and all of those. Again,
we are asked week in, week out to judge each
transaction, each infraction on its own.

Now, I don’t think there is anyone in
this room that doesn’t know how this came down. Fred
Trump didn’t wake up in the middle of the night and
say I feel like buying three and-a-half million
dollars worth of chips. Now, if that was part of the
stipulation which are difficult to get on a good day
and having faith in the Division of Gaming, in
extracting the best possible deal I have to go with
that because other times I have been here for over two
years now and we look at these case by case. I still
can’t figure out how we got to Jack Gallaway and the
Trop deal when day in/day out we go through, routinely
go through violations that clearly go right to the
CEOs of each organization. So it’s whatever mood we
are in. I’m not sure what motivates us on this. This
is a stipulation, very difficult to come by. If they
don’t accept it, fine, then it should go right to a
hearing. This is the best we can come up with right
now.

CHAIRMAN PERSKIE: Okay, again, the
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motion is to accept the stipulation, proposed
settlement as modified on the record here.

On the motion all in favor will so
indicate.

The record will reflect the motion
carries unanimously.

(All Commissioners present voted in
favor of the motion)

CHAIRMAN PERSKIE: The parties have
until the close of business today to notify Mr.
DiGiacomo that they accept the stipulation as modified
or that they don’t, failing which if they don’t accept
it or if we haven’t heard in either case the matter
will be forthwith remanded for a hearing on the
underlying complaint for a hearing to be held before
the Commission.

I think that’s all on that matter.
Thank you very much.

MS. GALLO: It is now time for the
public participation portion of the meeting.

CHAIRMAN PERSKIE: Anybody from the
public desire to be heard in any matter?

Come forward. Please state your
name.

MR. MORSE: My name is David Morse,