

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: EASTERN PENNSYLVANIA CITIZENS AGAINST
GAMBLING'S PETITION TO INTERVENE IN VALLEY FORGE
CASINO RESORT'S PETITION FOR APPROVAL OF REVISED
RESORT MEMBERSHIP PROGRAM

* * * * *

PUBLIC HEARING

BEFORE: WILLIAM H. RYAN, JR., Chairman
Annmarie Kaiser, Anthony C. Moscato,
Gregory C. Fajt, Gary A. Sojka, Keith R.
McCall, James B. Ginty; Members Jorge
Augusto, representing George Greig,
Secretary of Agriculture Christopher B.
Craig, Representing Robert M. McCord,
Robert P. Coyne, Representing Secretary to
Department of Revenue Daniel P. Meuser

HEARING: Thursday, November 8, 2012

LOCATION: Strawberry Square Complex
Second Floor
Harrisburg, PA 17101

WITNESSES: None

Reporter: Lacey C. Gray

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CHAIRMAN:

Good morning, everyone. I'm Bill Ryan, Chairman of the Pennsylvania Gaming Control Board. Before we begin I would like to ask everyone to please turn off cell phones, PDAs, and other devices. Thank you all very much.

With us today is Chris Craig representing State Treasurer Robert McCord; Bob Coyne representing Secretary of the Department of Revenue, Dan Meuser; and Jorge Augusto representing the Secretary of Agriculture, George Greig. Thank you, gentlemen, for being here.

I'll call the meeting to order, a quorum of members being present. I should note that today is Jim Ginty's birthday.

MR. MOSCATO:

Dare we ask how old, Mr. Chairman?

CHAIRMAN:

No, you don't. First order of business, I'd like to ask everyone to please stand for the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE RECITED

CHAIRMAN:

1 Thank you, ladies and gentlemen. We have
2 one hearing prior to the start of the public meeting
3 today. This matter is a Petition filed by Eastern
4 Pennsylvania Citizens Against Gambling and James
5 Schneller, which seeks Intervention in Valley Forge
6 Casino Resort's Petition for Approval of a revised
7 resort membership program.

8 Earlier this week Mr. Schneller made a
9 filing with the Board clerk indicating he would not be
10 present today, so we will consider his arguments on
11 the documents. I do know, however, that both the
12 Office of Enforcement Counsel (OEC) and Valley Forge
13 have responded to the Petition Seeking Intervention,
14 so I would ask each of those parties if they have
15 anything they would like to say to the Board on this
16 matter? Enforcement Counsel?

17 And gentlemen and ladies, whoever comes
18 up, before you speak I'd appreciate it and our court
19 reporter, who I believe is new to the way we do things
20 here, would appreciate it if you would state your
21 name, who you represent, and spell your last name.

22 ATTORNEY STUART:

23 Glenn Stuart for the (OEC). Last name
24 is, S-T-U-A-R-T.

25 CHAIRMAN:

1 Go ahead, sir.

2 ATTORNEY STUART:

3 We would maintain that Mr. Schneller
4 lacks standing and that the Board should deny his
5 Petition.

6 CHAIRMAN:

7 Okay. Short and sweet. Valley Forge?

8 ATTORNEY FABIUS:

9 Michael Fabius from the law firm Ballard
10 Spahr. It's, F-A-B-I-U-S. With me is Kevin Hayes.

11 ATTORNEY HAYES:

12 Kevin Hayes, H-A-Y-E-S, on behalf of
13 Valley Forge.

14 ATTORNEY FABIUS:

15 Good morning. We'll try and keep it
16 nearly as brief as OEC. Thank you, Chairman, thank
17 you, Commissioners. Happy birthday, Commissioner
18 Ginty.

19 MR. GINTY:

20 Thank you.

21 ATTORNEY FABIUS:

22 The Intervention and the Stay requested
23 by Mr. Schneller can be addressed briefly in the fact
24 that he offers --- he doesn't address the legal
25 standing the Board has in its regulations. He doesn't

1 address the legal standing for Stay. He has addressed
2 them in the past. And there's a significant material
3 difference in his papers --- this time from his papers
4 in the past and the brevity that he spends addressing
5 his arguments. He says on standing he is certain that
6 he has standing. And he makes references to
7 unspecified pleadings that we can't decipher. This
8 is, in our view, not even a good faith attempt to
9 address the legal standards that he knows he has to
10 meet, that he has attempted to meet in the past and
11 he's failed to meet in the past.

12 In May of this year --- I'm sorry, March
13 of this year Mr. King was before you in the last
14 request that we made for sanctions against Mr.
15 Schneller, asking that enough was enough. At that
16 time the Board admonished the behavior in a written
17 adjudication and called it a clear abuse of process.
18 At the time, Chairman Ryan, you expressed sympathy
19 from the bench. Commissioner Sojka, you expressed
20 sympathy from the bench, asking about costs and
21 damages in response to this Petition. There's in
22 excess of \$10,000 of my attorney time, myself on
23 behalf of Valley Forge.

24 We know that there's no merit to this
25 Petition, but if we don't participate --- one, we

1 don't want to disrespect the Board by not
2 participating and treating it seriously. And two, we
3 have to be wary of adverse factual findings if we
4 don't treat it seriously. So we do, we respond and we
5 attend.

6 There's a lack of symmetry here. He
7 simply papers the record because that's all he needs
8 to do in order to then appeal the inevitable denial,
9 appeal to the Commonwealth Court, appeal to the
10 Pennsylvania Supreme Court, attempt to appeal to the
11 U.S. Supreme Court, threaten to appeal to the U.S.
12 Supreme Court, to a Federal District Court. And the
13 procedure is, to say nothing else, a mess.

14 We ask that the Board's admonishment in
15 March be stepped up at least a notch. You gave him a
16 clear signal that this was abuse of process and it
17 should not continue. He hasn't taken that signal and
18 he's continued to abuse the Board's process. In March
19 we --- there was a discussion of a rule to show cause.
20 At the very least, we would ask for a rule to show
21 cause to instruct him to attend, and at the very
22 least, be here present for, you know, another
23 instruction that it's an abuse of process.

24 At this point I'll take any questions.

25 CHAIRMAN:

1 Questions from the Board?

2 MR. GINTY:

3 I have a question.

4 CHAIRMAN:

5 Jim?

6 MR. GINTY:

7 I have a question. We could be asking
8 Mr. Schneller to show cause from here to doomsday. I
9 mean, it's not going to change anything. He would
10 simply appeal that decision on and on and on. Do you
11 have any recourse outside of coming to the Board for
12 some come of injunctive relief?

13 ATTORNEY STUART:

14 There is. We've looked at abuse of
15 process, misuse of prosecution. There's prospects for
16 damages, but we are not optimistic that damages could
17 be collected, that he may be judgment proof from any
18 civil damages.

19 MR. GINTY:

20 I mean, if you sought inductive relief, I
21 mean, you could move on from there if you had to;
22 couldn't you? I mean, I assume he has a house or cars
23 or some such thing. But that was just a comment.

24 ATTORNEY FABIOUS:

25 I understand and I appreciate it.

1 MR. GINTY:

2 Rather than coming back to us. Because
3 I'm not sure that one --- that would end anything. I
4 would suggest you look at some other alternative.

5 ATTORNEY STUART:

6 Thank you, Commissioner.

7 CHAIRMAN:

8 Any other questions? If I can, before we
9 move on I'm going to ask our Chief Counsel, Mr.
10 Sherman. Mr. Sherman, isn't it true that the issue of
11 this gentleman, Mr. Schneller's, standing to come into
12 this hearing room and to make himself part of the
13 process is an issue that is on appeal to the
14 Commonwealth Court? The Commonwealth Court still has
15 not issued a decision; is that correct?

16 ATTORNEY SHERMAN:

17 That's correct. One of the Board's
18 earlier denials of standing, I believe it was in the
19 same matter involving the amenities plan, has been
20 appealed by Mr. Schneller to Commonwealth Court. The
21 Office of Chief Counsel (OCC) is currently engaged in
22 that litigation. And I think everybody is optimistic
23 that the court will rule that Mr. Schneller does not
24 have standing to participate in matters such as this.
25 We do not have that court ruling yet.

1 CHAIRMAN:

2 All right. Thank you. And Counselor,
3 speaking for myself --- there are seven of us here ---
4 but speaking for myself, but I think my colleagues
5 would agree with me, we are all open to public input.
6 We all need public input. We know that this Board is
7 open, the doors are open. We have a period of time at
8 the end of a meeting, at least every three or four
9 meetings, I'm not sure what it is, inviting the public
10 to come in and to say what's on people's minds.

11 However, we also have a process here. We
12 know we have to protect. And that's the process, the
13 rule of law. And we're aware of that. At this point,
14 however, speaking for myself, it seems to me that on
15 this issue we are best advised to wait until a ---
16 Commonwealth Court issues an opinion on the issue of
17 standing, then perhaps we can look at the issue again.
18 I'm not saying we will. Speaking for myself, it's a
19 possibility, but it seems to me it may be premature.
20 Okay?

21 ATTORNEY FABIOUS:

22 I appreciate that.

23 CHAIRMAN:

24 Anybody else? Okay. This concludes the
25 public hearing if there is nothing from anyone else on

1 that issue. The Board will not be voting on this
2 matter today. However, we will take it up for a vote
3 prior to consideration of the underlying Petition by
4 Valley Forge for which Intervention is sought at our
5 November 20th meeting. Thank you all.

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8 HEARING CONCLUDED

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CERTIFICATE

I hereby certify that the foregoing
proceedings, hearing held before Chairman Ryan was
reported by me on 11/8/2012 and that I Lacey C. Gray
read this transcript and that I attest that this
transcript is a true and accurate record of the

1 proceeding.

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Lacey C. Gray

Court Reporter