

FILED
JUN 23 2016
Board Clerk PGCB

COMMONWEALTH OF PENNSYLVANIA
GAMING CONTROL BOARD

3097-2013
3099-2013
3100-2013
3101-2013

IN RE: :
:
APPLICATION OF MARKET EAST :
ASSOCIATES :
:
APPLICATION OF PHL LOCAL :
GAMING, LLC :
:
APPLICATION OF STADIUM :
CASINO, LLC :
:
APPLICATION OF TOWER :
ENTERTAINMENT, LLC :
:
Applications for Category 2 :
Slot Machine License in Philadelphia, PA :
a City of the First Class :
:

APPLICATION: 73576
DOCKET: 3097-20113
:
APPLICATION: 73581
DOCKET: 3099-2013
:
APPLICATION: 73580
DOCKET: 310-2013
:
APPLICATION: 73496
DOCKET: 3101-2013

SUPPLEMENTAL ADJUDICATION OF THE PENNSYLVANIA
GAMING CONTROL BOARD IN THE MATTER OF THE
APPLICATIONS FOR THE CATEGORY 2 SLOT MACHINE
LICENSE IN THE CITY OF THE FIRST CLASS, PHILADELPHIA

On November 18, 2014, the Pennsylvania Gaming Control Board (“Board”) issued an Adjudication which awarded a Category 2 slot machine license designated for the City of Philadelphia to Stadium Casino, LLC (“Stadium”). That Adjudication was the culmination of a nearly two year long process which involved the acceptance of six substantial and competing applications for the license, thorough background investigations, public input hearings in Philadelphia, traffic studies and financial fitness reviews. By the time the final public suitability hearings were held in Philadelphia in late January 2014, four applicants remained: Stadium, Market East Associates, PHL Local Gaming and Tower Entertainment. Additionally, existing Category 2 licensee SugarHouse Casino was granted limited intervention in the proceedings to address the issue of alleged market saturation.

Following issuance of the Adjudication, Market East and SugarHouse Casino appealed. SugarHouse appealed the denial of intervention and attempted to appeal other issues for which it was not granted party status. Market East’s appeal asserted that 1) a grant of the license to Stadium presented an undue concentration of economic opportunities, 2) Stadium was not eligible to apply for a Category 2 license under 4 Pa.C.S. § 1304 because it was otherwise eligible to apply for a Category 1 license, 3) the grant of the license to Stadium violates § 1330’s one-and-a-third ownership rule, and 4) the Board’s grant of the license to Stadium was arbitrary and a capricious disregard of the evidence.

The parties extensively briefed the various issues and on March 29, 2016, the Pennsylvania Supreme Court issued an Opinion which affirmed, in part, and vacated, in part, the Board's award of the Category 2 slot machine license for the City of Philadelphia to Stadium. Specifically, with regard to SugarHouse Casino, the Court held that the Board did not err in granting limited intervention to SugarHouse as to the issue of market saturation and in denying intervention as to the other issues for which there were other parties to the proceedings to adequately represent the interests, i.e. issues of Stadium's eligibility to be granted the license under various provisions of the Gaming Act. With respect to the only issue for which it had been granted intervention and obtained party status, alleged market saturation, SugarHouse had failed to address the issue in its brief and hence waived any argument on appeal. *See Opinion*, at pp. 14-20.

With regard to the Market East appeal, the Court rejected claims that the Board did not address whether the grant of the license to Stadium presented an undue concentration of economic opportunities, as well as that the Board's grant of the license to Stadium was arbitrary and a capricious disregard of the evidence and thereby affirmed the Board's decision as to those issues. However, the Court found two issues which it could not resolve based upon the record presented and remanded the matter to the Board to issue supplemental findings of fact and

conclusions of law as to those two matters.¹ The two issues which the Court remanded to the Board are the following:

1. Noting that Section 1302 of the Race Horse Development and Gaming Act (“Gaming Act”), 4 Pa.C.S. § 1101, *et. seq.* prohibits a person eligible to apply for a Category 1 license from applying for a Category 2 license, the Court stated it could not determine whether Watche Manoukian continues to be eligible to apply for a Category 1 license for another facility. As such, the Court remanded for the Board to address whether Stadium or any of its affiliates was eligible to apply for another Category 1 slot machine license at the time Stadium applied for a Category 2 slot machine license, and
2. The Court stated that Section 1330 of the Gaming Act prohibits a licensee from possessing an ownership or financial interest that is greater than 33.3% in another licensee. The Court noted that while the Board addressed the “ownership” of Stadium by Mr. Manoukian, it had not addressed the “financial interest” held by Manoukian. Accordingly, the Court has remanded that issue for the Board to address whether Manoukian would have a “financial interest” in Stadium that violates the prohibition on multiple slot machine licensees contained in Section 1330 of the Gaming Act.²

Based on the foregoing, the Board determines that adequate factual basis exists within the record of the proceedings before it, as well as within official records of the Board, to address these two issues. As such, an additional hearing

¹ On the fourteenth day after the Court issued the Opinion, SugarHouse Casino filed a Petition for Reargument of the Court’s disposition of the intervention matter. The filing of the petition caused jurisdiction to be retained by the Court and hence the record was not remanded for the Board to issue this Supplemental Adjudication until the Petition for Reargument was denied by the Court on June 2, 2016.

² The Board notes that the distinction between the ownership interest and financial interest was not raised before the Board by Market East or any other competing applicant during the licensing proceeding or on appeal.

for the purpose of taking further evidence is not necessary.³ As such, the Board issues the following additional Findings of Fact and Conclusions of Law, which supplement the Board's November 18, 2014 Adjudication.⁴ Based upon the Record as more fully set forth below, the Board finds that Stadium was eligible to apply for the Category 2 slot machine license for the City of Philadelphia as neither it, nor any of its affiliates, intermediaries, subsidiaries or holdings companies were otherwise eligible to apply for a Category 1 license and that Watche Manoukian's financial interest in Stadium does not violate the prohibition on multiple slot machine licensees contained in Section 1330 of the Gaming Act.

This Supplemental Adjudication is provided in response to the Court's March 29, 2016 Opinion.

³ The Board also bases its decision herein upon facts which the Board is entitled, in its quasi-judicial capacity, to take notice of pursuant to the Commonwealth Documents Law, Section 506, which provides that the contents of the Pennsylvania Bulletin shall be judicially noticed. 45 Pa.C.S. §506. *See also Com. v. Brown*, 428 Pa.Super. 587, 592, 631 A.2d 1014, 1016 (1993). Additionally, an administrative agency may take official notice of information contained in its own files. *Ramos v. Pa Bd. of Prob. and Parole*, 954 A.2d 107, 109-10 (Pa. Cmwlth. Ct. 2008).

⁴ The Board's November 18, 2014 Adjudication is attached hereto as Exhibit A and all findings of fact, conclusion of law and discussion therein are incorporated herein by reference as though they were set forth at length herein.

SUPPLEMENTAL FINDINGS OF FACT

Eligibility of Stadium's Affiliates to Apply for another Category 1 Slot Machine License

1. Of the seven (7) Category 1 slot machine licenses contemplated and authorized in Section 1307 of the Gaming Act, the Board awarded six (6) of the licenses to eligible licensed racing entities in 2006.⁵
2. As six (6) Category 1 slot machine licenses have already been awarded, the Board may award only one (1) additional Category 1 slot machine license to an otherwise eligible applicant. 4 Pa.C.S. § 1307.
3. In 2007, the Pennsylvania Harness Racing Commission ("Racing Commission") awarded Valley View Downs, LP ("Valley View") a harness racing license for a to-be-built racetrack facility in Lawrence County, Pennsylvania.⁶ As the only entity to hold a requisite racing license that had not already been authorized by the Board to operate slot machines at its racetrack facility, Valley View thereafter applied to the Board for the one

⁵ The list of the six licensed racing entities that were awarded Category 1 slot machine licenses in 2006 and their affiliates, principals and key employees can be found at 41 Pa.Bull. 1086, February 26, 2011: <http://www.pabulletin.com/secure/data/vol41/41-9/362.html>.

⁶ A complete listing of all persons or entities that have **applied for or have held a racetrack license and/or slot machine license**, and all of their affiliates, intermediaries, subsidiaries, holding companies, principals and key employees thereof, is published on a yearly basis in the *Pennsylvania Bulletin* as required under the Gaming Act. See 4 Pa.C.S. §§ 1202(b)(27)-(27.1) and 1513(a.2)(1).

available Category 1 slot machine license. *See 42 Pa.Bull. 471*, January 21, 2012.

4. In 2013, Endeka Entertainment, LP (“Endeka”) purchased the Valley View project and was approved by the Racing Commission to hold the harness racing license. *44 Pa.Bull. 1537*, March 15, 2014. As an entity with the requisite racing license, Endeka then filed its application for the available Category 1 license and its application and the applications of its affiliates remain pending with the Board. *46 Pa.Bull. 1984*, April 16, 2016.
5. At the time Category 2 applications were submitted in November 2012, Stadium represented to the Board, under penalty of perjury, that it was eligible for a Category 2 license because neither Stadium nor any of its affiliates, intermediaries, subsidiaries or holding companies (collectively referred to herein as “affiliates”) were otherwise eligible to apply for the Category 1 slot machine license. *See Stadium Casino LLC’s Application, Appendix 23 and Affidavit.*
6. After completing the background investigation of each applicant, the Bureau of Investigations and Enforcement (“BIE”) provided the Board with a Background Investigation Report of Stadium which was incorporated into the Bureau of Licensing’s (“BOL”) Suitability Report of the applicant. The Suitability Report affirmed Stadium’s representation that Stadium was, in

fact, eligible for the Category 2 license as it was not otherwise eligible to apply for the Category 1 license. *See Category 2 Background Investigation and Suitability Report of Stadium*, p. 1-2, and see *January 30, 2014 Stadium Suitability Hearing Transcript*, p.114 and 117 (the BOL and BIE finding no issues to preclude licensure of Stadium).

7. In addition to the applicant's representations to the Board, as well as the testimony and documentary evidence presented by the BOL and BIE during the licensing proceedings, the annually published list of slot machine and racetrack applicants/licensees, and their respective affiliates, shows that during the Category 2 licensing proceeding neither Stadium nor any of its affiliates (including Watche Manoukian) held a racing license for a facility that had not yet been approved by the Board to operate slot machines, nor were Stadium or its affiliates associated with the licensed racing entity that had applied for the Category 1 license, Valley View/Endeka.⁷

Manoukian's Financial Interest in Stadium

8. Stadium Casino Investors, LLC ("SCI") and Stadium Casino Baltimore Investors, LLC ("SCBI") each have a 50% ownership interest in Stadium.

⁷ See the affiliate and principal listings for Stadium as compared to the affiliate and principal listings for Valley View/Endeka published in the *Pennsylvania Bulletin* at the following links:
42 Pa.Bull 471, January 21, 2012: <http://www.pabulletin.com/secure/data/vol42/42-3/127.html>
43 Pa.Bull 3603, June 29, 2013: <http://www.pabulletin.com/secure/data/vol43/43-26/1190.html>
44 Pa.Bull. 1537, March 15, 2014: <http://www.pabulletin.com/secure/data/vol44/44-11/564.html>
45 Pa.B. 1188, March 7, 2015: <http://www.pabulletin.com/secure/data/vol45/45-10/437.html>
46 Pa.B. 1984, April 16, 2016: <http://www.pabulletin.com/secure/data/vol46/46-16/679.html>

Category 2 Background Investigation and Suitability Report of Stadium, p. 4 and *OEC Exhibit A (Operating Agreement of Stadium Casino, LLC*, p.33).

9. Identical to ownership interests, all profits generated from the operation of Stadium will be split equally between SCI and SCBI. *Financial Investigations Unit Report for Stadium*, p. 44.
10. SCBI will contribute \$100 million in equity to Stadium project. *Financial Investigations Unit Report for Stadium*, p.7.
11. \$88 million of SCBI's \$100 million equity contribution will be money borrowed from Cordish Family II, LLC, a family investment entity whose purpose is to lend funds to finance real estate and gaming projects. *Financial Investigations Unit Report for Stadium*, p.27.
12. Watche Manoukian has no ownership or financial interest in SCBI. *Category 2 Background Investigation and Suitability Report of Stadium*, p. 7-9.
13. SCI's Operating Agreement provides that 66% of the 50% of profits it receives from Stadium operations (or 33% of all casino profits) flows to Greenwood Racing, Inc, while 34% of the 50% of profits SCI receives from Stadium Casino operations (or 17% of all casino profits) flows to the Sterling Investors Trust. *Background Investigative Report of SCI, OEC Exhibit A (Operating Agreement of Stadium Casino Investors, LLC*, p. 14).

14. Greenwood Racing, Inc., which post licensure indirectly owns 33% of the project through SCI, will gain its interest pursuant to a \$66 million pre-licensure loan to the project which converts to equity upon licensure by the Board. *Category 2 Background Investigation and Suitability Report of Stadium*, p. 12.
15. Greenwood Racing, Inc.'s \$66 million loan/equity conversion contribution to the project will be drawn from Greenwood Racing, Inc.'s 2011 Credit Facility. *Financial Investigations Unit Report for Stadium*, p.25.
16. Sterling Investors Trust, through an infusion of \$34 million in equity, will indirectly own 17% of Stadium through SCI. *Financial Investigations Unit Report for Stadium*, p.4 and 7.
17. The \$34 million to be used by the Sterling Investors Trust to purchase its equity in Stadium will be provided from Watche Manoukian's personal funds. *Background Investigation Report of Stadium, OEC Exhibit M (Watche A. Manoukian's Sterling Investors Trust Funding Letter)*.
18. Sterling Investors Trust is a trust established by Watche Manoukian, age 71. *Background Investigation Report of Watche A. Manoukian*, p.3.
19. The beneficiaries of the Sterling Investors Trust are Mr. Manoukian's three (3) sons, their spouses, the issue of the sons and their spouses. *Background*

Investigation Report of Sterling Investors Trust, OEC Exhibit A (Sterling Investors Trust Agreement, p.2).

20. \$34 million represents approximately 4% of Mr. Manoukian's net worth. *Background Investigation Report of Watche A. Manoukian, p.5.*
21. The Sterling Investors Trust is irrevocable and Mr. Manoukian, as Settlor of the trust, "may not amend [the trust document] or do any other act or exercise any right which may have the effect, directly or indirectly, of cancelling or modifying [the trust document]." *Background Investigation Report of Sterling Investors Trust, OEC Exhibit A (Sterling Investors Trust Agreement, p.1).*
22. Likewise, Mr. Manoukian "may not exercise any control over the trust estate, including, but not limited to, any control over the investments of the trust." *Id.*
23. The Trustee of the Sterling Investors Trust may make distributions only to the living Beneficiaries of the trust. *Id.* at p. 2.
24. Under the Sterling Investors Trust formation document "no power granted to any Trustee shall be construed as authority to allow Settlor [Mr. Manoukian], or any party contributing property to the trust to reacquire trust principal by substituting property of equal value." *Id.* at p. 7

25. The Trustee of the Sterling Investors Trust is Sterling Fiduciary Services, Inc. *Id.* at p. 11
26. Mr. Manoukian is not an Officer or Director of Sterling Fiduciary Services, Inc. *Stadium's February 2, 2014 Motion to Reopen Record for Limited Purpose (Written Consent of the Board of Directors of Sterling Fiduciary Services, Inc. and Resignation Letter of Watche A. Manoukian).*
27. Mr. Manoukian holds only a minority 28% ownership interest in Sterling Fiduciary Services, Inc. *Stadium's February 2, 2014 Motion to Reopen Record for Limited Purpose (Assignment Separate From Certificate).*
28. Persons holding the majority of shares in Sterling Fiduciary Services, Inc. elect the Board of Directors and decide matters brought before them. *Background Investigation Report of Sterling Fiduciary Services, Inc, OEC Exhibit A (By-Laws of Sterling Fiduciary Services, Inc., p.2).*
29. "The business of [Sterling Fiduciary Services, Inc.] shall be managed by its Board of Directors . . . [and] in its capacity as Trustee of a trust, its Directors, Officers and employees are not authorized to take any action that constitutes a 'substantial decision'. . . without the affirmative approval of the

Board of Directors.”⁸ *Id.* at p. 3-4. “The Officers of [Sterling Fiduciary Services, Inc.] shall be chosen by the Board of Directors.” *Id.* at p.8.

30. Amendments to the Sterling Fiduciary Services, Inc. By-Laws can occur only by a majority vote of all stock issued or a majority of the votes of Directors. *Id.* at p. 12.

CONCLUSIONS OF LAW

For the reasons set forth below, the Board finds that 1) Stadium was eligible to apply for and hold the Category 2 slot machine license because neither it nor any of its affiliates was otherwise eligible to apply for a Category 1 slot machine license and 2) Watche Manoukian’s financial interest in Stadium does not, in fact, violate the prohibition on multiple slot machine licensees contained in Section 1330 of the Gaming Act.

I. Stadium was eligible to apply for and hold the Category 2 license for the City of Philadelphia.

In addition to the general suitability and eligibility criteria applicable to all applicants for a slot machine license, the Gaming Act provides that an applicant may be eligible to apply for a Category 2 slot machine license only if the applicant and its affiliates, intermediaries, subsidiaries or holding companies (collectively

⁸ Substantial decisions include the timing and amount of distributions, the selection of Beneficiaries and the power to make investment decisions. *Background Investigation Report of Sterling Fiduciary Services, Inc., OEC Exhibit A (By-Laws of Sterling Fiduciary Services, Inc., p.4).*

“affiliates”) are not otherwise eligible to apply for a Category 1 license. 4 Pa.C.S. § 1304(a)(1).

A Category 1 license authorizes the placement and operation of slot machines only at the licensed racetrack facility identified in the Category 1 licensee’s application. 4 Pa.C.S. §§ 1302(b) and 1303(c). Therefore, to be eligible to apply to the Board for a Category 1 license, the applicant must have been previously approved or issued a license by the Racing Commission to conduct thoroughbred or harness race meetings at a licensed racetrack facility or must be a successor in interest to a person approved or issued the racing license. 4 Pa.C.S. § 1302(a). It therefore follows that if a person is currently licensed as a Category 1 facility licensee but does not possess a horse or harness racing license which entitles that person to operate a racetrack at a separate, second location, the person is eligible under 1302(a) of the Act to apply for a Category 2 slot machine license.

In 2006, the Board awarded six (6) of the seven (7) available Category 1 licenses to all six of the then eligible applicants that held requisite racing licenses, leaving one Category 1 license yet to be awarded. *See Finding of Fact 1* (hereinafter “FF”). In 2007, the Racing Commission awarded Valley View the last available harness racing license. Valley View thereafter applied to the Board for the remaining Category 1 license to place slot machines at Valley View’s to-be-built racetrack facility in Lawrence County, Pennsylvania. *FF 3*.

In 2013, Endeka purchased the Lawrence County project and was approved by the Racing Commission to hold the harness racing license previously awarded to Valley View.⁹ *FF 4*. As the only entity to hold a racing license that had not already been authorized by the Board to operate slot machines at its racetrack facility, Endeka had the exclusive right and was the only entity “otherwise eligible to apply” for the remaining available Category 1 license. Endeka filed its application for that license and its application and the applications of its affiliates remain pending with the Board. *Id.*¹⁰

Stadium and its affiliates, including Watche Manoukian, are not owners of, financiers of, affiliates of, or involved in any way with Valley View/Endeka and are thus not eligible to apply for a Category 1 slot machine license in conjunction with that project. *FF 5-7*. Furthermore, beyond Endeka there are no other racing entities that have been awarded a thoroughbred or harness racing license by the Racing Commission that have not already been authorized by the Board to operate slot machines. *FF 7*. Without the available racing license, neither Manoukian nor

⁹ A Category 1 license may only be issued at the particular license racetrack facility identified in the application and cannot be within 20 linear miles of another Category 1 facility. See 4 Pa.C.S. § 1302(b).

¹⁰ Even if, hypothetically, the Endeka license would be relinquished, Stadium, its affiliates and Manoukian still would not be eligible to apply for the corresponding Category 1 slot machine license. Instead, they would need to first apply to and be approved by the Racing Commission for a racing license. However that event is not what is before the Board for consideration and is so speculative as to not impose an impediment to the Board’s decision.

anyone else affiliated with Stadium could apply for a Category 1 license with the Board.

The Board therefore finds that Stadium's representations in its application (*FF 5*), the testimony and documentary evidence presented by the BOL and BIE during the licensing proceedings (*FF 6*), as well as the annually published list of slot machine and racetrack applicants/licensees and their affiliates (*FF 7*), is credible, competent and substantial evidence that neither Stadium nor its affiliates were eligible at any time during the license proceeding to apply to the Board to operate slot machines at a new racetrack facility as neither Stadium, nor its affiliates, including Manoukian, holds a racing license for a new Category 1 racetrack facility. Moreover, none are involved with the one entity that holds a racing license but has not yet been authorized by the Board to operate slot machines at its racetrack facility. Stadium and its affiliates are therefore **not eligible to apply for another Category 1 license** and thus Section 1304(a)(1) of the Gaming Act is not applicable to prohibit the award of the Category 2 slot machine license for the City of Philadelphia to Stadium.

II. Watche Manoukian does not possess a financial interest in Stadium that violates Section 1330 of the Act.

Section 1330 of the Gaming Act provides, in part, that "(n)o slot machine licensee, its affiliate, intermediary, subsidiary or holding company may possess an

ownership or financial interest that is greater than 33.3% of another slot machine licensee.”¹¹ 4 Pa.C.S. § 1330.

In our original Adjudication, the Board concluded that Stadium’s ownership structure, and in particular the ownership interests of Watche Manoukian, did not run afoul of Section 1330. The Adjudication did not, however, specifically discuss whether Manoukian’s financial interest (as opposed to his ownership interest) in Stadium violated that statutory provision.¹² The Board herein discusses that precise issue, as directed by the Court in its March 29, 2016 Opinion and Order.

The term financial interest is defined twice in the Gaming Act: First, in Section 1201, which discusses the composition, terms, qualifications and restrictions of the Board and its staff;¹³ and second in Section 1512, which addresses limitations placed upon executive-level public employees, public officials, party officers and their immediate family members relative to

¹¹ It is noteworthy that Section 1330 also provides language clearly indicating that the “33.3% test” is not to be applied until a license is “issued” and that any violations of the ownership or financial interest provisions can be cured through divestiture (i.e. “The board shall approve the terms and conditions of any divestiture under this section . . . No such slot machine license applicant shall be issued a slot machine license until the applicant has completely divested its ownership or financial interest that is in excess of 33.3% . . .”) 4 Pa.C.S. § 1330. In this matter, Stadium’s slot machine license has not been issued, and will not be issued, until all appeals are final and the requisite licensing fee is paid. 4 Pa.C.S. §§ 1103 (definition of issued) and 1301(2).

¹² We note that no party to the proceeding or other applicant for the license argued during the licensing proceedings that Manoukian had a “financial interest” in Stadium versus an ownership interest, nor was that distinction raised on appeal by any party. Rather, the Court raised the issue for the first time in its Opinion.

¹³ Section 1201, with some exceptions, defines financial interest to be “(a)n ownership, property, leasehold or other beneficial interest in an entity...” 4 Pa.C.S. § 1201.

relationships with the gaming industry.¹⁴ Both sections limit the financial interests those two groups can have in casinos and their related companies. While the definitions are similar, they specifically apply only to Sections 1201 and 1512 of the Gaming Act.¹⁵ As the definitions were not carried over to Section 1330, it is clear that the Legislature did not intend to apply the Section 1201 and 1512 definitions of financial interest to Section 1330.

Section 1330, however, does provide guidance as to what is meant by the term financial interest for the purposes of a 1330 analysis. First, it distinguishes financial interest from ownership interest through use of the word “or.”¹⁶ Second (and perhaps more importantly), it includes the phrase “that is greater than 33.3%” thereby limiting what can be considered a financial interest to things that are quantifiable, on a percentage basis, up to 100% “of a slot machine licensee.”

As is evident from the discussion in the original Adjudication issued in this matter, as well as prior Board Adjudications,¹⁷ the Board interprets financial interest for Section 1330 purposes to include indirect ownership interest of a slot

¹⁴ Section 1512, with some exceptions, defines financial interest to be “(o)wning or holding, or being deemed to hold, debt or equity securities or other ownership interest or profits interest...” 4 Pa.C.S. § 1512.

¹⁵ Likewise, our regulations define financial interest at 58 Pa. Code § 403a.1; however, there, the definition (very similar to the definition found at 4 Pa.C.S. § 1201) is limited to Chapter 403a, which establishes parameters on Board operations and organization.

¹⁶ “The conjunction ‘or’ must be given its ordinarily disjunctive meaning unless such a construction would lead to an absurd result.” *Elite Industries, Inc. v. Pennsylvania Public Utility Commission*, 574 Pa. 476 (2003).

¹⁷ See, for example, *In Re: Joint Application of PITG Gaming, LLC and Holdings Acquisition Co, L.P.*, OHA 42269-2008 (April 29, 2008).

machine licensee through intervening entities, as such indirect ownership remains easily quantifiable up to 100%. Similarly, because an interest in the profits of a slot machine licensee is also easily quantifiable up to 100%, a profits interest would also fall under the definition of financial interest.

Other interests that may fall into a broader definition of financial interests,¹⁸ including interests through loan agreements, leases and security instruments, do not readily fall into this quantifiable rubric and, as a result, absent some unique factual circumstances not present in this case, would typically not be considered financial interests for Section 1330 purposes.¹⁹ Moreover, consistent with the Statutory Construction Act, 1 Pa.C.S. § 1501, *et. seq.*, the Board believes it to be clear, that the intent of the General Assembly in adopting Section 1330 was to attain some – but not absolute - diversification of ownership and control in the Commonwealth’s casinos. As a result, to interpret financial interests in Section 1330 to potentially capture lenders and owners of real estate upon which a casino may sit, but who are not involved in its operation, would lead to an absurd result unrelated to that intent. For example, such an interpretation would exclude large investment banks, which routinely lend hundreds of millions of dollars to multiple casino entities to build and operate their properties, from doing so, thereby

¹⁸ “Financial Interest” is defined as “an interest equated with money or its equivalent.” *Black’s Law Dictionary, Sixth Edition* (1990).

¹⁹ Which, presumably, is also why the legislature did not incorporate the broader definitions of Sections 1201 or 1512 into Section 1330.

dramatically limiting the number of potential lenders to any project and undermining the intent of the Gaming Act to build and support a vibrant gaming industry in Pennsylvania.

Turning then to the facts of this case: as indicated above, the Board's original Adjudication has already addressed both the direct and indirect ownership interests of Watche Manoukian and concluded that neither violates Section 1330. Similarly, Manoukian does not have a profit or any other financial interest which would conflict with that section. Specifically, the Stadium Casino Operating Agreement divides all profits equally between SCBI and SCI. *FF 8*. Thereafter, 34% of the 50% of profits SCI receives from casino operations (or 17% of all casino profits) flows to the Sterling Investors Trust while 66% of the 50% of profits SCI receives from casino operations (or 33% of all casino profits) flows to Greenwood Racing, Inc. *FF 9*.

While the Board could continue this profits analysis as it pertains to the Greenwood Racing "piece of the pie" (33% of Stadium's profits), for all practical purposes, what is at issue here is how profits and any other potential beneficial interest are handled when they reach the Sterling Investors Trust (17% of Stadium's profits). For if Manoukian has no Section 1330 financial interest in the Sterling Investors Trust, and the Board believes it is clear he does not, then his interest through Greenwood Racing is irrelevant as Greenwood Racing receives

only 33% of profits. As a result, even if Manoukian retained all of Greenwood Racing's profits, which he does not, that interest, in and of itself, would not violate Section 1330.

Turning then to the Sterling Investors Trust, the record in these proceedings shows that the trust, while established by Manoukian, is **irrevocable** and he has relinquished all control. *FF 18-31*. In fact, all power to control the trust, its investments, and profits or beneficial interests derived from those investments, lies with the corporate trustee, of which Manoukian retains only a 28% minority interest; far less than what is required to appoint Directors, Officers and employees, or to make any corporate decisions. *FF 21-31*. Moreover, in addition to the terms of the irrevocable trust itself, which grants total control of the assets placed into the trust to the trustee for the sole purpose of benefitting Manoukian's issue and their spouses, trust law, generally, also places a legal, fiduciary duty on the trustee to deal with the property held in the trust for the benefit of the named beneficiaries and not for the benefit of any settlor. See, for example, *In re Estate of Warden*, 2 A.3d 565 (Pa. Super. 2010).

Under the facts of this case, including, but not limited to Manoukian's age, net worth, the relatively small percentage of that net worth being committed to the irrevocable trust, and the fact that the trust, by its clear terms, seeks to provide financial security for not only Manoukian's sons, but their spouses, as well as

future generations, leads the Board to conclude that the Sterling Investors Trust is an estate planning mechanism, rather than a tool being used to circumvent Section 1330 of the Act. *FF 19, 20 and 23.*

Before awarding any slot machine license, it is the Board's obligation to review the record before it, as it pertains to the winning applicant, to ensure complete compliance with the Act. In this case, that has been done in great detail and from the day Stadium was awarded a Category 2 slot machine license up until the date of this Supplemental Adjudication, no evidence of Manoukian holding a financial interest in Stadium in violation of Section 1330 of the Act has been identified.

As with all areas of casino regulation, the review of compliance with the Act and Regulations by the Board's various bureaus and offices, including the Bureau of Casino Compliance, Bureau of Investigations and Enforcement (and the Financial Investigations Unit and Office of Enforcement Counsel within it) and Bureau of Licensing, is ongoing and continues far after the award of the license. Changes to the structure of the licensee, whether in terms of direct ownership or the more ubiquitous 'financial interest' cannot occur without notification to, and review by, the Office of Enforcement Counsel and subsequent presentation to, and approval by the Board at a public meeting. Should the facts of this matter change, calling into question Manoukian's ownership or financial interest (or any other

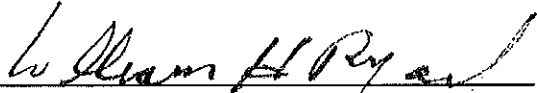
issue), appropriate steps will be taken to assure divestiture and compliance with the Act.

CONCLUSION

For each of the reasons set forth in the Board's November 18, 2014 Adjudication and based upon the additional Findings of Fact and Conclusions of Law set forth above in this Supplemental Adjudication, the Board finds that its award of a Category 2 slot machine license to be located in the City of Philadelphia to Stadium Casino, LLC is supported by the extensive evidentiary record and consistent with the relevant provisions of the Gaming Act.

By the Board:

Dated: June 23, 2016



**William H. Ryan, Jr., Commissioner
Pennsylvania Gaming Control Board**