

# IN THE MATTER OF THE APPLICATION OF GNAC, CORP. FOR A CASINO LICENSE

## OPINION

Decided October 13, 1981

### *New Jersey Casino Control Commission*

*Martin B. Danziger*, Acting Chairman  
*Madeline H. McWhinney*, Commissioner  
*Don M. Thomas*, Commissioner  
*Carl Zeitz*, Commissioner

### *Appearances*

For GNAC, Corp.:  
*Alfred J. Luciani*, Esq.  
*Bruce A. Levin*, Esq.

For Stephen A. Wynn:  
*Martin L. Greenberg*, Esq.  
*Greenberg, Margolis, Ziegler and Shwartz*, attorneys  
East Orange, New Jersey

For the Division of Gaming Enforcement:  
*James Flanagan*, Deputy Attorney General  
*John E. Adams, Jr.*, Deputy Attorney General

For the Casino Control Commission:  
*David Arrajj*, Special Counsel for Licensing  
*Jonathan Rosenbluth*, Assistant Counsel  
*Bertha L. Scott*, Legal Analyst

### *Introduction*

This matter is before the Commission pursuant to the application of GNAC, Corp. ("GNAC") for a casino license. The history of GNAC's application, its acquisition of a Temporary Casino Permit in November 1980, and the qualification criteria pertinent to this plenary casino license proceeding are set forth in the Chairman's Instruction to the Commission and need not be repeated at length here. That Instruction has been given to the Commissioners, made a part of the record of the casino license hearing and is incorporated by reference in this Opinion.

This Opinion concerns itself only with those areas which were the subject of significant attention at the hearing in this case. Detailed findings with regard to other licensing criteria are contained in a separate proposed Resolution, which we will consider today.

The investigative report of the Division of Gaming Enforcement ("Division"), which, as modified, has been stipulated and admitted in evidence as S-1, outlined several areas of concern. Following exposition of the evidence at the hearing, the Division indicated in summation three primary areas of concern: 1) certain hiring practices of Golden Nugget, Inc., ("GNI"); GNAC's parent company; 2) certain stock option practices of the Stock Option Committee and Board of Directors of GNI; and 3) allegations of drug use and distribution by employees of GNI associated with Stephen A. Wynn, President, Chairman of the Board, and Chief Executive Officer of GNI, as well as accusations of drug use by Mr. Wynn.

At the conclusion of the hearing, in which all three areas were fully explored, the Division interposed no objection to the qualifications of GNAC, GNI or Stephen A. Wynn. In fact, the Division stated its view that GNAC, GNI and Mr. Wynn had successfully demonstrated their qualifications by clear and convincing evidence. See *N.J.S.A.* 5:12-84 and 89(b). Nevertheless, it is the Commission's responsibility to evaluate independently the entire record and determine the qualifications of the business entities and natural persons who must qualify. This has been done by each Commissioner. The relevant issues may now be addressed.

A review of the testimony and documentary exhibits indicates clearly that this case turns almost entirely upon the qualifications of Stephen A. Wynn, the central actor in the events in question, and a fact consistent with his role as the unchallenged leader of GNI. Accordingly, Mr. Wynn's suitability for licensure necessarily encompasses the qualifications of the corporate applicants.

### *The Qualifications of Stephen A. Wynn*

Stephen Alan Wynn was born in New Haven, Connecticut on January 27, 1942. He is married to the former Elaine Farrel Pascal, now a Director of GNI and of GNAC. They reside with their two children in Las Vegas, Nevada. Mr. Wynn received his pre-college education in upstate New York where his family moved when he was young. Thereafter, he attended the University of Pennsylvania from which he graduated in 1963 with a Bachelor of Arts degree in English literature.

In 1960, Mr. Wynn's father, Michael Wynn, now deceased, entered into a partnership with Mr. Edward O. Wayson, Sr., to operate a bingo

hall in Upper Marlboro, Anne Arundel County, Maryland. During his college years, Stephen Wynn worked at the bingo establishment on weekends and during summers. Shortly before Mr. Wynn graduated from college, his father died. Upon graduation, Mr. Wynn took up active management of the bingo business, now known as Wayson's Amusements Co., Inc. ("Wayson's"). Mr. Wynn continued his management role until 1965, when the bingo business was incorporated. Presently, Mr. Wynn personally owns 20% of the stock of Wayson's, which is held in trust for him. Since 1963, Mr. Wynn has derived income from Wayson's in the form of dividends and has since 1967 been compensated as a consultant.

In 1965, Maurice Friedman invited Mr. Wynn to "buy points" in the then "Last Frontier" casino which was closed at the time. Mr. Wynn met Friedman and T. W. Richardson approximately a year earlier through Herb Liebert, now deceased, a friend of his deceased father. The introduction took place while Mr. Wynn was on vacation in Palm Springs, California with his wife. Mr. Liebert actually initiated investment discussions with Mr. Wynn by telephone a few weeks after Mr. Wynn returned from vacation, but they were inconclusive at the time.

In 1966, after Liebert died, Friedman called Mr. Wynn and invited him to Las Vegas to discuss investment in what was to become the "Vegas Frontier." Mr. Wynn flew to Las Vegas and met with Mr. Friedman and T. W. Richardson. After this visit, Mr. Wynn bought 3% of the new Vegas Frontier, Inc. ("Frontier") for \$30,000. He also successfully solicited investment from family friends, and through them, others in the East. He was briefly a Director of the company as well as its prospective slot manager.

In mid-1967, Mr. Wynn and his family moved to Las Vegas and he took up full-time duties as the Frontier's slot manager. The new casino opened under a cloud of allegations concerning hidden ownership by alleged Detroit underworld figures through one Jack Shapiro, whose investment group had displaced Wynn as a Director.

Shapiro rejected an offer by Howard Hughes to buy the Frontier before its opening, although Mr. Wynn favored acceptance. Wynn attributes poor business after the Frontier opened to inadequate management, staffing and entertainment. A second, much lower Hughes offer to buy the Frontier followed, precipitated by publicity regarding the possible revocation of Mr. Shapiro's license by the Nevada Gaming Control Board ("GCB"). This time, Shapiro agreed and the Frontier was sold. Mr. Wynn received only his original investment from this sale. He used it to buy back his Wayson's stock, which he had sold to Wayson's at the insistence of the GCB.

A later federal investigation, with which Mr. Wynn cooperated, of the Shapiro investment group resulted in the prosecution and, apparently, the criminal convictions of Shapiro and certain Detroit investors in the Frontier. Mr. Wynn was not implicated in any way with the nefarious dealings underlying these events. We are satisfied there is nothing now before us concerning Mr. Wynn's association with the Frontier which reflects negatively upon his character or integrity.

At the time he subscribed to the Frontier venture, Mr. Wynn met E. Parry Thomas, then Chairman of the Board and now Chairman of the Executive Committee of the Valley Bank of Nevada ("Valley Bank"). Mr. Thomas also represented the Howard Hughes organization ("Hughes") upon its first attempt to acquire the Frontier. Mr. Wynn and his family soon developed a strong personal relationship with Mr. Thomas and his family, which continues to this day. Mr. Thomas testified that his friendship with Mr. Wynn could be termed a father-son relationship. This relationship has been valuable to Mr. Wynn through the years. Mr. Thomas and Valley Bank have also had a continuous business relationship with Mr. Wynn since 1966, and have been the primary financial backers, until recently, of the majority of Mr. Wynn's investment and business transactions. Mr. Thomas estimated that Stephen Wynn or his businesses have borrowed approximately \$30 million dollars from Valley Bank since 1966.

Mr. Thomas encouraged Stephen Wynn to stay in Las Vegas after sale of the Frontier. Mr. Wynn did, deriving his income from Wayson's. Mr. Wynn testified that at this time, Mr. Thomas was "the most important thing" in his life. (4T-106)<sup>1</sup> He also stated that if Howard Hughes was then the "glamor [sic] figure" in Las Vegas, E. Parry Thomas was the "power figure," a "very, very powerful man, and still is." (4T-106) During this period, Mr. Wynn would return to Maryland a few days each month to help his family oversee Wayson's.

Late in 1968, at the suggestion of Mr. Thomas, Mr. Wynn became interested in purchasing Best Brands, Inc., ("Best Brands"), the Schenley

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<sup>1</sup> The following transcript references are used throughout this opinion:

1T—Transcript of September 14, 1981.

2T—Transcript of September 15, 1981.

3T—Transcript of September 16, 1981.

4T—Transcript of September 17, 1981.

5T—Transcript of September 18, 1981.

6T—Transcript of September 22, 1981.

7T—Transcript of September 23, 1981.

8T—Transcript of September 24, 1981.

liquor distributorship for Nevada. In part, through the efforts of Mr. Thomas, Mr. Wynn succeeded in acquiring 100% of the stock of Best Brands early in 1969, for \$65,000. Mr. Wynn operated this distributorship until May 1972. During this period he met, and then employed Robert R. Maxey, present Chairman of the Board of GNAC and Director, Executive Vice-President and Chief Operating Officer of GNI.

Also during this period, with the financial backing of E. Parry Thomas and Valley Bank, Mr. Wynn engaged in several ultimately profitable real estate transactions, some involving Best Brands and/or Schenley. He also borrowed heavily from the business but did not draw a salary until a few months before he sold it. During this period Mr. Wynn began to acquire GNI stock.

Much testimony was elicited from Messrs. Wynn, Maxey, and Thomas regarding Mr. Wynn's expansion and operation of Best Brands until its sale, and his financial dealings with the business and its relative unprofitability. We have considered fully all the evidence, testimonial and documentary, in this regard. We find therein nothing before us now which may be said fairly to reflect negatively upon Mr. Wynn's qualifications.

One remarkable real estate transaction, which received much attention at the hearing bears comment. In November 1971, while operating Best Brands, Mr. Wynn succeeded in acquiring from Hughes a parcel of land on the Las Vegas "Strip," adjacent to Caesar's Palace. The parcel was being rented by Caesar's from Hughes for use as an employee parking lot. Mr. Wynn bought the land for \$1,100,000 through Herb Knoll, an agent for Hughes. The purchase was financed by a \$1,200,000 loan from Valley Bank, the \$100,000 excess to cover interest. Mr. Abraham Rosenberg, a wealthy friend of Mr. Wynn, co-signed the notes as guarantor. Mr. Wynn asked Rosenberg to do so because Mr. Wynn could not provide sufficient security to justify the loan. In March 1972, the land was transferred to Morning Star, Ltd., a joint venture of Messrs. Wynn and Rosenberg, in which their respective interests were 67% and 33%. On October 27, 1972, Morning Star, Ltd. sold the parcel to a Caesar's Palace real estate subsidiary for \$2,250,000. After repaying Valley Bank, Mr. Wynn's share of the profit was approximately \$678,400.

As noted, this transaction received significant attention at the hearing. Having carefully considered all the evidence, we can find nothing about it to impair Mr. Wynn's qualifications.

As noted, Stephen Wynn began to acquire GNI common stock while he owned Best Brands. In 1969, he purchased 14,000 shares for

\$115,694.45. At the time, Mr. Wynn knew the public fact that E. Parry Thomas, then Chairman of the Board of Continental Connector Corporation ("Continental Connector") was attempting to take over GNI through an agreement between the stockholders of both corporations. However, the Securities and Exchange Commission ("SEC") obtained an injunction against execution of the agreement, apparently because a faulty audit of a holding company called M & R Investment, previously acquired by Continental Connector, gave inadequate information to Continental Connector and GNI stockholders. Thus, Mr. Wynn was unable to take advantage of the Continental Connector offer as he had hoped.

In 1970, Mr. Wynn bought no GNI stock. In 1971, he purchased 4,000 shares for \$23,373 and also sold 1,190 shares. Until 1972, Mr. Wynn's purpose in acquiring GNI stock was to be a passive investor. However, during negotiation of the real estate transaction with Caesar's described above, he conceived the objective of gaining control of GNI. Beginning in September 1972, he began, by increments, to acquire a large amount of GNI stock. Before October 27, 1972, Valley Bank financed the bulk of Mr. Wynn's GNI stock purchases. After October 27, 1972, proceeds of the land sold to Caesar's were available to acquire more GNI stock. Between September and the end of December 1972, Mr. Wynn bought 92,000 shares of GNI stock on the open market at a cost of \$503,305. On January 1, 1973, Mr. Wynn owned 110,000 shares of GNI stock, or 5.8% of the stock issued and outstanding. Between January and April 1973, he acquired 7,800 more shares. Because of the size of his holdings and his intention to gain control of GNI, in Autumn 1972, Mr. Wynn submitted a license application to the Nevada gaming authorities.

Also in the Fall of 1972, it became publicly known that one Jerome Zarowitz had acquired a large amount of GNI stock, in fact 92,000 shares. Philip Hannifin, then Chairman of the GCB, had been aware of Mr. Zarowitz's growing position in GNI since Spring 1972. In Hannifin's words, Mr. Zarowitz was a man of "notorious reputation." (2T-12) His holdings, in Hannifin's judgment, were not in the best interests of the State of Nevada. Accordingly, Mr. Hannifin, aware also of Mr. Wynn's large GNI holdings, and of his wish to gain control of GNI, persuaded Mr. Wynn to attempt to buy Jerome Zarowitz's GNI stock.

In 1971, other events unfolded that ultimately affected Jerome Zarowitz's sale of his GNI stock. At that time, Mr. Zarowitz's son, Lonnie, then 21 years old, applied for a Nevada license to be able to "buy into" a business known as a "slot route." Nevada's gaming authorities, not satisfied that Lonnie Zarowitz was independent of his father, denied his

application. The unsuitable reputation of Jerome Zarowitz is not a new revelation to this Commission. We recognized it in *In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses*, p. 13-18 (Docket No. 80-CL-1).

His conversations with an attorney for Jerome Zarowitz led Hannifin to conclude that Zarowitz was acquiring GNI stock to embarrass the gaming authorities because of their denial of the license application of his son. In fact, early in 1972, Jerome Zarowitz refused a request of the GCB through GNI, that he submit a license application. His attorney, Milton Rudin, questioned the constitutionality of Nevada laws empowering the gaming authorities to require Mr. Zarowitz to submit a license application and threatened litigation. These events, and conversations with Mr. Rudin, led Mr. Hannifin to believe that if Lonnie Zarowitz was licensed, Jerome Zarowitz would sell his GNI stock to Stephen Wynn.

Lonnie Zarowitz reapplied for a license, which was granted in the Spring of 1973. Mr. Hannifin stated candidly that he voted for Lonnie Zarowitz's new application not because his relationship with his father had changed, but because he believed granting the application would induce Jerome Zarowitz to sell his GNI stock.

In the Spring of 1973, Stephen Wynn was also granted a license by the Nevada gaming authorities. Thereafter, Mr. Hannifin's expectation was fulfilled. Jerome Zarowitz agreed to sell his GNI stock to a group of investors assembled by Mr. Wynn in May 1973. Mr. Wynn himself purchased 52,000 of Mr. Zarowitz's shares with financing, again, from the Valley Bank.

Thereafter, through negotiations with GNI Directors, Mr. Wynn was elected a Director and an Executive Vice-President in June 1973. Through further negotiations, during which Mr. Wynn assembled another investor group which made a tender offer to buy 225,000 shares of GNI stock, Mr. Wynn became President of GNI and installed a substantially new Board of Directors in August 1973. He had realized his ambition to take control of GNI. The tender offer was completed in September 1973, and Mr. Wynn acquired 25,000 more shares of GNI stock.

We cannot say that anything now in the record concerning these complicated events reflects negatively upon Mr. Wynn's qualifications. Although Mr. Wynn at one point negotiated personally with Jerome Zarowitz, nothing indicates that their association or the subsequent transaction between them was other than arms-length.

The stage is set now for discussion of the specific areas of concern noted by the Division at the hearings in this case. These areas relate to events after Mr. Wynn took over GNI.

### *A. GNI Hiring Practices*

This area of concern relates primarily to the hiring by Mr. Wynn of three individuals late in 1976 and early in 1977 to work as floormen in GNI's Las Vegas casino. They are Neil Azzinaro, Louis Cappiello, and Michael Dennis Jones. The Division, in its summation, also noted the hiring of Mr. Michael Pascal, Stephen Wynn's brother-in-law, as GNI's Treasurer on or about May 1, 1978. Questions have also been raised concerning stock options granted to these persons, and others, under GNI's 1973 Non-Qualified Stock Option Plan. The matter of stock options will be discussed later in this Opinion. We turn first to Michael Pascal.

In the Winter of 1977, after GNI opened a new hotel tower as part of the Las Vegas casino, Mr. Wynn decided the company needed a Treasurer with a stronger accounting background than Mr. James Cutler, then the acting comptroller. Addition of more hotel rooms was contemplated and the company was growing. Mr. Wynn discussed this problem briefly with Mr. Maxey, who proposed a candidate. Mr. Wynn proposed Michael Pascal, who was a CPA with a thriving practice in Florida. Mr. Wynn broached the subject to Mr. Pascal by telephone at Christmastime 1977. They met and discussed the matter in January or February 1978 at Sun Valley, Idaho, but Mr. Pascal deferred a decision. The matters discussed on both occasions included a salary of \$75,000 per year and a stock option.

In March 1978, Mr. Pascal accepted, the terms being \$75,000 salary and an option to purchase 50,000 shares of GNI stock under the 1973 Non-Qualified Stock Option Plan. Mr. Pascal was elected Treasurer and Chief Financial Officer of GNI at the May 1978 Board of Directors meeting. He was hired at \$75,000 a year.

Considering all the circumstances, we find the hiring of Mr. Pascal to [be] an exercise of business judgment. Mr. Wynn felt, and the Board of Directors apparently agreed, that his family relationship to Mr. Wynn provided GNI advantages in terms of loyalty and ability to communicate with management. Accordingly, we find nothing concerning this hiring transaction which reflects negatively on the character, integrity or business ability of Mr. Wynn or GNI.

The hirings of Neil Azzinaro and Louis Cappiello early in 1977 were unusual. Their hirings were called by both Messrs. Maxey and Wynn an "experiment." While subsequent events reveal the experiment was ultimately unsuccessful, in our view they do not show the hiring decisions to be an obstacle to the qualification of Mr. Wynn or the GNI.



Stephen Wynn met Neil Azzinaro in 1976 when Azzinaro operated a hair-styling establishment in Las Vegas known as "Neil's East." Mr. Wynn began using the salon at the suggestion of his wife. Mr. Wynn found Azzinaro charming and attractive, and an enjoyable conversationalist and began having his hair cut at "Neil's East." Louis Cappiello, a constant companion of Azzinaro, would often be there and Mr. Wynn also became acquainted with him. Azzinaro and Cappiello, at Mr. Wynn's suggestion, began frequenting the restaurants at the Golden Nugget and Mr. Wynn would often sit at their table. The three developed a social relationship. Over a period of time, Mr. Wynn dined at Azzinaro's residence on occasion, attended at least one birthday party for Azzinaro, and attended Cappiello's wedding after Cappiello's later employment at the Golden Nugget.

There came a time in mid or late 1976 when Azzinaro and Cappiello expressed an interest in employment at the casino. At the time, GNI's new hotel tower was under construction and Mr. Wynn felt the apparent ability he perceived of the two gentlemen to relate well to strangers might be valuable to GNI's efforts to attract customers. Mr. Wynn related this aspect of the talent he perceived to "marketing." He felt also his social relationship with Azzinaro and Cappiello was an advantage in terms of loyalty. In addition, both men seemed to him "hungry," that is highly motivated and exhibiting a very strong desire to work in a casino. Azzinaro, in particular, was "star struck" by the idea. (5T-66)

Cappiello was a more serious individual. He was a professional "player," that is, a sports bettor, an apparently common phenomenon in Las Vegas. Mr. Wynn drew no adverse inference from Cappiello's occupation. His one concern was that Cappiello might also be a bookmaker. Informal investigation satisfied him that this was not the case.

Before his hiring, Azzinaro told Mr. Wynn about what was apparently a running feud between himself and a Las Vegas policeman. This information displeased Mr. Wynn. When he had a chance he asked the Sheriff of Clark County, also a personal friend, if he knew about it. Mr. Wynn told the sheriff he was considering hiring Azzinaro and Cappiello. The sheriff did not indicate that they shouldn't be hired but said that Azzinaro had a "big mouth" (5T-84) and might get in trouble if he didn't "straighten out." *Id.* The tone of the comment was off-hand and did not alarm Mr. Wynn. Nevertheless, Mr. Wynn told Azzinaro about the conversation with the Sheriff and received assurances from Azzinaro there was no genuine basis for any accusation against him or Cappiello by the policeman.

Neither Azzinaro nor Cappiello had any gaming experience. Nevertheless, Mr. Wynn felt they might be valuable because of what he perceived as their "customer marketing" talents. He viewed them as a team and felt they could learn the game of craps, in which they were eventually employed. He also felt the main purpose of casino experience was to assure control of the games and of the flow of money in the casino. He believed Golden Nugget's control systems were strict enough, and since Azzinaro and Cappiello would be closely supervised by experienced people there would be no significant dangers in this regard.

Mr. Maxey, whom Mr. Wynn told about his desire to hire Azzinaro and Cappiello, disagreed. His hiring philosophy differed from Mr. Wynn's. He did not like Azzinaro and Cappiello, viewing them as flamboyant and undisciplined. He viewed their hiring as experimental because they lacked casino experience. While he disagreed with Mr. Wynn, he did not object to their hiring, and merely expressed his opinion that the experiment was a bad idea that would not work. It should be noted in this regard that Mr. Wynn felt that the "highly structured," "strict" and "disciplined" casino environment would test Azzinaro and Cappiello. This discipline was exactly what he felt gave him flexibility to experiment by hiring them.

Moreover, Mr. Wynn felt his own social relationship with them and the fact that he personally hired them would engender a test of another kind. Other employees in the casino might tend to ingratiate themselves or else be jealous of Azzinaro and Cappiello because of their friendship with Mr. Wynn. Accordingly, Mr. Wynn told the two men he would demand more of them than from other employees, and that they would receive the same treatment as others did from direct supervisors.

After Azzinaro and Cappiello attended gaming school for a time, Cappiello for a shorter period and Azzinaro longer, each was hired on Mr. Wynn's order as a craps floorman in February and March 1977 respectively. Mr. Wynn testified without dispute that he reduced, and almost ceased, the social aspect of his relationship with these individuals upon their hiring.

Michael Dennis Jones, Azzinaro's roommate for a time was also hired by Mr. Wynn as a floorman, apparently in blackjack and baccarat, but earlier than the others in December of 1976. Mr. Wynn met Jones through Azzinaro but was not particularly friendly with him. Unlike the others, Jones had significant prior casino experience.

Each of these individuals was indicted in 1980 by federal authorities for criminal offenses involving the distribution of cocaine. (D-51) The

charges against Azzinaro were dismissed before trial. Cappiello was tried and acquitted. Jones was convicted. These charges did not occur until after the three had left the Golden Nugget. Azzinaro and Cappiello resigned voluntarily in November and December 1979 respectively. Jones was fired in July 1978 because information indicated his involvement in a scheme by employees to steal from the casino.

Nevertheless, under all the circumstances, the decision by Mr. Wynn to hire these individuals cannot itself fairly be said to reflect adversely on his character, integrity or business ability. He knew nothing of their alleged, and in the case of Jones, proven involvement in drug trafficking at the time he hired them. He also exercised minimal, but not particularly thorough, efforts to assure himself regarding the backgrounds of Azzinaro and Cappiello before they were hired. To be sure, the almost total lack of casino experience of Azzinaro and Cappiello would have made their hiring into the positions they were given impermissible in this jurisdiction at the present time. But we do not now view this aspect of the "experiment" as a significant problem in the context of the issue at hand.

It should be noted that at one point after their hiring, apparently before Azzinaro and Cappiello were granted stock options in 1977, rumors regarding their possible involvement in drug use were conveyed to Mr. Wynn by Mr. Maxey. However, Mr. Maxey told Mr. Wynn that he had nothing concrete. Mr. Wynn instructed Mr. Maxey to stay on top of the matter and to gather more information if he could. Nothing more came of the matter during their employment, although Mr. Wynn did warn Azzinaro against drug use when he was promoted to shift boss. It may be these rumors could have been investigated more closely at the time. We would expect more aggressive action to be taken by the Applicant and Mr. Wynn should similar situations arise in the future.

In sum, under all of the foregoing circumstances, we cannot find that Mr. Wynn's association with these individuals, given its character and duration and the extent of his knowledge at the time, presents any serious difficulty to his qualification.

### *B. Stock Option Transactions*

The Division has raised questions regarding certain GNI stock option transactions involving stock option agreements under the 1973 Non-Qualified Stock Option Plan ("1973 Plan"). These questions relate primarily to agreements between GNI and Michael Pascal, Peter Thomas, a former Director of GNI and the son of E. Barry Thomas, Neil Azzinaro and Louis Cappiello.

### 1. *Michael Pascal*

As noted above, Mr. Wynn offered Michael Pascal a 50,000 share stock option as part of his compensation in connection with his hiring as GNI's Treasurer and Chief Financial Officer in May of 1978. Both Mr. Maxey and Mr. Wynn testified that GNI management viewed such options as part of "compensation packages" tailored for specific employees of GNI. It is clear further, from the testimony of Stock Option Committee members George Mason and David Zenoff, that Michael Pascal's stock option was a matter of extensive discussion among committee members.

Mr. Mason stated candidly that the philosophy of the Stock Option Committee, of which he is the Chairman, is to rely on the judgment and recommendations of management in the case of what may be termed ordinary employees of GNI. While Mr. Mason and Mr. Zenoff both stated that their first duty is to the stockholders, Mr. Mason indicated his opinion that this duty is ordinarily fulfilled by giving great weight to management's recommendations in run-of-the-mill cases, unless there appears some obvious impropriety. However, he also indicated that greater scrutiny would be given in less ordinary cases, such as recommendations to grant stock options to Directors, substantial shareholders or relatives of management. Mr. Pascal's option fell into the last category, was given substantial scrutiny according to Mr. Mason and was found justified.

According to pertinent provisions of the 1973 Plan, the Stock Option Committee has the sole authority to administer the plan, grant options and, within the limitations of the plan, to determine varying terms of individual agreements. The Committee is required, however, to keep minutes of its meetings and to report its actions to the Board of Directors. These provisions of the plan were the subject of scrutiny at the hearing, with reference to the facts revealed regarding individual plans. In the case of Michael Pascal, it appears that the vesting schedule in his original stock option agreement for 50,000 shares (J-14A)<sup>2</sup> and the effective date of the agreement were incorrectly reported to the Board (D-19), at least insofar as they were reported in writing. However, Mr. Mason addressed a letter dated June 14, 1978 to Mr. Maxey correctly describing the vesting schedule. In addition, all Directors who testified indicated that they were aware of the correct vesting schedule.

There was considerable testimony at the hearing regarding the apparent fact that the Stock Option Committee kept no formal written minutes

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<sup>2</sup> J—refers to joint exhibits; AW—refers to Applicant Wynn exhibits; AG—refers to Applicant GNAC exhibits; and D—refers to Division exhibits.

titled as such. Mark Moskowitz, GNI's securities attorney, testifying as an expert, stated without contradiction that there is no uniform legal definition of "minutes" and that they could therefore take any written form memorializing the Committee's actions including letters and memoranda. He also expressed his opinion that no particular form of reporting by the Committee to the Board of Directors is required by the Plan. Our own review of the Plan does not contradict Mr. Moskowitz's opinions with regard to these matters.

In light of the foregoing, we are unable to draw any adverse inference therefrom with regard to the qualifications of Mr. Wynn or GNI. Nevertheless, it appears clear that the record-keeping and reporting practices of the Stock Option Committee could be much improved.

In early 1979, Mr. Pascal was asked to step down from his post as Treasurer and to assume the title of Assistant Treasurer. Shortly after his original hiring as Treasurer, GNI embarked upon its newly conceived program to develop a hotel-casino complex in Atlantic City. This new project engendered more company growth, involving new public debt security offerings and a substantially heavier burden upon Mr. Pascal. Mr. Wynn and Mr. Maxey decided that the company required a person more experienced in these matters as its Treasurer. They therefore recruited Mr. Clyde T. Turner, who has extensive experience in public offerings and was then managing partner of Kafoury, Armstrong & Turner, a public accounting firm, to take over Mr. Pascal's position.

Mr. Turner's negotiated compensation was relatively high and he was to be granted a stock option under the 1973 plan for 100,000 shares. However, there were at that time less than that number of shares left available for distribution. Mr. Wynn asked Mr. Pascal to surrender approximately one-third of the 50,000 shares designated in his option agreement to make up the difference needed for Mr. Turner. He consented to do so. Accordingly, a new stock option agreement dated March 28, 1979, was executed by Mr. Pascal for 33,342 shares. (J-17) He resigned as Treasurer and was appointed Assistant Treasurer.

Because of the worsening of a long-standing illness of his mother, living in Florida, Mr. Pascal later decided to resign his position with GNI and return to Florida and did so effective May 1, 1980. But prior to that date he requested that the certain vesting dates in his stock option agreement be accelerated. As of that time, 13,342 shares had not yet vested. Ten-thousand shares were to vest on June 14, 1980 and the remainder one year later.

Because of the fact that Mr. Pascal was leaving the company under difficult family circumstances and that had his agreement been dated as of

his original employment date rather than one and one-half months later, 10,000 of the remaining shares would have vested on May 1, 1980, the Stock Option Committee considered that the only genuine acceleration being requested was for 3,342 shares. In further consideration of Mr. Pascal's earlier surrender of approximately one-third of his options, his loyal service, and of his agreement to act as a consultant and cooperate with gaming authorities, the requested acceleration was granted. (See AG-4E)

Mr. Wynn testified without contradiction that he did not recommend this result. He instead referred Mr. Pascal's requests in this regard to Bruce Levin, GNI's General Counsel, who in turn referred them to the Stock Option Committee. (See AG-4A and -4B) The transaction appears to have been fully documented and within the authority of the Stock Option Committee. We find nothing of serious concern inherent in it.

It should be noted here that upon his departure from GNI, Mr. Pascal was also granted what was termed severance pay of \$37,500. This course of action was undertaken at the suggestion of Mr. Maxey, not Mr. Wynn. It was approved essentially in light of Mr. Pascal's forced departure as well as of the fact that he had originally dissolved his CPA practice in Florida to become employed by GNI. Other employees had been given severance pay in similar circumstances. Again, we can find nothing in the evidence regarding this transaction which reflects adversely on the qualifications of Mr. Wynn or the Applicant.

## 2. Peter Thomas

Peter Thomas became an outside Director of GNI in November 1976. He was a member of the Executive Committee and on December 16, 1977, was granted a stock option for 10,000 shares (adjusted to 30,000 because of a 3 for 1 stock split on February 10, 1978). (J-10) The original agreement provided a vesting schedule of 20% of the shares per year.

Peter Thomas resigned as a GNI Director on July 12, 1978, at the behest of Valley Bank, his employer. (J-11) Shortly thereafter, Mr. Thomas requested that he be permitted to exercise 40% of the options specified in his agreement, or 12,000 shares. He argued in part that the first 20% segment (6,000 shares) had vested the day he signed the agreement. He also theorized that he was entitled to exercise upon at least half of the second 20% segment since he would have been entitled to all of it had he remained a Director until December 16, 1978. In part because it was considered prudent not to dispute with a highly placed employee of Valley Bank, GNI's principal lender, and in part because Mr. Thomas

apparently contemplated litigating the matter, the Stock Option Committee granted his request. However, an indemnification agreement was obtained from Mr. Thomas in the event of liability with regard to this acceleration. (AG-6)

The Stock Option Committee's action was reflected in the minutes of the GNI Board of Directors meeting of October 18, 1978. At this time, Mr. Thomas had already exercised his option on 4,000 of his previously vested shares, 2,000 on July 27, 1978 and 2,000 more on August 31, 1978. On October 18, 1978, he exercised the remainder of his accelerated option as approved, specifically, 8,000 shares. It should be noted that this purchase occurred six days beyond the 90 day limitation period on the exercise of options following termination contained in the 1973 plan. Mr. Mason testified that he had no knowledge of why this was permitted or recollection of approving it and we find no mention of it in the documentary exhibits. We can only ascribe it to a lack of attention to detail which we believe the GNI management should take steps to remedy in the future.

Before Mr. Thomas began exercising his options, as described, and while he was still a Director of GNI, he sold 2,000 shares of GNI stock. This sale and purchase within a six-month period, with one transaction occurring while Mr. Thomas was a Director, gave rise to a cause of action against Mr. Thomas by GNI or its shareholders to recover his profit under Section 16(b) of the Securities and Exchange Act of 1934.

This matter was not discovered until June of 1980 by Mark Moskowitz during his review of Directors' stock transactions in preparation of a registration statement. On behalf of GNI, Mr. Moskowitz negotiated a settlement of the claim with Mr. Thomas' counsel which resulted in the payment by Mr. Thomas to GNI of a total of \$32,000 and his execution of an indemnification agreement.

The circumstances surrounding the occurrence of this Section 16(b) liability on the part of Mr. Thomas presents no serious obstacle to the qualification of the Applicant or GNI in our view. It again appears to have resulted from sloppiness and a lack of attention to detail. We are satisfied from the evidence that GNI, at the direction of Mr. Wynn, took prompt and appropriate action to remedy the problem once it was discovered.

Finally, we are satisfied that the evidence shows no impropriety in connection with the decision to accelerate Mr. Thomas' vesting date in the first instance. The action was within the authority of the Stock Option Committee and was supported by the substantial, if not compelling, reason of avoiding litigation. Nor was Mr. Wynn involved in the decision. He testified without contradiction that he made no recommendation and

left the matter entirely to the Stock Option Committee. Properly, he did not wish to be involved because of his personal relationship with Peter Thomas and his father, E. Parry Thomas. Accordingly, we find nothing in these events to reflect negatively on Mr. Wynn's qualifications.

### 3. Neil Azzinaro and Louis Cappiello

At the time of the hiring of Neil Azzinaro and Louis Cappiello, they were offered stock options under the 1973 plan by Mr. Wynn. When Mr. Wynn discussed their hiring with Mr. Maxey, he also discussed the matter of stock options. Mr. Maxey persuaded Mr. Wynn not to recommend stock options for them immediately, but instead to wait until their job performance could be evaluated. Azzinaro and Cappiello were informed of this decision and commenced employment.

All witnesses who testified on the subject indicated that Azzinaro and Cappiello performed reasonably in their jobs. While there were some disciplinary problems, they apparently occurred later and were not severe or unusual. Accordingly, Mr. Wynn did finally recommend to the Stock Option Committee that they be granted options later in 1977. In accordance with its policy of relying upon management recommendations in cases of this type, the options were granted by the Committee. Agreements were then prepared providing that none of the 5,000 shares granted would vest until two years after the date thereof, that is, December 16, 1977. The designated price was \$10.00 per share.

The terms of these agreements were duly reported to the Board of Directors. (See J-3) However, at the time they were presented to Azzinaro and Cappiello by Mr. Wynn, they asked that the vesting period be reduced to 12 months on the ground that they had already been employed for nearly a year. Under the two-year vesting period, they would not be able to exercise their options until nearly three years after hiring rather than two as they felt they had been promised.

Mr. Wynn acceded to this request and asked the Stock Option Committee to reduce the vesting period to 12 months. This was done at the direction of the Committee by "whiting out" the number 24 in the agreements and typing in the number 12. This change was never formally reported to the Board of Directors in writing. Again, however, all Board members who testified stated that they had been aware of the change at the time and perceived it as the correction of an error rather than a genuine amendment.

For the sake of clarity of the corporate records, these changes to stock option agreements probably should have been reported upon in writing. We can only ascribe this oversight as with the others described above, to



sloppiness and a lack of uniform recording and reporting procedures. But we do not find therein any seriously negative reflection on the qualifications of GNI or Mr. Wynn. Obviously, such procedures should be improved.

### *C. Allegations of Drug Use by Stephen Wynn*

At the hearing, significant attention was given to certain allegations that Stephen Wynn had been a user of a controlled dangerous substance, cocaine. These allegations emanated from three individuals, none of whom testified at the hearing. As to one of these people, one Kathy Thomas, statements she apparently gave were not introduced in evidence. Mr. Wynn was cross-examined about them and during that cross-examination, the Division indicated that Ms. Thomas' accusations against Mr. Wynn were later recanted under oath. We therefore give no weight to references in the record to her apparent accusations. It should be noted in addition that Mr. Wynn categorically and straightforwardly denied these accusations under oath on cross-examination.

The other two individuals making such accusations are Anita Kayne Cosby and Shirley Ann Fair. Their transcribed statements given under oath were admitted in evidence as D-57 and D-58, respectively. We will consider them in that order.

Ms. Cosby is a former employee of Golden Nugget. She was personally fired by Mr. Wynn on May 21, 1979, upon her arrest under criminal charges involving illegal drug distribution. (See AW-17) She later entered a plea of guilty to possession of cocaine and was convicted. In evaluating the credibility of Ms. Cosby's statement (D-57), we take into account Ms. Cosby's possible bias against Mr. Wynn because of her firing. See *State v. Smith*, 101 N.J. Super. 10 (App. Div. 1968), certif. denied, 53 N.J. 577 (1969). We also take into account the matter of her criminal conviction as affecting her credibility. See *State v. Sands*, 76 N.J. 127 (1978). Mr. Wynn, on cross-examination by the Division, also clearly and categorically denied Ms. Cosby's allegations under oath.

Ms. Fair was not an employee of Golden Nugget. She is apparently a former "girlfriend" of Michael Jones. The Division stipulated that she is an admitted prostitute and a paid informant. She was apparently a major witness in the criminal proceedings against Azzinaro, Cappiello and Jones. Significantly, the charges against Azzinaro were dismissed before trial and Cappiello was acquitted.

In her statement, Ms. Fair accuses Mr. Wynn of using cocaine on several occasions. She also accuses a Mr. Frank DeAngelo of distributing

cocaine to Mr. Wynn. Mr. DeAngelo was a co-defendant of Azzinaro, Cappiello and Jones in the proceedings mentioned above. In addition, the only specific date she identified on which she stated she saw Mr. Wynn use cocaine, among other unspecified occasions, was on New Year's Eve 1977 at the home of Jones. She apparently also accused Mr. DeAngelo of being present on this occasion.

Mr. DeAngelo, during two polygraph examinations in connection with the criminal proceedings against him, denied ever supplying cocaine for Mr. Wynn and denied being present on New Year's Eve 1977. These statements are in evidence. (AW-16) Apparently as a result of these examinations, the charges against Mr. DeAngelo were voluntarily dismissed by the United States Attorney for the District of Nevada. (AW-16) Also apparently taken into account in this regard were statements by two persons not involved in the charges, that Mr. DeAngelo was with them on New Year's Eve 1977 at a party held in a condominium at North Lake Tahoe, California. (AW-16) It should also be noted that the Division has stipulated that other persons alleged to have been at Michael Jones' home on New Year's Eve 1977 have given statements denying their presence. These matters, even apart from the conclusions of the polygraph examiner regarding Mr. DeAngelo's truthfulness, which we do not consider (see *State v. McDavitt*, 62 N.J. 36 (1972)), certainly serve to undercut the credibility of Ms. Fair's statement.

Further, Mr. Wynn has produced the affidavits of several disinterested individuals stating that on New Year's Eve 1977, Mr. Wynn was at a party in their presence in Sun Valley, Idaho. (AW-16) Flight logs for the GNI plane were also introduced indicating Mr. Wynn's flight to Sun Valley on December 28, 1977. These serve to corroborate the foregoing statements. These matters further undercut the credibility of Ms. Fair's accusations against Mr. Wynn.

Furthermore, Mr. Wynn has forthrightly and with candid demeanor denied Ms. Fair's accusations and subjected himself to searching cross-examination with regard to them. His appearance of candor and credibility is bolstered by the testimony of several witnesses at the hearing as to his good reputation for honesty as well as to their opinions that he is an honest person.

In light of all of the foregoing, we simply find the testimony of Mr. Wynn more credible than the statements of Ms. Fair and Ms. Cosby. On balance, therefore, we cannot find that the record supports these allegations of drug use against Mr. Wynn. Accordingly, we do not find therein anything to reflect adversely on the qualifications of Mr. Wynn.

*Conclusion*

In light of all of the foregoing facts and conclusions, this Commission is satisfied that the Applicant GNAC has established by clear and convincing evidence its qualifications for licensure, according to all relevant criteria, as well as the qualifications of GNI, its holding company, and of Stephen A. Wynn. Accordingly, a casino license will issue to GNAC subject to conditions contained in the Resolution regarding this matter which we will consider adopting today, in such form as it may be finally adopted.