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PA GAMING CONTROL BOARD
BEFORE THE CLERK

THE PENNSYLVANIA GAMING CONTROL BOARD

FILED
OCT 5 2010
1408-2010
Board Clerk PGCB

COMMONWEALTH OF PENNSYLVANIA	: PGCB DOCKET NO.
GAMING CONTROL BOARD	: NO. 1408-2010
BUREAU OF INVESTIGATIONS	:
AND ENFORCEMENT,	: ADMINISTRATIVE
Complainant	:
	: HEARING
PHILADELPHIA ENTERTAINMENT AND	:
DEVELOPMENT PARTNERS, L.P., D/B/A	: MOTION FOR SUMMARY
FOXWOODS CASINO PHILADELPHIA	: JUDGMENT
SLOTS LICENSE 1367	:
Respondent	:

MOTION FOR SUMMARY JUDGMENT

And now comes the Bureau of Investigations and Enforcement, through the Office of Enforcement Counsel and files this Motion for Summary Judgment pursuant to 58 Pa Code § 493a.10(b), and Pennsylvania Rule of Civil Procedure 1035.2 against Philadelphia Entertainment and Development Partners, L.P., and in support thereof states the following:

1. Pursuant to 58 Pa. Code § 493a.10 (b), "After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for summary judgment based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits.

2. Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, "After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law.

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issue to be submitted to a jury."

3. PEDP has the burden of proving, by clear and convincing evidence, its suitability. 4 Pa. C.S. §1310 (a) (1); 4 Pa. C.S. §1313 (a) and (b).

I. PROCEDURAL FACTS

4. On April 29, 2010, a Complaint was filed by the Office of Enforcement Counsel against Philadelphia Entertainment and Development Partners, L.P. ("PEDP") alleging that PEDP failed to comply with Pennsylvania

Gaming Control Board ("Board") Orders of September 1, 2009 and/or March 3, 2010 (Count I); that PEDP failed to comply with its Statement of Conditions (Count II); that PEDP is unable to have a minimum of 1,500 slot machines available for play by May 29, 2011 (Count III); and that PEDP has failed to maintain its suitability (Count IV). (Exhibit "A")

5. On June 1, 2010, PEDP filed an Answer, New Matter, Legal Objections, and Affirmative Defenses to the Complaint. (Exhibit "B")

6. On June 18, 2010, a Discovery Order was issued by Linda Lloyd, Director of Hearings and Appeals, Pennsylvania Gaming Control Board. (Exhibit "C")

7. On July 29, 2010, a second Discovery Order was issued by Linda Lloyd. (Exhibit "D")

8. Discovery has been conducted by the parties. Documents have been exchanged and depositions and Interrogatories have been taken by both parties. Exhibits "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O".

9. On September 9, 2010, the Director of Hearings and Appeals issued an Order that final Motions shall be filed by October 5, 2010. (Exhibit "P")

10. No hearing date has been scheduled in this matter.

II. UNDISPUTED ISSUES OF MATERIAL FACT

11. On December 20, 2006, Philadelphia Entertainment and Development Partners, L.P. ("PEDP") was awarded a Slot Machine License by the Pennsylvania Gaming Control Board ("Board") to build and operate a gaming facility at 1449 S. Christopher Columbus Boulevard, in Philadelphia, Pennsylvania, as presented at its suitability hearing on November 14, 2006.

12. On February 1, 2007, the Board issued an Order and Adjudication formally awarding the Slot Machine License to PEDP. (Exhibit "Q", Pennsylvania Gaming Control Board Order of February 1, 2007)

13. PEDP's project, as approved by the Board on December 20, 2006 will take 22 months to complete phase one which would have 3,000 slot machines available for play. (See Exhibit "R"; Transcript of November 14, 2006, suitability hearing, Pgs. 46-50, testimony of Gary Armentrout; Exhibit "S", PowerPoint presentation from November 14, 2006 hearing; Exhibit "E", Pgs. 19 and 20 deposition of Gary Armentrout taken on July 22, 2010)

14. Twenty-two months from October 5, 2010 is June 5, 2012.

15. On March 2, 2007, Riverwalk Casino, L.P., filed an Appeal of the Order and Adjudication of February 1, 2007

to the Supreme Court of Pennsylvania ("PA SC"), and on July 17, 2007, the PA SC upheld the award of the Slot Machine License. (Exhibit "T" Supreme Court decision)

16. On July 11, 2007, representatives authorized to legally bind PEDP and Foxwoods Management, LLC signed a Statement of Conditions (SOCs) to Slot Machine License 1367, Condition 5 (five) of which requires PEDP "To exercise due diligence to ensure that at all times, Philadelphia Entertainment and Development Partners, LP, its affiliates, intermediaries, subsidiaries, holding companies, management companies, principals, and key employees meet and maintain the suitability requirements of the Act, including but not limited to, those relating to good character, honesty, integrity and financial fitness." (Exhibit "U", Statement of Conditions)

17. On May 29, 2008, a Slot Machine License was issued to PEDP.

18. Pursuant to 4 Pa. C.S. § 1210 (a)(2), "each slot machine licensee shall be required to operate and make available to play a minimum of 1,500 slot machines at its licensed facility within one year of the issuance by the board of a slot machine license to the slot machine licensee." (Exhibit "V" 4 Pa. C.S. § 1210 (a)(2))

19. May 29, 2009 is one year from the date of the issuance of the slot machine license to PEDP.

20. On May 22, 2009, PEDP filed a petition for an extension of time to make slot machines available. (Exhibit "W" Petition to Extend Time to Make Slot Machines Available)

21. On September 1, 2009, the Board issued an Order granting PEDP's Petition for extension of time to make slot machines available, and extended the time to May 29, 2011, subject to nine conditions. (Exhibit "X", Board Order of September 1, 2009)

22. On November 30, 2009, PEDP filed a Motion to Extend Time to Comply with Conditions 5 and 6 of the Board's Order of September 1, 2009, and on December 15, 2009 the Office of Enforcement Counsel filed an Answer, Objection and Motion for Sanctions in response. (See Exhibit "Y", Petition and Exhibit "Z", Answer)

23. By Order dated February 10, 2010, the Board denied PEDP's request for extension, imposed sanctions against PEDP, and ordered PEDP to appear at a hearing on March 3, 2010. (Exhibit "AA", Board Order of February 10, 2010)

24. At a hearing before the Board on March 3, 2010, PEDP counsel F. Warren Jacoby, Esquire, testified that

there was no capability at that time and that there were no plans in place to be able to develop a facility by May 29, 2011 and that its only contingency plan was to work with Steven Wynn. Without the Wynn transaction the only option would be to look to other sources of financing. (Exhibit "BB", transcript of March 3, 2010, testimony of F. Warren Jacoby, Esquire, Pgs. 52-54)

25. At a hearing before the board on March 3, 2010, PEDP counsel, F. Warren Jacoby testified that PEDP had no "Plan B" if the Wynn proposal and agreement collapsed and that the Wynn proposal and agreement was fundamental to PEDP's license. (Exhibit "BB" transcript of March 3, 2010, testimony of F. Warren Jacoby, Esquire, Pgs. 52-54)

26. On March 3, 2010, the Board issued an Order holding that PEDP failed to meet its burden, by clear and convincing evidence, that it had achieved substantial compliance with Conditions 5 and 6 of the Board's September 1, 2009 Order, and ordered PEDP to submit definitive financial documents required by conditions 5 and 6 by April 26, 2010. (Exhibit "CC", Board Order of March 3, 2010)

27. On April 2, 2010, PEDP signed a Partnership Interest Purchase Agreement with an entity controlled by Wynn Resorts Limited, and submitted the agreement to the

Board and BIE. (Exhibit "DD", Partnership Interest Purchase Agreement)

28. On April 6, 2010, PEDP submitted to BIE/OEC conceptual renderings prepared by Wynn Design & Development, LLC, of a facility proposed to be constructed at the Columbus Boulevard site, and a proposed timeline for construction of that facility. The timeline indicated that the facility, as depicted, would be open to the public on or about July 2, 2012. (Exhibit "EE", letter of April 6, 2010, from F. Warren Jacoby, Esquire)

29. On April 8, 2010, Wynn Resorts Limited terminated all agreements and negotiations with PEDP and the Foxwoods Casino project in Philadelphia, PA. (Exhibit "FF", letter, and Exhibit "GG" press release)

30. The termination of all agreements and negotiations by Wynn included the Partnership Interest Purchase Agreement and the conceptual renderings prepared by Wynn Design & Development LLC.

31. On April 26, 2010, PEDP, through its counsel, submitted correspondence to BIE and the Board which stated among other things that as of that date it did not have for submission to BIE and the Board definitive financial documents, renderings or a timeline for making available 1,500 slot machines at the Columbus Boulevard site by May

29, 2011. (Exhibit "HH", letter of April 26, 2010, from F. Warren Jacoby, Esquire)

32. Since April 26, 2010, PEDP has submitted no documents, architectural renderings, or other materials required by conditions 5 and 6 of the Board Order of September 1, 2010.

42. No construction has begun at the site of the proposed PEDP gaming facility on S. Christopher Columbus Boulevard, Philadelphia, Pennsylvania. (Exhibit "II")

43. PEDP can no longer produce information, documentation and assurances concerning financial background and resources necessary to establish by clear and convincing evidence of its financial stability, integrity and responsibility. Exhibits "E"; "BB"; "EE"; "HH"; "H"; "F"; "G".

44. PEDP no longer has the financial or operational ability to plan, design, and construct a facility at the Columbus Boulevard site with a minimum of 1,500 slot machines available for play by May 29, 2011. Exhibits "E"; "R"; "BB"; "HH"; "H"; "F"; "G".

45. PEDP is no longer suitable for a slot machine license. Exhibits "A"; "B"; "C"; "D"; "E"; "F"; "G"; "H"; "I"; "J"; "K"; "L"; "M"; "N"; "O"; "P"; "Q"; "R"; "S"; "T"; "U"; "V"; "W"; "X"; "Y"; "Z"; "AA"; "BB"; "CC"; "DD"; "EE"; "FF"; "GG"; "HH"; "II", "JJ", "LL",".

III. ISSUES TO BE PROVEN

46. The Elements of Proof which must be established by Complainant consist of the following:

COUNT I
FAILURE TO COMPLY WITH ORDERS OF
SEPTEMBER 1, 2009 AND MARCH 3, 2010

(a) That Orders were issued by the Board on September 1, 2009 and March 3, 2010.

(b) That conditions were attached to those Orders.

(c) That the conditions require PEDP to do or perform certain things.

(d) That PEDP has failed to do or perform those things required by the conditions.

(e) That PEDP has failed to comply with the conditions.

(f) That the effect of the failure to comply with the conditions is an invalidation of the Orders.

COUNT II
FAILURE TO COMPLY WITH STATEMENT OF CONDITIONS

(a) That PEDP agreed to certain conditions in order to obtain and retain their slot machine license.

(b) That PEDP signed a Statement of Conditions on July 11, 2007.

(c) That Condition 5 requires PEDP to meet and maintain the suitability requirements of the Act including financial fitness.

(d) That PEDP has failed to comply with Condition 5 of the Statement of Conditions.

(e) That by failing to comply with conditions five and six, PEDP is subject to penalties, including revocation of its slot machine license.

COUNT III
INABILITY TO HAVE 1500 SLOT MACHINES AVAILABLE FOR PLAY
BY MARCH 29, 2011

(a) That the gaming act requires a slot machine licensee to operate and make available for play 1500 slot machines within one year of the issuance of the slot machine license.

(b) That PEDP's slot machine license was issued on May 29, 2008.

(c) That one year from May 29, 2008 is May 29, 2009.

(d) That an extension of time was granted by the board to May 29, 2011.

(e) That it is not possible for PEDP to have 1500 slot machines available for play by May 29, 2011.

(f) That, by its inability to have 1500 slot machines available for play by May 29, 2011, PEDP is in violation of the Gaming Act, and is subject to penalties, including revocation of its slot machine license.

COUNT IV
FAILURE TO MAINTAIN SUITABILITY

(a) That the Gaming Control Board has general and sole regulatory authority over the conduct of gaming or related activities.

(b) That the Board has the specific power and duty to issue, approve, renew, revoke, suspend, condition or deny issuance or renewal of slot machine licenses.

(c) That an applicant must be found suitable to be awarded a slot machine license.

(d) That PEDP was found suitable financially and operationally to hold a slot machine license.

(e) That PEDP has the duty to maintain its suitability, financially and operationally.

(f) That PEDP has failed to maintain suitability.

(g) That failure to maintain suitability is grounds for revocation.

VI. SUITABILITY STANDARDS

Statutory Authority: (Exhibit "JJ")

4 Pa.C.S. §1313. Slot Machine license application financial fitness requirements.

A. Applicant financial information.- The board shall require each applicant for a slot machine license to produce the information, documentation and assurances concerning financial background and resources as the board

deems necessary to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, its affiliate, intermediary, subsidiary or holding company..

B. Financial backer Information.-The board shall require each applicant for a slot machine license to produce the information, documentation and assurances concerning financial background and resources as the board deems necessary to establish by clear and convincing evidence the integrity of all financial backers, investors, mortgagees, bondholders and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed....

C. (Related to payment of license fee)

D. Applicant's business experience.- The board shall require each applicant for a slot machine license to produce the information, documentation and assurances concerning financial background and resources as the board deems necessary to establish by clear and convincing evidence that the applicant has sufficient business ability and experience to create and maintain a successful, efficient operation....

E. Applicant's operational viability - In assessing the financial viability of the proposed licensed facility,

the board shall make a finding, after review of the application, that the applicant is likely to maintain a financially successful, viable and efficient business operation and will likely be able to maintain a steady level of growth of revenue to the Commonwealth...

Regulatory Authority: (Exhibit "KK")

58 Pa.C.S.441a.9

(a) An applicant for a slot machine license shall prove by clear and convincing evidence:

(1) The financial stability and integrity of the applicant and its affiliates, intermediaries, subsidiaries and holding companies in accordance with section 1313 of the act (relating to slot machine license application financial fitness requirements).

(2) The good character, honesty and integrity of the applicant and its affiliates, intermediaries, subsidiaries, holding companies and principals in accordance with section 1310 of the act (relating to slot machine license application character requirements).

(b) For Category 1 slot machine applications, the State Horse Racing Commission or the State Harness Racing Commission may submit additional information to the Board if it believes the information will assist the Board in

making a determination relating to the operational, financial or character fitness of the applicant.

(c) The Board may issue a slot machine license under this chapter if it determines that the applicant:

(1) Has demonstrated that the applicant will establish and is likely to maintain a financially successful, viable and efficient business operation and will likely be able to maintain a steady level of growth of revenue to the Commonwealth.

(2) Is of good character, honesty and integrity.

PEDP Suitability Report: (EXHIBIT "LL")

Definition:

"The financial suitability of the applicant encompasses an assessment of an applicant's historical financial stability and financial wherewithal to develop the proposed project. In addition, financial suitability assessment includes the proposed project's ability to maintain a steady level and growth of revenue to the Commonwealth." PEDP Suitability Report, Pg. 9.

The Financial Suitability Task Force performed an evaluation of PEDP's financial suitability by analyzing historical financial measures (past financial performance and financial risk profile) that are indicators of an applicant's financial stability.

The Financial Suitability Task Force also considered the Applicant's individual key employee qualifiers and its financial wherewithal for developing its proposed slot machine gaming facility, Foxwoods Casino, as well as the proposed project's potential ability to maintain and grow revenue for the Commonwealth.

Because, PEDP had (and has) no financial history, the Task Force analyzed Mashantucket Pequot Gaming Enterprise's historical financial performance, financial risk profile, and debt structure along with PEDP's corporate structure, key individuals, project funding and project revenue potential. PEDP Suitability Report Pg. 10.

Pennsylvania Supreme Court:

In referencing section 1313 of the Act, the court stated "In brief, that section requires that an applicant for a slot machine license must show by clear and convincing evidence 'the financial stability, integrity and responsibility of the applicant' and related entities and that the 'applicant has sufficient business ability and experience to create and maintain a successful efficient operation"

The Court further stated that section 1313 requires that "in assessing the financial viability of an applicant's proposed facility, the Board must determine

whether 'the applicant is likely to maintain a financially successful, viable and efficient business operation and will likely be able to maintain a steady level of growth of revenue to the Commonwealth'". Station Square Gaming vs. Gaming Control Board, 927 A2d 232 (Pa. 2007)

**V. POWER AND AUTHORITY OF THE
PENNSYLVANIA GAMING CONTROL BOARD**

Pursuant to 4 Pa. C.S. § 1202 (a)(1) "the board shall have general and sole regulatory authority over the conduct of gaming or related activities... The board shall ensure the integrity of the acquisition and operation of slot machines, table games, table game devices, and associated equipment and shall have sole regulatory authority over every aspect of the authorization, operation, and play of slot machines and table games." 4 Pa. C.S. § 1202 (a)(1).

Pursuant to 4 Pa. C.S. § 1202 (b)(12), the board has the specific power and duty "(A)t its discretion, to issue, approve, renew, revoke, suspend, condition or deny issuance or renewal of slot machine licenses." 4 Pa. C.S. § 1202 (b)(12)

Pursuant to 4 Pa. C.S. § 1313 (a), "the board shall require each applicant for a slot machine license to produce the information, documentation and assurances

concerning financial background and resources as the board deems necessary to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, its affiliate, intermediary, subsidiary or holding company.." 4 Pa. C.S. §1313(a).

VI. ARGUMENT

Pursuant to 58 Pa Code § 493a.10(b), "After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for summary judgment based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits.

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, "After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law.

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof

at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

A Motion for Summary Judgment should be granted when there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report. Pa. Rule of Civil Procedure 1035.2.

A Motion for Summary Judgment may be granted without an evidentiary hearing by an agency. Snyder vs Department of Environmental Resources, 138 Pa. Cmwlth.534, 588 A2d 1001, where the Court held that 2 Pa. C.S. § 504 which requires a hearing before an agency can issue an adjudication does not apply to a situation where no legally relevant factual issue is in dispute. Id. at 1005.

The legal standard of Pa. R.C.P. 1035.2 states that "where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law, summary judgment may be entered. Where the non-moving party bears the burden of proof on an issue, he may not merely rely on his pleadings or answers in order to survive summary judgment." Coleman vs Wyeth Pharmaceuticals, Inc., ___ A2d ___, 2010, WL 3385964 (Pa. Super); ADP, Inc. vs Morrow Motors Inc., 969 A2d 1244 (Pa Super 2009). The

reason for a summary judgment motion is "to avoid a useless trial but is not, and cannot, be used to provide for trial by affidavits or trial by depositions." Curran vs Philadelphia Newspapers, Inc., 497 Pa. 163; 439 A2d 652 (1981). The Pennsylvania Supreme Court has cautioned, however, that, when it considers a motion for summary judgment, "a lower court must examine the whole record, including the pleadings, any depositions, any answers to interrogatories, admissions of record, if any, and any affidavits filed by the parties. From this thorough examination, the lower court will determine the question of whether there is a genuine issue as to any material fact. Stimmler vs. Chestnut Hill Hospital, 602 Pa. 539, 981 A2d 145 at 154, citing Thompson Coal Co. vs Pike Coal Co. 488 Pa. 198, 412 A2d 466 (1979).

The elements of the counts in the Complaint in this matter have been set forth above. Taking into consideration, the pleadings, answers to interrogatories, and depositions taken during discovery, it is clear that there are no genuine issues of any material fact required to prove all the necessary elements of the cause of action in the Complaint. Each element of each cause of action is either admitted, uncontested or supported by deposition testimony, affidavit, or interrogatory answers.

A review of the pleadings shows that in its Answer to the Complaint PEDP admitted almost all factual allegations. Their denials were based almost exclusively on the lack of the original document referred to, or on items which are not material to the issues required to be proven.

In their Answer PEDP alleged Defenses which do not dispute the factual issues. Those claimed defenses are nothing more than excuses, or reasons, why PEDP has failed to comply with Board Orders, build a gaming facility, or remain suitable. While those excuses may garner sympathy, they do not provide a defense to the allegations in the Complaint, nor do they provide any genuine issue for any material fact.

The issues of fact, supported by the attached Exhibits clearly show that PEDP has failed to comply with Board Orders of September 1, 2009, and March 3, 2010, and nothing has been revealed through the discovery process to dispute those facts. The Board should rule that PEDP has failed to ~~comply with the conditions of their Orders.~~ When the Board granted PEDP additional time to build their gaming facility, it did so with the requirement that PEDP comply with nine conditions. Since PEDP has failed to meet the conditions of the Order, the Order is no longer valid, the time has not been extended, and PEDP is in violation of the

Gaming Act for failing to have 1,500 slot machines available for play by May 27, 2009. Since they are in violation of the Gaming Act, the Board may, and should revoke their license.

The issues of fact, supported by the attached Exhibits clearly show that PEDP is in no condition financially or operationally to build a gaming facility in the time required by the Gaming Act. Even though the board conditionally extended the time to build the gaming facility until May 29, 2011, it is physically not possible to build the facility for which they were approved for licensure by that date.

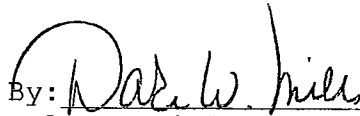
Because of their dire financial condition, PEDP has violated condition 5 (five) of its statement of condition, and the issues of fact, supported by the attached Exhibits clearly prove the violation. These financial problems, in the end make them unsuitable financially and operationally, and the issues of fact, supported by the attached Exhibits clearly prove that PEDP is unsuitable to hold a slot machine license.

The issues of fact, supported by the attached Exhibits clearly show that PEDP has failed to comply with the Gaming Act, the Statement of Conditions, Board Regulations and Board Orders. PEDP has failed to build a gaming facility

as they promised on November 14, 2006. They have not begun construction of a gaming facility and have no ability to do so. Foxwoods Development Corporation, the affiliate of PEDP no longer has the desire or ability to construct and operate a gaming facility.

WHEREFORE, The Bureau of Investigations and Enforcement, through the Office of Enforcement Counsel respectfully requests that the Pennsylvania Gaming Control Board grant this Motion for Summary Judgment, and revoke the slot machine license of Pennsylvania entertainment and Development Partners, LP.

Cyrus R. Pitre, Esquire
Chief Enforcement Counsel

By: 
Dale W. Miller, Esquire
Deputy Chief Enforcement Counsel

BEFORE THE
THE PENNSYLVANIA GAMING CONTROL BOARD

COMMONWEALTH OF PENNSYLVANIA	: PGCB DOCKET NO.
GAMING CONTROL BOARD	: NO. 1408-2010
BUREAU OF INVESTIGATIONS	:
AND ENFORCEMENT,	: ADMINISTRATIVE
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PHILADELPHIA ENTERTAINMENT AND	:
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FOXWOODS CASINO PHILADELPHIA	: JUDGMENT
SLOTS LICENSE 1367	:
Respondent	:

O R D E R

AND NOW, this day of , 2010,
upon consideration of the within Motion for Summary
Judgment, the Motion for Summary Judgment is Granted, and
the slot machine license of Philadelphia Entertainment and
Development Partners, L.P. is revoked.

By the Board:

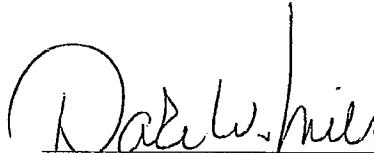
Gregory C. Fajt
Chairman

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 5th day of October, 2010, a copy of this Motion for Summary Judgment was served upon attorneys for the Petitioner, LeRoy S. Zimmerman, Esquire, Robert A. Graci, Esquire, F. Warren Jacoby, Esquire, and Stephen A. Cozen, Esquire, who are authorized to accept such service, by first class mail to:

LeRoy S. Zimmerman, Esquire
Robert A. Graci, Esquire
Eckert Seamans Cherin & Mellot, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

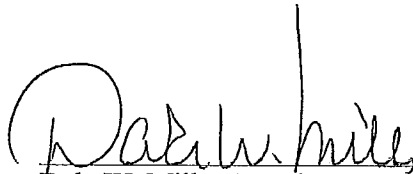
F. Warren Jacoby, Esquire
Stephen A. Cozen, Esquire
Cozen O'Conner
1900 Market Street
Philadelphia, PA 19103



Dale W. Miller, Esquire
Pennsylvania Supreme Court ID # 33520
Deputy Chief Enforcement Counsel
Pennsylvania Gaming Control Board
Office of Enforcement Counsel
1001 East Hector Street
Conshohocken, PA 19428-5300
(610) 943-7426

VERIFICATION

I, Dale W. Miller, Esquire, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in cursive script that reads "Dale W. Miller". The signature is written in black ink and is positioned above a horizontal line.

Dale W. Miller, Esquire
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