Wolf Block

213 Market Street, 9th Floor, P.O. Box 865, Harrisburg, PA 17108-0865
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

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Dino A. Ross
Direct Dial: (717) 237-7189
Direct Fax: (717) 237-2769
E-mail: dross@wolfblock.com

June 11, 2007

VIA HAND DELIVERY

Richard Sandusky, Director
Regulatory Review
Pennsylvania Gaming Control Board
5th Floor, Strawberry Square
Harrisburg, PA 17101

Re: Downs Racing, L.P.'s Comments to Proposed Rulemaking
In re: Regulation #125-61

Dear Mr. Sandusky:

Enclosed please find Downs Racing, L.P.'s comments to Proposed Rulemaking with regard to the above-referenced Regulation.

Respectfully submitted,

Dino A. Ross
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DAR/spa
Enclosures

HAR:73628.1/MOH005-222463

BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD

In re: Regulation #125-61 Proposed Rulemaking – 58 Pa. Code, Chapters 421a, 423a, 425a, 427a, 431a, 436a, 438a, 439a and 440a	:

DOWNS RACING, L.P.'S COMMENTS TO PROPOSED RULEMAKING

Down's Racing, L.P. ("Downs Racing") is the holder of a Category 1 slot machine license which authorizes it to operate the Mohegan Sun at Pocono Downs in Plains Township, Pennsylvania. Downs Racing submits these comments to the Board's Proposed Rulemaking, as captioned above, which was published in the Pennsylvania Bulletin on May 12, 2007 at 37 Pa. B. 2197.

Comments to Chapter 421a and 423a

Chapters 421a and 423a of the proposed regulations are interrelated and govern the application process for licenses, permits, registrations and certifications. The focus of Downs Racing's comments to these Chapters are the requirements imposed on licensees pursuant to the annual renewal process. Although it is unclear from the regulations, Downs Racing opposes any annual renewal process that requires more than a material update of information contained in the prior application (whether the initial application or a subsequent renewal thereof). The initial application filed by Downs Racing consisted of 18 volumes and thousands of pages and required hundreds of hours at great expense and effort to compile and file. Adoption of a renewal process that even comes close to that required in the initial application would serve no purpose and be wasteful of both the resources of the licensee in compiling it and the Board in reviewing it.

Section 1326 of the Pennsylvania Race Horse Development and Gaming Act (the "Act"), 4 Pa. C.S. §1326, governs the renewal process. It provides, in relevant part, as follows:

> All permits and licenses issued under this part, unless otherwise provided, shall be subject to renewal on an annual basis upon the application of the holder of the permit or license submitted to the Board at least 60 days prior to the expiration of the permit or license. The application renewal shall include an update of the information contained in the initial and any prior renewal applications and the payment of any renewal fee required by this part. A permit or license for which a completed renewal application and fee, if required, has been received by the Board will continue in effect unless and until the Board sends written notification to the holder of the permit or license that the Board has denied the renewal of such permit or license. (emphasis supplied).

Accordingly, pursuant to the plain language of Section 1326, the renewal process is intended to address only changes in information from the prior year which are material to a licensee's suitability for licensure. All that is envisioned by this process is the provision by the licensee of material updates, nothing else.

This construction is further supported by the required frequency of renewals. The Act requires that any license/permit be renewed on an annual basis. In light of this frequency, it is clear that the legislature intended that the licensee provide only material updates to its application. A contrary interpretation would be extremely burdensome and serve no regulatory purpose.[1]

Chapters 421a and 423a of the proposed regulations purportedly were promulgated to govern the renewal process. However, there is no specific provision

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[1] It is important to note that New Jersey requires licenses to be renewed only every five years and as a result of a longer renewal period, requires that more information be provided in the renewal application. See N.J.S.A. 5:12-88; N.J.A.C. 19:43-11:2. Accordingly, it follows that a renewal period that is significantly shorter should require much less information – only material changes that have occurred in the time period since the last filing.

governing renewals and no guidelines or procedures regarding renewal applications.[2] These regulations should clearly and unequivocally contain provisions that provide the licensee with guidance through the renewal process and track the requirements of §1326 of the Act.

For example, the final regulations should provide the following: (1) the renewal application will only include material updates that have occurred during the prior year and that the Board's investigation and review will be restricted to those updates. "Material" should be defined to include only those updates which will have an effect on a continued finding of suitability;[3] (2) given that it is not always clear when the license was issued and therefore when the renewal application is due, the regulations should require the Board to notify each individual and corporate licensee 120 days prior to expiration of a given license or permit; (3) consistent with §1326, the regulation should provide that the renewal application is deemed approved unless expressly denied by the Board; (4) given the express language of §1326, the regulations should make it clear that renewals only apply to licenses and permits, not to registrations and certifications.

It is important that the renewal process be a streamlined and narrow process for several reasons. First, the Act requires it to be so. Section 1326(a) does not envision a

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2 No renewal forms are posted on the Board's website except those applicable to manufacturers and suppliers, which are governed by Section 1317 of the Act.

3 The requirement of materiality would especially be important in the context of providing financial information. A licensee should not be required to annually file voluminous financial records or construct new net worth statements if there has only been insignificant changes. Only those changes that effect suitability should be required to be disclosed.

costly or burdensome process which revisits suitability issues outside of material updates. Second, the regulation imposes costs on the licensee, directly through the use of its own resources and indirectly through costs incurred by the Board which are then subject to recovery from the licensee. Given the already high tax rate imposed on licensees in Pennsylvania, the Board should restrict the imposition of regulations to that which is consistent with the Act and which is necessary for the public benefit.

A contrary interpretation of the requirements of the Act and content of the renewal application would serve no regulatory purpose. The Act as it now stands already requires a licensee to promptly notify the Board of any action that it believes would constitute a violation of the Act.[4] Additionally, the Statement of Conditions for each licensee generally requires the licensee to promptly report any material suitability issues. Accordingly, there presently exists a system of checks, balances and safeguards that allows the Board to continuously monitor suitability issues concerning each licensee. To require more than material updates in the annual renewal application would therefore be unnecessary and overly burdensome.

Comments to Chapter 440a

Chapter 440a of the proposed regulations concerns management companies. The focus of Downs Racing's comments to this Chapter is Section 440a.4(b), which provides as follows:

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[4] 4 Pa. C.S. §1331(3) and (4) (any licensee, key employee or gaming employee has duty to inform Board of any actions believed to be a violation of act and to notify the Board of any arrests, violations or offenses under 18 Pa. C.S.).

(b) Notwithstanding any provision to the contrary in a management contract, a management company shall be jointly and severally liable for any act or omission by the slot machine licensee in violation of the act or this part, regardless of actual knowledge by the management company of the act of omission.

This section establishes that a management company is jointly and severally liable for acts or omissions of the slot licensee regardless of fault. The liability imposed on a management company pursuant to this chapter is too broad and in many cases, not fair or equitable. While Downs Racing has no objection to a regulatory scheme that holds a management company jointly and severally liable for acts or omissions within the purview of the management contract or direct operation of the casino, it is improper to hold the management company liable for the actions of the slot licensee outside the purview of the management contract or the operation of the casino. Not only would the management company be without fault regarding these transgressions, it would have no way of knowing about them and no ability to take appropriate steps to prevent them. This particular provision therefore could dissuade potential qualified management companies from contracting to manage Pennsylvania casinos and inhibit the production of optimal revenue for the Commonwealth. This certainly is not in the public interest.

Examples of the inequity of this strict liability provision are violations under §1512 and §1513 of the Act.[5] Under these provisions, a management company would be jointly and severally liable for the improper delivery of complimentary services by the slot licensee and for an improper political contribution made by the slot licensee. These types of violations are far too attenuated to subject the management company to liability.

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[5] 4 Pa. C.S. §§1512, 1513.

There is no way that a management company could do anything to prevent these violations and accordingly, it should not be held jointly or severally liable for them.

Moreover, section 440a.5(g) of the proposed regulation provides that the duties and obligations imposed on the slot licensee by the Act are not within the purview of the management company and remain the responsibility of the slot licensee.[6] Accordingly, the language of the regulation recognizes that certain duties and obligations under the Act are solely the responsibility of the slot licensee and cannot be delegated to the management company. Therefore, it follows that the management company should not be held liable for violations of those non-delegable duties and obligations of the slot licensee.

Section 440a.4(b) should be stricken or, alternatively, modified to provide that the management company can only be held jointly and severally liable for the actions or omissions of the slot licensee that are within the purview of the management contract or relate directly to the operation of the casino.

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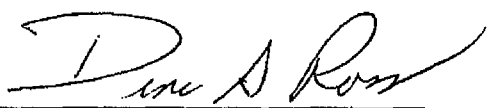
[6] Section 440a.5(g) provides that "a slot machine licensee and licensed management company may not contract for the delegation of any benefits, duties or obligations specifically granted to or imposed upon the slot machine licensee by the act."

Wherefore, for all the foregoing reasons, Downs Racing requests the Board to incorporate its comments into its final rulemaking.

Respectfully submitted:



Dino A. Ross, Esquire
Wolf, Block, Schorr and Solis-Cohen LLP
213 Market Street, 9th Fl.
Harrisburg, PA 17101
717-237-7189
Counsel for Downs Racing, L.P. and the Mohegan Tribal Gaming Authority

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