

established a seven member Board as the independent agency responsible for applying the statutory framework of the Act. Section 1325 of the Act, 4 Pa.C.S. §1325, gives the Board the authority to “issue, renew, condition or deny a slot machine license based upon the requirements of this part and whether the issuance of a license will enhance tourism, economic development or job creation[,] is in the best interests of the Commonwealth and advances the purposes of this part.” The Act also gives the Board the authority “to issue, approve, renew, revoke, suspend, condition or deny issuance or renewal of slot machine licenses.” 4 Pa.C.S. §1202(b)(12).

Originally, there were three categories of slot machine licenses: Category 1 for existing race tracks, Category 2 for stand-alone slot machine facilities located in Pittsburgh, Philadelphia, or “revenue or tourism enhanced locations,” and Category 3 for slot machine facilities located at existing resort hotels. 4 Pa.C.S. §§1301-1305. In January 2010, the General Assembly amended the Act to allow table games and authorized the Board to issue a table game operation certificate. The Act provides that two stand-alone gaming facilities may be located in Philadelphia.

On December 20, 2006, the Board approved two Category 2 license applications for Philadelphia. SugarHouse HSP Gaming, L.P. (SugarHouse) is a Delaware limited partnership with its principal place of business located at 1001 North Delaware Avenue, Philadelphia, Pennsylvania 19123. SugarHouse is the owner and operator of the SugarHouse Casino which offers slot machine gaming and table gaming to the public under a Category 2 Slot Operator’s License and a

Table Games Operations Certificate. SugarHouse is a wholly owned and controlled indirect subsidiary of HSP Gaming, L.P. (HSP). RPRS is a Delaware limited partnership with its principal place of business at 130 Spruce Street, Suite 30B, Philadelphia, Pennsylvania 19106. RPRS is a limited partner of HSP. The general partner of HSP is HP Gaming Products, L.P. (HP), a Delaware limited partnership. The only other limited partner of HSP is High Penn Gaming Partners, LP.

On January 8, 2008, the Board issued HSP's Category 2 License. Because of continuing legal challenges and the refusal of the City of Philadelphia to issue certain permits, the Board granted HSP's application to extend the deadline for beginning operations. On September 23, 2010, HSP opened SugarHouse Casino.

On May 29, 2008, the Board issued the second Category 2 license in the City of Philadelphia to Philadelphia Entertainment and Development Partners (Foxwoods). On September 1, 2009, the Board granted Foxwoods an extension until May 29, 2011, to open its casino and required Foxwoods to submit architectural and other construction plans and a development timeline by December 1, 2009, as well as monthly status reports. Foxwoods moved for a further extension. On February 10, 2010, the Board denied the motion for an extension, imposed a \$2,000 per day sanction beginning December 1, 2009, and continuing until Foxwoods complied with the conditions of the Board's September 1, 2009, order. The Board also issued a rule to show cause why the Board should

not impose additional sanctions, including license revocation, for Foxwoods's non-compliance with the September 1, 2009, order.

On April 29, 2010, after a potential investor announced that he was no longer interested in financing the Foxwoods project, the Board's Bureau of Investigations and Enforcement (BIE) filed a complaint and sought revocation of Foxwoods's Category 2 license. On December 23, 2010, the Board granted BIE's motion for summary judgment and revoked Foxwoods's license. This Court affirmed the revocation, and our Pennsylvania Supreme Court denied Foxwoods's petition for allowance of appeal. Philadelphia Entertainment & Development Partners, L.P. v. Pennsylvania Gaming Control Board, 34 A.3d 261 (Pa. Cmwlth. 2011), *petition for allowance of appeal denied*, 41 A.3d 852 (Pa. 2012).

On July 11, 2012, the Board announced that it would begin accepting applications to consider licensing another casino in Philadelphia. On November 16, 2012, the Board announced it had received six applications. Tower was one of the applicants. The Board subsequently held public hearings for all six applications on February 12, 2013, as well as public input hearings in Philadelphia on April 11-12, 2013, and on May 8-9, 2013 as required by Section 1205(b) of the Act, 4 Pa.C.S. §1205(b).

II. Petition for Review.

On July 29, 2013, RPRS filed the petition for review and alleged that nothing in the Act permitted the Board to reissue a license that had previously been

revoked. RPRS sought judgment in its own right and derivatively on behalf of HSP and a declaration that the Board lacks statutory or other authority to reissue to any applicant the Category 2 license that the Board revoked from Foxwoods. Specifically, RPRS alleged:

10. RPRS has advised HSP, High Penn Gaming Partners, L.P., and HP Gaming Partners, L.P. that RPRS believes that the Board would be acting beyond its statutory authority were it to reissue a Category 2 Slot Operator License in Philadelphia.

11. RPRS brings this action both individually and derivatively, on behalf of HSP. RPRS has not made formal demand on HSP's Management Committee or HP Gaming Partners, L.P. to bring this action in HSP's own name because the making of such demand would be futile.

12. Any such demand by RPRS would be futile because the controlling members of the Management Committee and HP Gaming Partners, L.P. have made clear that they are unable to make a decision on whether to have HSP bring this action in its own name, notwithstanding that they cannot say that RPRS's belief, as discussed above in Paragraph 10, is wrong and that they cannot say that RPRS's belief is wrong that HSP's competitive position would be harmed if a Category 2 license were reissued in Philadelphia.

13. Shortly after the Board announced that it would receive applications for a second Category 2 Slot Operator License for a casino operation in Philadelphia, RPRS conducted preliminary legal research and concluded that there was a substantial question as to whether the Board had authority under the Gaming Act to reissue a Category 2 license in Philadelphia.

14. RPRS promptly brought these preliminary conclusions to the controlling members of HSP's Management Committee and HP Gaming Partners, L.P. However, HSP's Management Committee and HP

Gaming Partners, L.P. were not in a position to consider initiating legal action because there was then pending in Delaware Chancery Court a dispute between the majority and minority partners of HSP regarding voting powers on the Management Committee. That dispute was not resolved until January 29, 2013.

15. Within days of the resolution of that dispute, HSP authorized counsel for RPRS to further research the legal issues by which there might be a proper basis to challenge the Board's authority to reissue a Category 2 license in Philadelphia.

16. Counsel, working closely with RPRS, further researched the matter and shared its conclusions with HSP. Nonetheless, HSP did not respond definitively to RPRS's recommendation that HSP challenge the Board's authority to reissue a Category 2 license in Philadelphia while certain approvals for an expansion of SugarHouse Casino were pending.

17. Those approvals were obtained on May 15, 2013. RPRS then again recommended that HSP challenge the Board's authority to reissue a Category 2 license in Philadelphia. As HSP was conducting meetings with Federal officials relating to an infrastructure project on the site of the SugarHouse Casino, HSP did not respond definitively to RPRS's recommendation that HSP challenge the Board's authority.

18. After the meetings with Federal officials were completed on May 30, 2013, HSP indicated that it still could not reach a consensus on RPRS's recommendation for HSP to bring suit to challenge the Board's authority to reissue a Category 2 license in Philadelphia. HSP repeatedly indicated to RPRS that it was having trouble reaching a consensus about bringing such action because of its concern with respect to how such a suit would be perceived by officials of the City of Philadelphia and others. That position was again most recently related to RPRS on July 23, 2013.

19. HSP's inability to reach a consensus on its bringing a lawsuit in its own name to challenge the Board's authority to reissue a Category 2 license in Philadelphia, despite ample time within which to do so, and the risk of prejudice to such a challenge if additional time passes, demonstrates sufficient futility of demand, and vests RPRS with standing to proceed individually and derivatively on behalf of HSP.

....

56. Nothing in the Gaming Act (with just one exception explained below) provides the Board with authority to issue more than five Category 2 licenses in the Commonwealth, or to issue more than two Category licenses for licensed facilities in Philadelphia.

57. The Board issued all five Category 2 licenses authorized by the Gaming Act, and issued the two authorized Philadelphia Category 2 licenses to HSP's indirect, wholly-owned subsidiary and to Foxwoods. HSP is operating the SugarHouse Casino, and the Foxwoods Category 2 license has been revoked.

58. Nothing in the Gaming Act vests the Board with authority to 'reissue' a previously-issued license that the Board has revoked.

59. In drafting and enacting the Gaming Act, the Legislature plainly understood the distinction between license issuance and, following license revocation or nonrenewal, license 'reissuance.'

60. The term 'reissued' appears only twice in the Gaming Act. Under § 1307, in the event the Board has not issued all seven Category 1 licenses within five years of the Gaming Act's effective date, any such 'Category 1 license may be reissued by the board at its discretion as a Category 2 license if an application of issuance of such license has not been made to the board.' 4 Pa.C.S. § 1307. At no time has the Board attempted to reissue any Category 1 license that has not been applied for as a Category 2 license. . . .

....

62. Prior to the Gaming Act's July 2004 adoption, State Senator Gibson E. Armstrong proposed an amendment to

the Gaming Act (subsequently rejected) under which the Board would be required to ‘initiate a public auction of slot machine licenses.’ In addition to the public auction procedure, Senator Armstrong’s proposed amendment included a provision that would have expressly authorized the Board to auction and reissue a revoked or non-renewed license:

(a.2) *Revoked or nonrenewed licenses.*- If a slot machine license terminates or expires without renewal or if the board revokes or determines not to renew a slot machine license and the revocation or determination is final, *the board may reissue the license* to a qualified applicant pursuant to the open and competitive bidding process set forth in this section.

[Proposed amendment A3195 to Amendment No. A3055, revising 4 Pa.C.S. §1209(a) (rejected by Senate on July 1, 2004) (emphasis added [by RPRS])].

63. Following the Gaming Act’s July 2004 enactment, there was an attempt in the Legislature to amend the Gaming Act to provide the Board with authority to reissue a revoked license. In May 2009, the Pennsylvania Senate’s Committee on Community, Economic and Recreational Development approved the following amendment to § 1304 of the Gaming Act:

(1.1) In the event that a license for a Category 2 licensed facility to be located within a City of the First Class, which license was issued prior to the effective date of this paragraph, is revoked by the Board prior to commencement of operations of the Category 2 licensed facility, then *the Board may reissue the revoked Category 2 slot machine license to another applicant* for a Category 2 licensed facility, provided that:

(I) No more than two Category 2 licensed facilities may be located within a City of the First Class. . . .

[Proposed Senate Bill No. 831, Session of 2009, as amended May 26, 2010 (emphasis added)].

64. Senate Bill No. 831 was never enacted.

65. Thus, both the Gaming Act's text and its legislative history establish that the Gaming Board lacks authority to reissue a gaming license previously revoked.

Petition for Review in the Nature of a Complaint for Declaratory Relief, July 29, 2013, Paragraph Nos. 10-19, 56-60, and 62-65 at 5-7, and 16-19.

III. Preliminary Objections.

The Board preliminarily objects and asserts that this Court lacks subject matter jurisdiction, RPRS lacks standing, and that the petition should be dismissed for failure to state a claim upon which relief can be granted. With respect to the lack of subject matter jurisdiction, the Board asserts:

2. Section 1204 of the Gaming Act, 4 PA.C.S. §1204, provides that the Supreme Court of Pennsylvania shall be vested with exclusive appellate jurisdiction to consider appeals of any final order, determination or decision of the board involving the approval, issuance, denial or conditioning of a slot machine license.

3. The Board's decision and subsequent proceedings involves [sic] the issuance of a slot machine license which had to be commenced by appeal to the Supreme Court within thirty days of the Board's decision.

4. This Court lacks jurisdiction to hear this matter by virtue of Section 1204 which vests jurisdiction over this matter in the Supreme Court.

Pennsylvania Gaming Control Board's Preliminary Objections to Petition for Review in the Nature of a Complaint for Declaratory Relief, August 21, 2013, (Preliminary Objections), Paragraph Nos. 2-4 at 1-2.

With respect to the preliminary objection regarding standing, the Board asserts:

7. RPRS has not satisfied the criteria for bringing a derivative shareholder action.
8. RPRS has not alleged that the majority owners have acted out of partiality or for a wrongful purpose in not bringing this action in its own right.
9. By deciding not to file the suit, the majority owners have made a business decision on behalf of the HSP casino.
10. RPRS is not aggrieved or otherwise harmed by the Board's decision to accept applications and move forward with the licensing process as the Gaming Act specifically contemplates two Category 2 licenses to be issued and to operate in Philadelphia.

Preliminary Objections, Paragraph Nos. 7-10 at 2.

With respect to the preliminary objection in the nature of a demurrer, the Board asserts:

11. The Pennsylvania Race Horse Development and Gaming Act specifically contemplates that two Category 2 slot machine licenses shall be located in the City of Philadelphia, and sole regulatory authority over every aspect of the authorization of gaming is vested in the Gaming Board. . . .
12. Only one Category 2 slot machine license is currently issued and operating.
13. The intent of the General Assembly, as manifested throughout the Act, is that two Category 2 slot machine licenses in the City of Philadelphia shall be issued and

operating to maximize revenues to the Commonwealth and the City of Philadelphia, employment opportunities for Philadelphia and Pennsylvania resident [sic], and economic and tourism development.

14. The Board's action in accepting applications for the available license and moving forward toward issuance of the license is in furtherance of the expressed provisions of the Act as well as of the General Assembly's intent to fulfill all goals of the Act. (Citations omitted).

Preliminary Objections, Paragraph Nos. 11-14 at 3.

By order dated October 4, 2013, this Court granted Tower's petition to intervene. Tower preliminarily objects in the nature of a demurrer because the Act mandates that the Board issue two Category 2 licenses in the City of Philadelphia.

IV. The Merits of the Preliminary Objections.

The Board contends that this Court lacks jurisdiction, that RPRS lacks standing, and that RPRS's petition is legally insufficient.¹

In considering preliminary objections, this Court must consider as true all well-pleaded material facts set forth in the petitioner's petition and all reasonable inferences that may be drawn from those facts. Mulholland v. Pittsburgh National Bank, 174 A.2d 861, 863 (Pa. 1961). Preliminary objections should be sustained only in cases clear and free from doubt that the facts pleaded

¹ Tower joins in the questions presented by the Board in its preliminary objections.

are legally insufficient to establish a right to relief. Werner v. Zazyczny, 681 A.2d 1331 (Pa. 1996).

The Board asserts that RPRS's petition for review in the nature of a complaint for declaratory relief is legally insufficient and must be dismissed.²

First, the Board argues that RPRS's interpretation of the Act would produce an absurd result. Section 1307 of the Act, 4 Pa.C.S. §1307, provides:

The board may license no more than seven Category 1 licensed facilities and no more than five Category 2 licensed facilities, as it may deem appropriate, as long as two, and not more, Category 2 licensed facilities are located by the board within the city of the first class and that one, and not more, Category 2 licensed facility is located by the board within the city of the second class. The board may at its discretion increase the total number of Category 2 licensed facilities permitted to be licensed by the board by an amount not to exceed the total number of Category 1 licenses not applied for within five years following the effective date of this part. Except as permitted by section 1328 (relating to change in ownership or control of slot machine licensee), any Category 1 license may be reissued by the board at its discretion as a Category 2 license if an application for issuance of such license has not been made to the board. The board may license no more than two Category 3 licensed facilities.

The Board argues that RPRS's argument that Board lacks authority to issue a slot machine license that has previously been revoked is both illogical and unreasonable. Section 1921(b) of the Statutory Construction Act, 1 Pa.C.S.

² This Court has foregone the sequence of the Board's arguments.

§1921(b), provides that when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. Section 1922 of the Statutory Construction Act, 1 Pa.C.S. §1922, provides that in ascertaining the intent of the General Assembly when it enacts a statute, one must assume that the General Assembly intended a result that was not absurd.

Under Section 1202(a)(1) of the Act, 4 Pa.C.S. §1202(a)(1), the Board is granted general and sole regulatory authority over the conduct of gaming or related activities as described in Section 1202. Section 1102(2-6) of the Act, 4 Pa.C.S. §1102(2-6), provides that the authorization of limited gaming is intended to enhance live horse racing, breeding programs, entertainment, and employment in the Commonwealth; provide a significant source of new revenue to the Commonwealth to support property tax relief, wage tax reduction, economic development opportunities, and other similar initiatives; improve the living and working conditions of personnel who work and live in and around the backside and stable areas of race tracks; provide broad economic opportunities to the citizens of the Commonwealth; and to improve tourism.

Under Section 1202(b)(12) of the Act, 4 Pa.C.S. §1202(b)(12), the Board has the authority “[a]t its discretion, to issue, approve, renew, revoke, suspend, condition or deny issuance or renewal of slot machine licenses.”

Given these statutory sections, the Board asserts that RPRS’s proposed interpretation of the Act that the Board lacks the authority to issue a slot machine license that it has previously revoked is problematic for two reasons.

First, in order to generate the largest possible source of revenue for the Commonwealth, it makes sense that every slot machine license which the General Assembly intended to be issued is issued. Second, if the Board lacks the authority to issue a previously revoked slot machine license, under RPRS's interpretation every casino in Pennsylvania will either stay in business forever or the number of casinos licensed in Pennsylvania will contract if and when an entity goes out of business or is stripped of its license. The Board argues that this interpretation is clearly contrary to the goals of the Act. This Court agrees.

Further, the Board argues that there is another financial aspect of the failure to issue the second license. Section 1901.1 of the Act, 4 Pa.C.S. §1901.1, provides the following:

The board shall defer assessing slot machine licensees for payments to the State Gaming Fund for any loans made to the State Gaming Fund until such time as all slot machine licenses have been issued and all licensed gaming entities have commenced operation of slot machines. The board shall adopt a repayment schedule that assesses to each slot machine license costs for the repayment of any such loans in an amount that is proportional to each slot machine licensee's gross terminal revenue.

According to the Board, the Commonwealth loaned \$36,000,000.00 from the General Fund to the State Gaming Fund to finance the Board's start-up costs. Under Section 1901.1 of the Act, the Board may not assess licensees for payments to pay back the loan until all licenses are issued. The Board argues that a main goal of the legalization of gambling in Pennsylvania was to increase revenue. Therefore, the Board reasons it is implausible that it was the General Assembly's

intent for the Board to lack the authority to issue a license that had been revoked. This Court agrees that it is unlikely that the General Assembly intended such a result.

RPRS asserts that the General Assembly created a clear distinction between the terms “issue” and “reissue” in the Act. The term “reissue” is in Section 1307 of the Act, 4 Pa.C.S. §1307, which states that in the event the Board has not issued all seven Category 1 licenses within five years of the Act’s effective date, such a “Category 1 license may be reissued by the board at its discretion as a Category 2 license if an application of issuance of such license has not been made to the board.”

A review of Section 1307 of the Act, 4 Pa.C.S. §1307, reveals that the term “reissue” is used in the context of the Board changing an existing Category 1 license to a Category 2 license. That is a much different situation than the controversy presented here and does not establish a distinction between issuing and reissuing a license, or at least not the distinction that RPRS requests this Court to draw.

Similarly, the other reference in the Act to the term “reissue” is contained in Section 1518(a)(11) of the Act, 4 Pa.C.S. §1518(a)(11), which provides:

It shall be unlawful for a licensed gaming entity that is a licensed racing entity and that has lost the license issued to it by either the State Horse Racing Commission or the State Harness Racing Commission under the Race Horse

Industry Reform Act or that has had that license suspended to operate slot machines or table games at the racetrack for which its slot machine license was issued unless the license issued to it by either the State Horse Racing Commission or the State Harness Racing Commission will be subsequently reissued or reinstated within 30 days after the loss or suspension.

Clearly, Section 1518(a)(11) of the Act is inapplicable to the present controversy because the use of the word “reissue” concerns the reissuance of a license formerly issued by either the State Horse Racing Commission or the State Harness Racing Commission and does not address the powers and authority of the Board. Further, the term “reissued” in Section 1518(a)(11) of the Act addresses the reissuing of a license to the same entity whose license was revoked or suspended, which is totally different from the current controversy.

In support of its position, RPRS refers to two proposed amendments to the Act which referenced the Board’s authority to reissue revoked licenses. These amendments were never passed. RPRS asserts that the failure of these amendments to pass and the fact that the amendments specify the Board’s authority to reissue licenses indicates the intent of the General Assembly to preclude the Board from reissuing a revoked license.

Under Section 1921(b) of the Statutory Construction Act, 1 Pa.C.S. §1921(b), “when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”

Both the Board and Tower persuasively argue that it is clear from the Act that the General Assembly intended that the Board award all the licenses specified in the Act and that it is not necessary to examine the legislative history cited by RPRS. It is clear from reading the Act that the General Assembly authorized the Board to award two Category 2 licenses in the City of Philadelphia. RPRS is creating a distinction between “issuing” and “reissuing” a license where no such distinction was created by the General Assembly.

RPRS points to the proposed amendments to the Act as evidence of the intent of the General Assembly. While the proposed amendments used the term “reissue” regarding the Board’s authority to award revoked licenses, the first amendment was proposed by only one senator and then rejected. The second was re-referred to the Senate Committee on Appropriations after the Senate did not consider it on its calendar for close to a month. Further, the comments of individual legislators in debate are not an appropriate basis upon which to base legislative intent. See *Montgomery County v. Department of Corrections*, 879 A.2d 843 (Pa. Cmwlth. 2005). Similarly, the language in proposed amendments which were supported by only a small number in the General Assembly and which did not pass in either house of the General Assembly are not indicative of the intent of the General Assembly.

The Board is correct that RPRS has failed to state a claim upon which relief may be granted. The Board’s preliminary objection in the nature of a demurrer is sustained. Because Tower raises essentially the same issue, its

preliminary objection is sustained as well.³


BERNARD L. MCGINLEY, Judge

³ With respect to the preliminary objection regarding this Court's jurisdiction, the Board asserts that this Court lacks jurisdiction because Section 1204 of the Act, 4 Pa.C.S. §1204, provides "[t]he Supreme Court of Pennsylvania shall be vested with exclusive appellate jurisdiction to consider appeals of any final order, determination or decision of the board involving the approval, issuance, denial or conditioning of a slot machine license. . . ." The Board asserts that RPRS challenges the Board's authority to move forward with the issuance of the second Category 2 license for the City of Philadelphia after the originally issued license was revoked. The Board asserts that this decision *involves* the *issuance* of a *slot machine license* and therefore comes under Section 1204 of the Act.

The Board publicly announced this decision on July 11, 2012. According to the Board, RPRS had thirty days to appeal this decision to the Pennsylvania Supreme Court. RPRS did not do so. As a result, the Board asserts that RPRS's failure to timely perfect an appeal to the Supreme Court constituted a waiver of the right to appeal, and RPRS's action should be dismissed as an untimely attempt to circumvent this Court's lack of jurisdiction.

This Court does not agree that it lacks jurisdiction. Section 1204 of the Act vests our Pennsylvania Supreme Court with jurisdiction to hear appeals of "final orders, determinations or decisions" of the Board "involving the approval, issuance, or denial or conditioning of a slot machine license." (emphasis added). Here, RPRS is not appealing a final order or decision of the Board regarding the approval or denial or issuance of a license. Rather, RPRS argues that the Board lacks the authority to reissue the license that had been revoked. The use of the term "final" limits the jurisdiction of the Pennsylvania Supreme Court to appellate jurisdiction over appeals of final orders of the Board regarding the issuance, approval, denial, or conditioning of a license.

Under its interpretation the Board would have this Court ignore the term "final" in Section 1204 and focus on the term "involving." Because the General Assembly is presumed to have intended to avoid surplusage, every word, sentence and provision of a statute must be given effect. Independent Oil & Gas Association of Pennsylvania v. Board of Assessment Appeals, 814 A.2d 180, 183 (Pa. 2002). Under the Board's interpretation of Section 1204, any decision by the Board that in some way involves a slot machine license would be appealable to the Supreme Court. Since the revocation of the license originally issued to Foxwoods, the Board has made many decisions such as setting the deadline for applications, establishing hearing dates, and other decisions about the form and content of the applications. All of these decisions "involve" the issuance of a slot machine license. However, the plain language of Section 1204

(continued...)

vests the Pennsylvania Supreme Court with exclusive appellate jurisdiction over *final* decisions of the Board involving the approval, issuance, denial or conditioning of a slot machine license. The General Assembly did not intend to vest the Supreme Court with exclusive appellate jurisdiction over every decision, no matter how routine or mundane. Section 1922(1) of the Statutory Construction Act (SCA), 1 Pa.CS. §1922, provides that the “General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.” The Board’s interpretation of Section 1204 of the Act does not pass muster under Section 1922(1) of the SCA.

Because RPRS is not appealing a final order of the Board involving the issuance, denial, approval, or conditioning of a license, this Court and not the Supreme Court has jurisdiction over RPRS’s petition for review. This preliminary objection is overruled.

This Court need not address the final preliminary objection regarding standing.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

RPRS Gaming, L.P., as a limited :
partner in and derivatively on behalf :
of HSP Gaming, L.P., :
Petitioner :
v. :
Pennsylvania Gaming Control :
Board and HSP Gaming, L.P., : No. 377 M.D. 2013
Respondents :

ORDER

AND NOW, this 16th day of June, 2014, the preliminary objection of the Pennsylvania Gaming Control Board and Tower Entertainment, LLC that the petition for review in the nature of a complaint for declaratory relief filed by RPRS Gaming, L.P. is legally insufficient is sustained. The petition for review in the nature of a complaint for declaratory relief filed by RPRS Gaming, L.P. is dismissed with prejudice. The preliminary objection concerning the jurisdiction of this Court is overruled.



BERNARD L. MCGINLEY, Judge

Certified from the Record

JUN 16 2014

and Order Exit