

RECEIVED

2010 MAY 13 PM 4:54

PA GAMING CONTROL BOARD
OFFICE OF THE CLERK

BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD

FILED
MAY 13 2010
1408-2010
Board Clerk PGCB

COMMONWEALTH OF
PENNSYLVANIA GAMING CONTROL
BOARD BUREAU OF
INVESTIGATIONS AND
ENFORCEMENT,
Complainant,

v.

PHILADELPHIA ENTERTAINMENT
AND DEVELOPMENT PARTNERS, L.P.
D/B/A FOXWOODS CASINO
PHILADELPHIA SLOT MACHINE
LICENSE 1367,
Respondent.

Filed By: Philadelphia Entertainment and
Development Partners, L.P.

:
:
: Docket No. 1367
:
:
: Office of Hearings and Appeals Docket
: Number: 1498-2010

: ADMINISTRATIVE HEARING

: COMPLAINT, ORDER AND
: RULE TO SHOW CAUSE

: Counsel of Record:
Stephen A. Cozen, Esquire
(PA ID #03492)
F. Warren Jacoby, Esquire
(PA ID #10012)
John V. Donnelly III, Esquire
(PA ID #93846)
Jared D. Bayer, Esquire
(PA ID #201211)
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
(215) 665-2000

LeRoy S. Zimmerman, Esquire
(PA ID #07278)
Robert A. Graci, Esquire
(PA ID #26722)
**ECKERT SEAMANS CHERIN &
MELLOTT, LLC**
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000

**UNOPPOSED MOTION BY PHILADELPHIA
ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P.
FOR AN EXTENSION OF TIME TO RESPOND TO COMPLAINT,
ORDER AND RULE TO SHOW CAUSE PURSUANT TO 58 Pa. Code § 497a.5**

MOVANT, Philadelphia Entertainment and Development Partners, LP d/b/a Foxwoods Casino Philadelphia ("PEDP"), by and through its undersigned counsel, hereby moves for an extension of time to respond to the Complaint, Order and Rule to Show Cause ("Complaint") filed by the Office of Enforcement Counsel ("OEC") on behalf of the Bureau of Investigations and Enforcement ("BIE") for a period of 30 days pursuant to 58 Pa. Code § 497a.5, and, in support thereof, avers as follows:

1. On September 1, 2009, the Pennsylvania Gaming Control Board ("Board"), acting pursuant to its discretion under section 1210 of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. § 1210, issued an Adjudication and Order granting the Petition of PEDP to Extend the Time to Make Slot Machines Available subject to certain Conditions.

2. After a hearing on March 3, 2010, at which the Board heard testimony from representatives of PEDP and Wynn Resorts, Limited ("Wynn") concerning PEDP's agreement with Wynn and its affiliates ("Wynn Transaction") that had recently been memorialized in a Term Sheet that had been provided by PEDP to BIE, the Board directed PEDP to submit definitive financing documents to the Board and OEC no later than March 31, 2010, and to submit the documents required by Conditions 5 and 6 of the Board's Order of September 1, 2009, by April 26, 2010.

3. On March 31, 2010, PEDP submitted to BIE its definitive financial documents in conjunction with the proposed Wynn Transaction, and subsequently submitted fully executed copies of such documents to BIE on April 5, 2010. Thereafter, on April 6, 2010, PEDP submitted to BIE documents in response to Conditions 5 and 6 of the September 1, 2009 Order in conjunction with the Wynn Transaction.

4. At the April 7, 2010 meeting of the Board, BIE, through OEC, acknowledged that PEDP complied with the deadlines imposed by the Board in its March 3, 2010 Order for the submission of definitive financial documents and the documents required by Conditions 4, 5 and 6 of the Board's Order of September 1, 2009.

5. On April 8, 2010, without any warning to PEDP, the Board, BIE, or any state or local officials, Wynn unilaterally terminated the Wynn Transaction, and all related documents between Wynn and PEDP.

6. On April 28, 2010, PEDP and BIE, through OEC, entered into a Consent Agreement for submission to the Board pursuant to which, among other things, PEDP would have been accorded 180 days from the Board's approval of the Consent Agreement within which to deliver to the Board and BIE certain documents and information as required by Conditions 4, 5 and 6 and the Board's Order of March 3, 2010 in order to provide PEDP relief from the deadlines imposed by the Board's September 1, 2010 Order, as amended by its March 3, 2010 Order, as the result of the Wynn unilateral termination..

7. At its April 29, 2010 meeting, the Board issued its Order wherein it refused to approve such Consent Agreement, without prejudice.

8. Thereafter on that same day, April 29, 2010, shortly after the Board's rejection of the Consent Agreement, BIE, through OEC, filed a Complaint against PEDP seeking the revocation of its slot machine license.

9. Counsel for PEDP received the Complaint by electronic mail on April 29, 2010.

10. Although the proposed Order that accompanied the Complaint calls for the Board to set the number of days in which PEDP is to answer the Complaint, pursuant to the Board's

Regulations, responses to complaints must be filed within 30 days after service of a complaint.
58 Pa. Code § 493a.5(a).

11. Since the last day of the 30 day response period is a Saturday and the next day after the due date that is not a Sunday or legal holiday is June 1, 2010, pursuant to the Board's regulations, PEDP's response to the Complaint is due on June 1, 2010. 58 Pa. Code § 493a.5(a).

12. PEDP continues to work diligently to secure the necessary funding and/or financing for its casino project – following Wynn's unilateral and wholly unexpected termination of the Wynn Transaction – so as to be able to make new submissions to the Board in response to Conditions 4, 5, and 6 of the Board's Order of September 1, 2009, and the Board's Order of March 3, 2010..

13. In addition, while it continues with its efforts of seeking funding and financing in place of that which was to have been provided by Wynn, PEDP is also continuing in its efforts to submit to BIE and the Board a proposal for the re-setting of the timeframes to comply with Conditions 4, 5 and 6, which would be acceptable to the BIE and Board, and consistent with its efforts and the status of its negotiations with potential investors to replace Wynn.

14. During the same time period, PEDP has commenced an analysis of the events, litigation and documents relating to the period commencing in December 2006 to date (including with respect to the Wynn Transaction) as part of its preparation of its defense against the revocation Complaint filed by BIE, all of which will bear materially upon the factual and legal issues to be presented to the Board in conjunction with its consideration and disposition of such Complaint.

15. Pursuant to § 497a.5 of the Board's regulations, 58 Pa. Code § 497a.5, the Board may, upon timely motion and for good cause shown, extend any period of time set forth in any Order of the Board.

16. PEDP respectfully submits that good cause exists here to grant PEDP a thirty-day extension of time within which to respond the Complaint until July 1, 2010.

17. By way of the Complaint, the BIE seeks the revocation of the Category 2 slot machine license issued to PEDP, which is effectively the ultimate sanction that the Board can impose on a slot machine licensee.

18. To date, the Board has never revoked any slot machine license issued under the Gaming Act or, indeed, held proceedings to consider the revocation of a slot machine license.

19. The slot machine licensure revocation proceeding commenced by the Complaint is therefore a matter of first impression, such that PEDP has only limited guidance as to matters of procedure and substance as it prepares its defense to such Complaint. Thus, in addition to its review of such matters, it is also necessary to not only refer to Pennsylvania law, but to the law and rulings of other jurisdictions as to matters such as the proposed revocation.

20. PEDP has invested substantial sums to obtain the slot machine license, including the \$50 million licensing fee paid to the Commonwealth, as well as many millions of dollars more in its efforts to develop a licensed gaming facility.

21. PEDP has also expended substantial efforts to develop its licensed gaming facility as approved by the Board, including its substantial, though ultimately unsuccessful, efforts invested in the Wynn Transaction over an extended period of time from November, 2009 until

April, 2010, which was terminated for reasons beyond PEDP's control and anticipation, as well as that of the Board and BIE.

22. Given the gravity of the ultimate sanction at issue, the substantial investment and efforts by PEDP in this project, and the resulting significant record at issue, PEDP needs adequate time to prepare its response to the Complaint and PEDP does not anticipate being able to do so by June 1, 2010.

23. Additionally, between the date of the filing of this Motion for Extension of Time and the date that PEDP's response is due, counsel for PEDP must prepare for and attend oral argument before the Commonwealth Court to defend against an attack on PEDP's license and the Board's Order of September 1, 2009, which is scheduled to be held before a panel of the Court sitting in Philadelphia on May 18, 2010.

24. Good cause exists for said extension of time to respond, and no prejudice will arise if said request is granted. *See* 58 Pa. Code § 497a.5(a)(1).

25. This application is made prior to the expiration of the time period originally prescribed by the Board's Regulations. *See* 58 Pa. Code § 497a.5(a)(1).

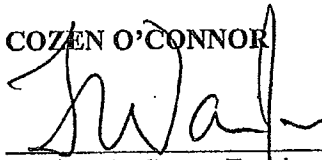
26. Chief Enforcement Counsel for BIE has advised the undersigned that BIE consents to PEDP's request for a 30 day extension to respond to the Complaint.

27. Accordingly, it is respectfully requested that the Board exercise its authority and grant PEDP's application for an extension of time to respond to the Complaint.

WHEREFORE, for the foregoing reasons, Movant, Philadelphia Entertainment and Development Partners, LLP respectfully requests that the Pennsylvania Gaming Control Board extend the time by which PEDP must respond to the Complaint, Order and Rule to Show Cause until July 1, 2010.

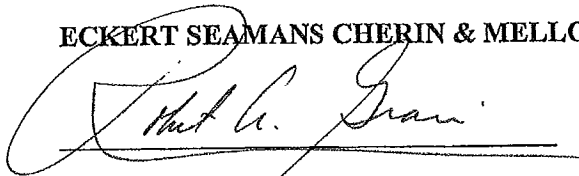
Respectfully submitted,

COZEN O'CONNOR



Stephen A. Cozen, Esquire (PA ID #03492)
F. Warren Jacoby, Esquire (PA ID #10012)
John V. Donnelly III, Esquire (PA ID #93846)
Jared D. Bayer, Esquire (PA ID #201211)
1900 Market Street
Philadelphia, PA 19103
(215) 665-2000

ECKERT SEAMANS CHERIN & MELLOTT, LLC



LeRoy S. Zimmerman, Esquire (PA ID #07278)
Robert A. Graci, Esquire (PA ID #26722)
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000

*Attorneys for Philadelphia Entertainment and
Development Partners, L.P.*

VERIFICATION

I hereby state that I am authorized to make this Verification on behalf of PEDP, and I state that the facts above set forth in the foregoing Unopposed Motion to An Extension of Time to Respond to Complaint, Order and Rule to Show Cause 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).

Date: May 13, 2010

A handwritten signature in black ink, appearing to be "D. R. J.", written over a horizontal line.

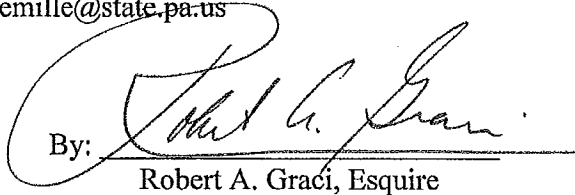
CERTIFICATE OF SERVICE

I certify that I am this day serving a complete copy of the foregoing Consent Motion to
Extend Time by electronic mail upon the following:

Cyrus R. Pitre, Esquire
Chief Enforcement Counsel
Strawberry Square—Verizon Tower
303 Walnut Street, 5th Floor
Harrisburg, PA 17101-1825
cpitre@state.pa.us

Dale William Miller, Esquire
Deputy Chief Enforcement Counsel
Pennsylvania Gaming Control Board
1001 Hector Street, Suite 410
Conshohocken, PA 19428-5300
dalemille@state.pa.us

By:



Robert A. Graci, Esquire

Dated: May 13, 2010

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

IN RE :
PHILADELPHIA ENTERTAINMENT AND :
DEVELOPMENT PARTNERS, L.P., d/b/a : **PGCB Docket No. 1367**
FOXWOODS CASINO PHILADELPHIA :
:

ORDER

AND NOW, this ____ day of May 2010, the Board hereby **GRANTS** the Unopposed Motion by Philadelphia Entertainment and Development Partners, L.P. for an Extension of Time to Respond to Complaint, Order and Rule to Show Cause Pursuant to 58 Pa. Code § 497a.5 for good cause shown. The time for PEDP to respond to the Complaint, Order and Rule to Show Cause is hereby **EXTENDED** by 30 days until July 1, 2010.

By: _____
Gregory C. Fajt, Chairman
Pennsylvania Gaming Control Board