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COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: ORAL ARGUMENT ON MOUNT AIRY #1, LLC PETITION
TO MODIFY THE BOARD'S JUNE 13, 2012 ORDER

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PUBLIC HEARING

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BEFORE: WILLIAM H. RYAN, JR., Chairman
Gregory C. Fajt; Anthony C. Moscato;
Annemarie Kaiser; Keith R. McCall; John
J. McNally; David W. Woods; Members,
Jennifer Langan, representing Robert M.
McCord, State Treasurer, Robert P.
Coyne, representing Daniel P. Meuser,
Secretary of Revenue, and Jorge Augusto,
Representing George Greig, Secretary of
Agriculture

HEARING: Wednesday, January 8, 2014

LOCATION: Pennsylvania Gaming Control Board
Strawberry Square Complex, 2nd Floor
Harrisburg, PA

Reporter: Lacey C. Gray

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NONE OFFERED

P R O C E E D I N G S

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2 -----
3 CHAIRMAN:

4 Thank you, ladies and gentlemen. We
5 have several items before the Board today by way of
6 public hearings or oral arguments, which will take
7 place prior to our public meeting. Immediately
8 following our first matter we will move directly into
9 our second hearing and so forth until we complete all
10 of these matters. At the conclusion of these
11 hearings and presentations we will take a brief
12 recess to conduct quasi judicial deliberations before
13 returning to conduct our regularly scheduled meeting.

14 Our first item on our agenda is an oral
15 argument which pertains to Mount Airy's petition to
16 modify the Board's June 13th, 2012 Order. This
17 matter was referred to the Office of Hearings and
18 Appeals (OHA) for creation of an evidentiary record
19 and a report from a Hearing Officer, which was issued
20 on December 11th, 2013, and has been provided to the
21 Board.

22 I see, Mr. Sklar, you're here on behalf
23 of Mount Airy. Is that correct, sir?

24 ATTORNEY SKLAR:

25 That is correct.

1 CHAIRMAN:

2 Could you just state your name for the
3 record and spell your last name?

4 ATTORNEY SKLAR:

5 Sure. Michael Sklar, S-K-L-A-R, on
6 behalf of Mount Airy.

7 CHAIRMAN:

8 Mr. Sklar, you may begin.

9 ATTORNEY SKLAR:

10 Thank you. Good morning, Mr. Chairman,
11 members of the Board. This morning the petition
12 that's before you, Mount Airy is requesting the Board
13 to vacate condition number five in the Board's
14 June 13, 2012 Order. And specifically condition five
15 prohibits Mount Airy from directly or indirectly
16 providing any remuneration, cash or property
17 distribution to Louis DeNaples. The sole underlying
18 basis for this restriction was Mr. DeNaples
19 indictment and ensuing criminal charges that were
20 filed against him by the Dauphin County District
21 Attorney's Office in January of 2008.

22 Subsequent to that the --- all the
23 criminal charges were withdrawn by the district
24 attorney, and also subsequent to that the Dauphin
25 County Court of Common Pleas issued two expungement

1 orders making it clear that all records were
2 expunged, and the withdrawal --- there was an
3 agreement with the district attorney when the charges
4 were withdrawn.

5 There was certain conditions that were
6 placed on Mr. DeNaples and that withdraw agreement
7 was amended and superseded. And all the restrictions
8 in that withdraw agreement were of no force and
9 effect. So it basically took Mr. DeNaples back to a
10 point before the criminal charges were filed.

11 So the rationale for this request is
12 very simple. The underlying basis for the
13 restriction is gone and therefore the restriction
14 should be lifted. We're not seeking any waiver,
15 special treatment, exemption for Mr. DeNaples. The
16 only thing we're saying is treat him like anyone else
17 in the Commonwealth. If he comes back with some kind
18 of affiliation with Mount Airy or any other gaming
19 company, he's got to comply with whatever the license
20 requirements are, licensure requirements are as would
21 any other person.

22 So that's all that we're asking the
23 Board right now. Just put him back, treat him like
24 anyone else and that's --- in a nutshell that's the
25 initial request. If the Board is not inclined to

1 vacate condition number five, then we request that we
2 make it clear --- or the Board makes it clear that
3 this restriction applies to Mr. DeNaples
4 individually.

5 The Office of Enforcement Counsel (OEC)
6 contends that condition number five extends to
7 companies in which Mr. DeNaples has an interest. The
8 plain language that I read earlier, it's crystal
9 clear at least in Mount Airy's mind that it applies
10 solely to Mr. DeNaples. And, in fact, in a prior
11 hearing before the OHA a Hearing Officer concurred
12 with that interpretation, that it only applies to Mr.
13 DeNaples personally. Enforcement Counsel contends or
14 requests the Board to --- if the restriction is
15 lifted, they are requesting that Mr. DeNaples be
16 licensed as a Principal regardless of the facts,
17 regardless --- we don't know when and if he is going
18 to come back, what the relationship's going to be,
19 what the dollar amount --- if it's a vendor type of
20 association, we don't know what the dollar thresholds
21 are going to be.

22 OEC says it doesn't matter. Doesn't
23 matter if it's a thousand dollar contract, a million
24 dollar contract, Mr. DeNaples has to be licensed as a
25 Principal at the highest level. And I just think

1 they're putting the cart before the horse. Again, I
2 come back to, we're not asking for special treatment.
3 We're just saying treat him as you would anyone else.
4 And to the extent that he needs to get licensed, his
5 companies need to get licensed because of certain
6 dollar thresholds, he's got to comply. No waiver, no
7 special treatment. So that's in a nutshell what the
8 relief that is being requested today.

9 CHAIRMAN:

10 Cyrus, will you speak for the ---

11 ATTORNEY PITRE:

12 Deputy Chief ---.

13 CHAIRMAN:

14 --- OEC?

15 ATTORNEY PITRE:

16 Yeah, Deputy Chief Enforcement Counsel
17 Nan Davenport will make the initial argument, and
18 I'll be here to answer any questions that the Board
19 may have or make any counter arguments.

20 CHAIRMAN:

21 Thank you. Good morning, Nan.

22 ATTORNEY DAVENPORT:

23 Good morning. Good morning, Chairman
24 Ryan, Commissioners. Nan Davenport,
25 D-A-V-E-N-P-O-R-T, Deputy Chief Enforcement Counsel

1 for the OEC. Mr. Sklar is correct that OEC
2 recommends that the Board keep in place the condition
3 number five. What I want to point out is condition
4 number five, that restriction provides that the
5 Children's Trust, Mount Airy --- or Mount Airy Holdco
6 may not provide Louis DeNaples either directly or
7 indirectly any remuneration cash or cash
8 distributions.

9 I think that Mr. Sklar is saying that
10 it applies directly to Mr. DeNaples is incorrect
11 because I think it applies --- the indirect would
12 apply to companies with which he has an ownership
13 interest. Now, if the Board modifies or lifts the
14 conditions the OEC recommends that Louis DeNaples be
15 found suitable prior to Mount Airy conducting any
16 business with the company with which he has an
17 ownership interest. Louis DeNaples has not been
18 fully vetted since 2006. He's filed applications in
19 December of 2007 as well as April of 2009, which was
20 due to the suspension as well as the subsequent
21 corporate restructuring, he has not been fully vetted
22 by the Board.

23 Section 1317.2 of the Act and Section
24 437(a)(1) of the regulations provide that a gaming
25 service provider whose compensation does not exceed

1 the monetary thresholds, which are set forth in the
2 regulations, who is exempt from registration or
3 certification requirements may still be required to
4 be registered or certified, and may be required to
5 obtain a permit or other authorization if the Board
6 determines that registration or certification is
7 necessary to protect the integrity of gaming.

8 When you look back at the history of
9 these conditions that had been placed on Mr. DeNaples
10 since his license suspension, there was a Board
11 opinion that came out following --- the day following
12 his suspension, which specifically said the purpose
13 for the condition was to protect the public
14 integrity, public interest in gaming.

15 In addition Section 1202(g)(20) of the
16 Gaming Act provides that the Board has the power to
17 determine the suitability of any person who seeks to
18 furnish to a slot machine licensee, directly or
19 indirectly any goods or services and to require the
20 person comply with the Act and the regulations.

21 Therefore OEC believes that in order to protect the
22 public interest and the integrity of gaming in the
23 Commonwealth that if the Board does either lift or
24 modify condition number five, we recommend the Board
25 require that Louis DeNaples be found qualified that

1 he submit a certified gaming service provider
2 disclosure form, be fully vetted and found qualified
3 by the Board prior to Mount Airy conducting business
4 with any company in which he has an ownership
5 interest.

6 Mr. Sklar said that OEC wants him
7 licensed as a Principal. That's not correct. We
8 want him to be found qualified as part of a gaming
9 service provider. With respect to treating him the
10 same as anybody else, I think in this case that it is
11 different because he's a --- was a Principal of a
12 Category 2 Licensee whose license was suspended by
13 the Board because of conduct during this 2006
14 investigation by the Board. So, therefore I think we
15 do need to look at this differently and in order to
16 protect the public interest, I think he has to be
17 vetted first if the Board lifts condition number
18 five. Thank you.

19 CHAIRMAN:

20 Any questions from the Board?

21 MR. WOODS:

22 Mr. Chairman?

23 CHAIRMAN:

24 Go ahead. We'll give Mr. Sklar his
25 chance, but let's go to the Board first.

1 MR. WOODS:

2 I appreciate some additional
3 clarification from Counsel, OEC, concerning the
4 specific revisions of our regulations. And having
5 looked at those and then looking at your two
6 requests, either vacate, which I think was made in
7 the .32 of the Office --- the hearing report, and ---
8 or modify the condition number five as you made in
9 .38, because it would benefit Mount Airy. And
10 Enforcement Counsel maintains that very clearly
11 condition five was not strictly put in place because
12 of the criminal charges and if we modify that you be
13 able to afford with additional vetting.

14 Question for Enforcement Counsel would
15 be, at any point do you think that any modification
16 of or amendment of condition five could take place
17 that would ensure the integrity of gaming in
18 Pennsylvania, and that amendment would be able to
19 achieve a goal of allowing companies associated with
20 Mr. DeNaples to move forward and have an agreement
21 with Counsel if given time to work on that?

22 ATTORNEY PITRE:

23 Well, I guess that would be
24 entirely ---.

25 CHAIRMAN:

1 Cyrus, could you state your name for
2 the record?

3 ATTORNEY PITRE:

4 Cyrus Pitre, P-I-T-R-E, Chief
5 Enforcement Counsel. That would be entirely up to
6 whether or not Mr. DeNaples is willing to undergo a
7 background investigation prior to conducting any
8 business with Mount Airy or any of his businesses
9 conducting business with Mount Airy. We can't ignore
10 the proverbial elephant in the room. I mean, bottom
11 line is Mr. DeNaples has a history with this Board.
12 That history has been --- has not been fully vetted
13 since Mr. DeNaples' suspension and since the lifting
14 of that suspension. We are only asking that Mr.
15 DeNaples undergo a full background investigation and
16 be found suitable prior to conducting any business or
17 prior to any of his businesses that he has an
18 interest in conducting any business with Mount Airy.

19 The ball is in his court. I've told
20 this to Mr. Sklar. We are making that known
21 publicly here before the Board, so I mean, that's
22 totally up to Mr. DeNaples. I think it would be ---
23 BIE would not be doing its job to ignore the history.
24 I wouldn't be doing my job to ignore that history.
25 That history has to be vetted and the outcome has to

1 be brought before this Board for a final
2 determination.

3 CHAIRMAN:

4 For the record, BIE is Bureau of ---

5 ATTORNEY PITRE:

6 Investigations and Enforcement.

7 CHAIRMAN:

8 --- Investigations and Enforcement; is
9 that correct, Cyrus?

10 ATTORNEY PITRE:

11 That's correct.

12 MR. WOODS:

13 Knowing that the regulations permit
14 additional examination by the OEC or BIE, would it be
15 Mount Airy's position that they would be willing to
16 discuss the possibility of additional scrutiny by BIE
17 over the course of the next 60 days or so, and come
18 back to the Board at the end of that time with some
19 sort of recommendation if you reached some agreement
20 to amend condition five?

21 MR. SKLAR:

22 Again, I think that it's premature to
23 say just a blanket statement that, Mr. DeNaples, no
24 matter what --- I'll give you a perfect example. One
25 of Mr. DeNaples' companies is auto parts. Mount Airy

1 has a number of vehicles. If one of those vehicles
2 breaks down and the auto parts company can provide
3 \$100 part at cost, to me it doesn't make sense that
4 Mr. DeNaples in that instance --- it's being provided
5 at cost. Nothing flows to Mr. DeNaples. It's
6 impossible. We can demonstrate that it's provided at
7 cost.

8 To require in that circumstance a full
9 background investigation is not --- to me, in my
10 opinion, is not warranted. And it's over the top and
11 I just don't understand under the circumstances why
12 at this point in time that blanket requirement should
13 be opposed. And let's flip it to the more extreme
14 example. If it's a million dollar contract that one
15 of Mr. DeNaples' companies is going to enter into
16 with Mount Airy, that's a different circumstance.
17 That clearly qualifies that the certified vendor and
18 then, yes, Mr. DeNaples would be required to undergo
19 a full background investigation. There's a reason
20 why the Board has established certain dollar
21 thresholds for certain levels of licensure.

22 So, in the first example it doesn't
23 make any sense to require a --- and everyone's aware
24 of how extensive these background investigations are.
25 And in that first example it's just not warranted.

1 And that's why I come back to, I think we're putting
2 the cart before the horse. All I'm asking --- all
3 Mount Airy is requesting is let's vacate the Order
4 --- or the condition and depending on what Mr.
5 DeNaples comes back with, then we can cross that
6 bridge and figure out what type of licensure is
7 required. And I would certainly sit down with
8 Enforcement Counsel depending on what the
9 circumstance was.

10 ATTORNEY PITRE:

11 And I think that's where you see the
12 great divide in this because, in my opinion, if it's
13 one cent he needs to undergo a background
14 investigation. We cannot ignore the history. Okay?
15 To ignore the history would be to ignore everything.
16 You might as well just take the previous records
17 before this Board and set them on fire. There's a
18 history. That history has to be dealt with. I'm
19 willing to deal with that history.

20 I'm asking that if Mr. DeNaples wants
21 to partake in the gaming industry, that we move
22 forward so that we can deal with that history and
23 have the matter fully vetted and brought before the
24 Board. I mean, the criminal charges emanated from a
25 record before this Board. Regardless of the criminal

1 charges, the record before this Board has to be set
2 straight one way or the other. Either that record is
3 going to be set straight through a full vetting or
4 that record will remain the way it is through
5 inaction.

6 So, I implore the Board that if you
7 lift the conditions or --- that it be with the
8 understanding that Mr. DeNaples has to be found
9 suitable prior to conducting any business indirectly
10 or directly with Mount Airy.

11 ATTORNEY SKLAR:

12 The problem with what Mr. Pitre said is
13 he's making this specter hanging over Mr. DeNaples,
14 that there's this lingering history. The indictment
15 stems from a sworn interview that Enforcement Counsel
16 took prior to Mr. DeNaples being licensed by this
17 Board. The indictment was --- and the charges were
18 dropped. Two Expungement Orders were issued, so this
19 specter that there's this lingering history that's
20 hanging out there, it just doesn't make sense.

21 If Enforcement Counsel took the sworn
22 interview, that is what was the genesis of the
23 criminal charges. To suggest that somehow back then
24 they missed something --- everything was presented to
25 the Board. Following the sworn interview that we're

1 talking about there was a full investigation. There
2 was four days of hearings, suitability hearings in
3 closed session for Mr. DeNaples. The Board
4 ultimately licensed Mr. DeNaples.

5 To suggest that there's this lingering
6 boogyman out there, I just don't think is fair. And
7 it's not based on the facts that it transpired in the
8 course of this --- of history.

9 ATTORNEY PITRE:

10 I never used the word specter, never
11 used the word boogyman. I have not cast judgment one
12 way or the other upon the suitability of Mr. DeNaples
13 because, quite honestly, I don't know because we have
14 not completed a full vetting since 2006, prior to me
15 coming to be a part of this Board. So, I know that a
16 lot of people cast aspersions in the press and --- I
17 have no judgment. I have not cast any judgment upon
18 Mr. DeNaples.

19 The only thing I'm trying to do is get
20 a full record so that we can make a determination
21 with regard to suitability. We do not have a full
22 record and until we have a full record, I implore the
23 Board to either keep the condition in place or if you
24 lift the condition, do it with --- do it under the
25 circumstances that I previously presented.

1 CHAIRMAN:

2 Okay. David, are you finished?

3 MR. WOODS:

4 I believe so.

5 CHAIRMAN:

6 Anyone else?

7 MR. MCNALLY:

8 Just a quick question. You say that
9 the matter was expunged, two Expungement Orders were
10 issued. Was OEC ever provided notice of the petition
11 that you were seeking to have those records expunged?

12 ATTORNEY SKLAR:

13 They were not a party to the criminal
14 proceedings. I don't know if they were provided
15 courtesy copies. I don't know, but they certainly
16 weren't a party to it. I don't know if they could
17 have even made a --- had any kind of position on the
18 expungement or not.

19 MR. MCNALLY:

20 And Mr. Pitre had made reference to
21 investigation from dollar one, if you wanted to go
22 out and buy auto parts. But won't you acknowledge
23 that pursuant to our statute you had to provide
24 notification if you're going to pay anyone more than
25 \$15,000 prior to that; correct?

1 ATTORNEY SKLAR:

2 Correct.

3 MR. MCNALLY:

4 So, would you agree that that could
5 trigger some sort of investigation on behalf of BIE?

6 ATTORNEY SKLAR:

7 I think that the --- all we're asking
8 is treat Mr. DeNaples like anyone else. So, yes, if
9 --- as you step up the dollar thresholds, he needs to
10 comply and/or his companies need to comply as would
11 anyone else.

12 MR. MCNALLY:

13 Such as Mount Airy. I mean, it's up to
14 Mount Airy to provide us notification if they pay
15 anyone more than \$15,000.

16 ATTORNEY SKLAR:

17 Absolutely.

18 ATTORNEY PITRE:

19 And that notification is basically a
20 sheet of paper. It's not an application that starts
21 the background investigation process or anything of
22 that nature, so even --- I can tell you that it would
23 be my position to ---. And to convince and to tell
24 Director Morrow our position would be that there
25 would be no interim authorization or no business

1 allowed until we conduct an investigation into his
2 background.

3 ATTORNEY SKLAR:

4 Just let me say this. I want to be
5 clear why --- because I'm sure some of you may have
6 in your mind why Mr. DeNaples requested permission to
7 withdraw as a Principal why would he even consider,
8 fathom, making this request. And the answer is, he
9 has certain companies that can help Mount Airy out.
10 He is not going to provide any goods or services with
11 any profit margin. He's going to provide that ---
12 those services at or below cost. We would enter into
13 any --- and that is any condition to any contract.
14 And the proof is in the pudding.

15 Mr. DeNaples, as the Board's aware,
16 when they were attempting to do the refinancing, Mr.
17 DeNaples solely for the benefit of Mount Airy assumed
18 \$120 million. Took it off Mount Airy's balance sheet
19 to facilitate the refinancing. So, Mr. DeNaples'
20 only interest here is to help Mount Airy out to the
21 extent that he has companies that will provide goods
22 or services at a cheaper price than third parties.

23 I'll give you another example. He has
24 a landfill. Right now Mount Airy has to contract
25 with another company to do the hauling. They're

1 obviously charging a profit margin. Mr. DeNaples can
2 provide those services for nothing or virtually
3 nothing. I would submit that the --- whoever the
4 employees are should be paid, reimbursed by Mount
5 Airy, but there's no mark up. So, that's the perfect
6 example where it's going to benefit Mount Airy.

7 What benefits Mount Airy is going to
8 benefit the Commonwealth and I just don't understand,
9 given that backdrop, what this absolute blanket ---
10 he's got to be vetted no matter what, no matter what
11 the circumstance is. And, again, that's to me ---
12 and I submit that's for another day. We can deal
13 with that for another day. The only thing that Mount
14 Airy's asking right now is let's lift the condition,
15 then if Mount --- if Louis DeNaples, Mount Airy come
16 back with something, then we can address it. We can
17 evaluate what those circumstances and facts are.

18 CHAIRMAN:

19 John, anything else?

20 MR. MCNALLY:

21 Just one other question. Are you aware
22 of any other service provider that provides services
23 at no profit or even at a loss to a casino?

24 ATTORNEY SKLAR:

25 I don't know off the top of my head.

1 The only circumstance would --- that I can imagine
2 would be if there was some kind of relationship,
3 either family or some other connection where there
4 wasn't a profit incentive.

5 MR. MCNALLY:

6 Thank you.

7 ATTORNEY PITRE:

8 And if I may just --- if we take Mr.
9 Sklar's position then I can't imagine the countless
10 man hours that we would have to spend tracking to
11 ensure that no money changed hands in that regard, or
12 everything was at cost. And perhaps if Mr. Sklar and
13 Mount Airy is willing for us to appoint another
14 trustee to track all of that, then maybe that might
15 be an outcome that we might be willing to deal with
16 if he wants --- if he is willing to have a trustee
17 appointed with an accounting firm to track all those
18 no cost services, then maybe that's something, you
19 know, we might feel comfortable with. But I doubt
20 that Mr. Sklar or Mount Airy would be willing to do
21 that.

22 ATTORNEY SKLAR:

23 It was pretty simple in the
24 circumstance or the case that I mentioned to you
25 before, the OHA. There was a situation where it was

1 a DeNaples' affiliated company, was provided
2 compensation --- or remuneration from Mount Airy. We
3 were easily able to --- it was for motor bikes as a
4 promotional. And they were able to provide ---
5 here's the invoices for those motor bikes, here's
6 what Mount Airy paid. No possibility that any money
7 could have flowed to Mr. DeNaples. And a Hearing
8 Officer found that that was, in fact, the case.

9 ATTORNEY PITRE:

10 I don't think we got to the merits of
11 whether or not money flowed. Okay? I think that
12 basically the only thing that the Hearing Officer
13 found was that there was no --- that we did not make
14 --- that there was no notification in that regard
15 directly to the company.

16 CHAIRMAN:

17 That's my recollection also, Mr. Sklar.
18 I believe that's correct. Greg?

19 MR. FAJT:

20 Thank you, Mr. Chairman. Let me try to
21 peel back the layers of the onion here and see if we
22 can come to some common ground. Nan, I think I heard
23 you say two things, and I heard Cyrus say something
24 different and then I heard him say kind of the same
25 thing, and that was dealing with condition five. I

1 am troubled as to why you would have the position to
2 keep condition five when all of the underlying
3 circumstances regarding condition five have been
4 expunged from the record. So, why don't you address
5 that initially and then I'll get to my second layer
6 of the onion?

7 ATTORNEY PITRE:

8 If I may. I don't think the underlying
9 --- the criminal record with regard to the
10 suspension, you're right. That criminal record is
11 completely expunged and I could care less about that
12 criminal record. What I care about is the record
13 that was before this Board in 2005, 2006 that,
14 subsequent to that expungement, that we have not
15 vetted. We have not vetted that record.

16 MR. FAJT:

17 I'm going to get to that and --- so I
18 understand that. So, your issue is as to the
19 underlying criminal charges, they're no longer
20 relevant as to condition number five. Okay. Your
21 issue is your records, BIE's records, and the
22 investigation they did with Mr. DeNaples. And
23 clearly, Michael, he is in a different position than
24 other people.

25 And I understand you want him to be

1 treated just like if I came to the Board or anybody
2 else in this room came for a license. Same
3 treatment. He is different. He has been before this
4 Board, an extensive record, extensive background
5 check. And what I hear these guys saying is that in
6 that record there are inconsistencies in his
7 testimony. Am I correct, not correct? And what can
8 you say as to what is in that record that bothers
9 you?

10 ATTORNEY PITRE:

11 What bothers us in the record is that
12 we have questions for Mr. DeNaples, and I'm not going
13 to say that they're inconsistent. I'm going to say
14 that they're so vague that it can be inconsistent or
15 there might be a legitimate story behind it to make
16 it perfectly fine. I don't know because we have not
17 done a full vetting with regard to the previous
18 statements that he's made to us under oath.

19 MR. FAJT:

20 So is it possible that you could have
21 Mr. DeNaples submit to further vetting, we'll use
22 that term, that is short of a full background check
23 knowing that you don't know where that vetting is
24 going to go? And maybe it goes in a way where it
25 turns into a full background check.

1 ATTORNEY PITRE:

2 I can even make it simpler than that.

3 MR. FAJT:

4 Please do. We're looking for a
5 compromise.

6 ATTORNEY PITRE:

7 All we're looking for is for Mr.
8 DeNaples at this stage to get --- we need to get
9 updated information, which I think we've been pretty
10 much updated on since he was with --- prior to him
11 withdrawing, and have him sit for a sworn interview
12 to answer questions that we have of him. And once he
13 clears up those questions we may find Mr. DeNaples is
14 perfectly suitable.

15 MR. FAJT:

16 Okay. One more point, Mr. Sklar, to
17 your point. On the expungement I do agree with BIE
18 that that expungement did not --- you know, I
19 understand where they are coming from on that because
20 they have internal records, internal interviews and a
21 lot of other information that was not party to that
22 expungement. So, I clearly see where they're coming
23 from, that they have, you know, vagueness, whatever
24 the term you want to use, that they need cleared up.

25 Because, again, Mr. DeNaples was before

1 this Board. I know you don't want to necessarily
2 recognize that, but he is different than anybody else
3 in the Commonwealth in that regard. That's just a
4 fact.

5 ATTORNEY SKLAR:

6 I would certainly agree that he has a
7 history unlike anyone else. I certainly would agree
8 with you, but let me come back to your first
9 question. The Board's underlying basis for condition
10 five --- it doesn't matter what Enforcement Counsel
11 believes the underlying basis --- the Board's
12 underlying basis, which is crystal clear was the
13 underlying criminal charges. Those charges ---.

14 MR. FAJT:

15 I'll agree to that. I'll agree to
16 that. So, let's just say we lift condition five.
17 For the sake of argument, we lift condition five.
18 They still have issues with information that they had
19 in interviews with Mr. DeNaples that they want
20 clarity on. And why does that cause you a problem?

21 ATTORNEY SKLAR:

22 I'll be very blunt. Mr. DeNaples
23 doesn't have any issue with, in theory, submitting to
24 a background investigation. He did it initially in
25 '05, '06. That's not an issue. The problem is he

1 sat down for a sworn interview. Someone got their
2 hands on that sworn interview. And I want to be
3 delicate here. They crafted an argument and got an
4 indictment. The words that were utilized were
5 innocuous, subject to interpretation. And he got
6 indicted based on that. Okay?

7 And everyone's aware of the travails
8 that transpired after that. So, that's the concern.
9 It's not sitting down and having a background
10 investigation. Would have done it in the first place
11 if there was some concern in the back of his mind, I
12 can't submit to a background investigation. He did
13 and he was licensed by the Board. So, that's not the
14 problem. The issue is, for whatever reason, you can
15 submit --- I recognize where you're coming from, but
16 that's the problem that Mr. DeNaples has. That's the
17 issue in a nutshell, is that he subjects himself to
18 that and the same thing happens again based on
19 nothing as far as he's concerned.

20 And that's how it ultimately turned
21 out, but it turned his world upside down for two or
22 three years. He just got resolved --- he was taken
23 off the board of First National Community Bank. He
24 was fighting for --- since 2008. It just got
25 resolved with the Office of the Comptroller of

1 Currency. They finally let him back on. Went up to
2 the Third Circuit. I don't want to, you know,
3 rehash that whole history, ---

4 MR. FAJT:

5 We're aware of that, yes.

6 ATTORNEY SKLAR:

7 --- but that's the problem. That's the
8 issue.

9 ATTORNEY DAVENPORT:

10 OEC contends that if the questions of
11 2006 were innocuous then let us go back and revisit
12 that issue and we'll clarify the record.

13 MR. FAJT:

14 And I'll finish with this. And how do
15 you address Mr. Sklar's issue that we don't end up
16 --- Mr. DeNaples doesn't end up in the same place
17 that he was with the whole indictment? I'm not
18 overly sympathetic to that, quite frankly, because I
19 don't think that's going to happen, but I think it's
20 a valid --- you know, I mean, I think he raises a
21 point that needs to be answered by you guys.

22 ATTORNEY PITRE:

23 And we can't. We can't because I mean,
24 that's left to whomever in the law enforcement
25 community. It's no different than me making

1 representations before this Board or anyone else that
2 comes before this Board making representations.
3 Witnesses come up here every day. We do sworn
4 interviews every day of individuals and they are all
5 subject to that same outcome, that it's possible that
6 someone in the law enforcement community may find
7 that they may have said something that was erroneous,
8 perjurious or criminal and criminal charges emanate
9 from it.

10 Mr. DeNaples has not been the only
11 person that this has happened to, but he has
12 definitely been probably the most high profile person
13 that this has happened to in the Commonwealth with
14 regard to the work that we've done.

15 CHAIRMAN:

16 Tony?

17 MR. MOSCATO:

18 I need just a little more clarification
19 on that, Cyrus. When you say someone in the law
20 enforcement community, Mr. DeNaples and BIE ---
21 excuse me. Mr. DeNaples and BIE sat down and there
22 was a sworn statement taken from him. Okay. BIE is
23 not, at least to the best of my knowledge, part of
24 the, quote, unquote, law enforcement community. So,
25 who are you referring to when you say someone from

1 the law enforcement community?

2 ATTORNEY PITRE:

3 It can be State Police, it can be the
4 Attorney General's Office, it can be a district
5 attorney, it can be the federal government, it could
6 be the U.S. Attorney. When we do background
7 investigations there's nothing to keep anyone from
8 the law enforcement community from saying, BIE, I
9 need your cooperation with this investigation. BIE,
10 I need this information.

11 And we are obligated under the Act and
12 we're obligated --- even if the Act didn't state, we
13 would be obligated to provide that information to
14 individuals or to members of the law enforcement
15 community. That goes hand in hand with ensuring that
16 the integrity of gaming is maintained.

17 MR. MOSCATO:

18 Okay. That's what I needed to hear. I
19 would have it --- would have gone from BIE to them.
20 I'm good. Thank you.

21 CHAIRMAN:

22 Anyone else? Mr. Sklar, the condition
23 we're talking about here, issue number five. At
24 least it's last iteration, number five, ---

25 ATTORNEY SKLAR:

1 Correct.

2 CHAIRMAN:

3 --- is in an Order by this Board dated
4 June 13th, last year?

5 ATTORNEY SKLAR:

6 Correct.

7 CHAIRMAN:

8 Not that long ago. After the Board
9 issued the Order, Mount Airy had a remedy at that
10 point, as I understand the law, you can correct me if
11 I'm wrong, to appeal. Isn't that correct?

12 ATTORNEY SKLAR:

13 Correct.

14 CHAIRMAN:

15 And Mount Airy decided not to do that?

16 ATTORNEY SKLAR:

17 Correct.

18 CHAIRMAN:

19 Okay.

20 ATTORNEY SKLAR:

21 But if I could just add?

22 CHAIRMAN:

23 Go ahead.

24 ATTORNEY SKLAR:

25 I think that it was a year and a half

1 ago. There has been three new Board members since
2 the last time it was considered. And the third point
3 is, as you know, there was --- that petition was
4 wrapped up with three other petitions, and it was
5 complex and complicated. And perhaps I didn't
6 articulate the --- Mount Airy's position as clearly
7 as I should have with respect to what I'm seeking
8 today. So, maybe, you know --- and I'll take
9 responsibility. So, for all of those reasons I do
10 think it's appropriate and certainly I think Mount
11 Airy's right to come back and ask the Board, a year
12 and a half later, for the relief that we're seeking
13 today.

14 CHAIRMAN:

15 Thank you, sir. And I appreciate the
16 questions of what I said. It was June 13th, 2012,
17 the Order. Anything further? Anything from
18 Ex-Officio members? Gentlemen, ladies? Okay. Thank
19 you very much.

20 ATTORNEY SKLAR:

21 Thank you.

22 CHAIRMAN:

23 The matter is now concluded. We will
24 consider it during our Executive Session. Thank you,
25 Mr. Sklar.

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ATTORNEY SKLAR:

Thank you.

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HEARING CONCLUDED

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