

IN THE PENNSYLVANIA GAMING CONTROL BOARD

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4718-2016
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IN RE:
RECOMMENDATION OF DENIAL
AND/OR ABANDONMENT OF
CATEGORY 1 APPLICATION OF
ENDEKA ENTERTAINMENT, LP

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PGCB DOCKET NO. 4718-2016

ADJUDICATION

Before the Pennsylvania Gaming Control Board (“PGCB” or “Board”) for disposition is the Bureau of Investigations and Enforcement’s (“BIE”) May 31, 2016 Recommendation of Denial and/or Abandonment of the Category 1 Application of Endeka Entertainment, LP (“Recommendation”) filed by the Office of Enforcement Counsel (“OEC”). OEC’s filing seeks an Order denying or declaring Endeka Entertainment, LP’s (“Endeka”) Application for Category 1 Slot Machine License abandoned as a result of its ongoing and long-term failure to cooperate in the background investigation process; to cure its and its principals’ application deficiencies; to complete all requirements of licensure as required by the Board’s May 20, 2015 Order; and to demonstrate financial fitness and suitability by clear and convincing evidence.

As more fully set forth below, following full consideration of the evidence of record, including One-Hundred Thirty-Five (135) factual stipulations agreed to by the parties, as well as their arguments, the Board has determined an Order denying Endeka’s Category 1 Slot Machine License Application is warranted and Endeka’s Application is denied, with prejudice¹.

¹ In making this determination, the Board is only denying the Endeka Application, with prejudice. All applications of persons and entities which have been submitted in support of the Endeka Application are administratively withdrawn, without prejudice, and all pending petitions to withdraw applications of persons previously involved in this project are dismissed as moot (with those underlying applications also administratively withdrawn, without prejudice).

Procedural Background

The Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §§ 1101, *et seq.* (“Gaming Act”), enacted by the General Assembly in July 2004 and amended thereafter, authorizes the Board to award slot machine licenses and certifications to conduct table games. Section 1307 of the Gaming Act directs that there may be no more than seven (7) Category 1 licensed facilities. 4 Pa.C.S. §1307. Category 1 licensed facilities are casinos which must be situated at a licensed horse racetrack facility. 4 Pa.C.S. §1302. On May 31, 2013, Endeka applied for the 7th and final Category 1 Slot Machine License having previously received a license to conduct live horse racing from the State Harness Racing Commission.²

During April 2015, nearly two (2) years after making its application to the Board, OEC served a Notice of Recommendation of Denial of Initial Application upon Endeka citing Endeka’s failure to cooperate in the Bureau of Investigations and Enforcement’s (“BIE”) investigation. At approximately the same time, Endeka filed a Petition for Extension of Time, asking the Board to provide it with a six (6) month extension of time to provide financing and other background information requested by BIE and OEC. A public hearing on Endeka’s Petition was held on May 20, 2015, after which the Board granted Endeka a six (6) month extension of time to comply with BIE’s and OEC’s requests; effectively mooted OEC’s Recommendation of Denial.

² While not necessarily relevant to these proceedings, it is noteworthy that there exists an extensive history of efforts to build the proposed racetrack and casino at the same Lawrence County site well prior to Endeka receiving a Harness Racing License and making application to the Board. In fact, Valley View Downs, LP obtained a Harness Racing License and submitted a Category 1 Slot Machine License Application on October 29, 2007, more than five (5) years prior to the Application at issue in these proceedings. Subsequent to that date, Valley View Downs, LP filed for Chapter 11 bankruptcy protection and, with the approval of the State Harness Racing Commission, the Harness Racing License was then transferred to American Harness Tracks, LLC. Fifteen months after that, on October 25, 2012, the State Harness Racing Commission approved the transfer of the Harness Racing License from American Harness Tracks, LLC to Endeka. Seven months later, Endeka filed its Application with the Board.

Thereafter, on May 31, 2016, over a year after the extension was granted, OEC filed the Notice of Recommendation of Denial and/or Abandonment now before the Board. In it, OEC essentially asserts that, while Endeka initially complied with BIE's and OEC's requests to provide information after the Board took the matter up a year earlier, it has once again fallen into non-compliance; including an inability to show it has the ability to finance the project.

The Board took the matter up at its July 13, 2016 meeting and, after reviewing the record and hearing from the parties, voted unanimously to deny Endeka's Application, with prejudice, for the reasons outlined herein.

FINDING OF FACTS:

1. On October 25, 2012, the State Harness Racing Commission approved the transfer of a Lawrence County based Harness Racing License from American Harness Tracks, LLC to Endeka.
2. On May 31, 2013, Endeka filed a Category 1 Slot Machine License Application ("Application") with the Board.
3. As part of Endeka's Application to the Board, Penn National Gaming, Inc. ("Penn National") submitted an Entity Affiliate Application, and Western PA Gaming Ventures, LLC ("Western PA Gaming"), an entity associated with Penn National, submitted a Management Company Application.
4. Western PA Gaming also submitted a \$50 Million bond, as required by 4 Pa. Code §1313(c).
5. At the time of its initial Application, Endeka's direct ownership structure was as follows:

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| a. SDSSL Tuxepo Investors, LP ("Tuxepo") | 89.99% |
| b. AHT Land, LP ("AHT") | 10.00% |
| c. Endeka, LLC | 0.01% |
6. On November 12, 2014, more than seventeen (17) months after filing its Application, OEC requested Endeka provide, within 30 days, executed agreements relating to the funding of the Endeka project, as well as any applications of entities or individuals which would be required by the funding structure under the Gaming Act and the Board's Regulations.

7. Three and a half months later, on February 27, 2015, counsel for Endeka sent OEC a letter requesting until September 1, 2015 to provide agreements and related applications relating to the project's funding.
8. Just over a month after Endeka asked OEC for a six (6) month extension to provide agreements and related applications relating to the project's funding, on April 6, 2015, Penn National and Western PA Gaming filed a Petition to Withdraw their applications in connection with the Endeka project³.
9. Four (4) days later, on April 10, 2015, Endeka asked the Board for an order granting the extension previously requested informally of OEC through the filing of a Petition for Extension of Time for it to provide certain financing and other background documentation requested by OEC. In its petition, Endeka requested a six (6) month extension to "complete the orderly transition from [Western PA Gaming] as the developer of the Project to the Constituent Partners, to provide Endeka with additional time in which to seek a replacement operator and finalize financing sources for the Project . . ."
10. On or about April 15, 2015, OEC issued a Notice of Recommendation of Denial of Initial Application due to failure to cooperate and, on May 8, 2015, OEC filed an Answer to Endeka's Petition for Extension of Time, objecting to the extension.⁴
11. A public hearing on Endeka's Petition for Extension of Time was held before the Board on May 20, 2015. During the public hearing, representatives of Endeka stated that Endeka had begun working with Mr. Joseph Procacci ("Procacci") to bring him into the Lawrence County project and, in fact, a term sheet outlining the arrangement had been executed by and between Endeka, Procacci Limited Local Gaming, LLC and Procacci Local Gaming, LLC.
12. Procacci is well known to the Board as a successful businessman and someone found suitable for casino related licensure as he had been vetted for an ultimately unsuccessful bid to obtain a Category 2 Slot Machine License for the City of Philadelphia⁵.
13. Endeka put on testimony at the May 20, 2015 public hearing indicating that it sought time to work with Procacci to "finalize agreements and project financing" and avowed that Endeka was "confident that within the next 6 months we will be able to provide Board staff with all of the requisite documents to confirm the financial suitability of this project."

³ On May 20, 2015, the Board granted Penn National and Western PA Gaming's Petition for Withdrawal, without prejudice.

⁴ OEC subsequently filed an Amended Recommendation of Denial of Initial Application and Amended Answer to the Petition for Extension of Time, continuing to object to any relief being provided to Endeka given its failure to fully cooperate in BIE's investigation.

⁵ Unlike a Category 1 Slot Machine License, which must be located at a facility licensed for live horse racing, a Category 2 Slot Machine License is for a "stand alone" facility and has no such requirement.

14. On or about May 20, 2015, the Board issued an Order granting Endeka an extension of time, giving Endeka until November 20, 2015 to “complete all requirements of licensure.”
15. Subsequent to the May 20, 2015 public hearing, Endeka submitted applications related to Procacci and his affiliated entities, as well as for the Merit Managing Group (“Merit”) and its principals.
16. Merit was proposed by Procacci to serve as the casino management company for the Endeka project. Merit was also known to the Board as it was previously found to be suitable for licensure in an identical role during Procacci’s attempt to get a Category 2 Slot Machine License in the City of Philadelphia.
17. Procacci also submitted, to the Board, a bond in the amount of \$50 Million, on behalf of Endeka, to replace the \$50 Million bond previously submitted to the Board by Western PA Gaming.
18. On or about September 23, 2015, Tuxepo entered into an Agreement of Sale with Procacci. The Agreement of Sale of Membership Interests intended a transfer of the 89.99% ownership interest in Endeka from Tuxepo to Procacci Limited Local Gaming, LLC.
19. On October 21, 2015, the Harness Racing Commission issued a final order granting Endeka’s Petition for Stock Transfer from Tuxepo to Procacci with the following conditions:
 - a. By January 21, 2016 Endeka was required to present fully executed, detailed and definitive documents evidencing financial capability and commitment to build a race track for not less than \$170 Million;
 - b. Construction would begin or would be 25% completed a year from the date of the Order (October 21, 2016);
 - c. Construction would be 50% completed 18 months from the date of the Order (April 21, 2017); and
 - d. Construction would be totally complete 2 years from the date of the Order (October 21, 2017)⁶.
20. On November 20, 2015, six (6) months to the day after the Board’s May 20, 2015 extension, Endeka filed amendments to its Application. Specifically, Endeka disclosed that the project costs were, at that point in time, \$204 Million (inclusive of licensing fees) which would largely be funded by NewCastle Funding, LLC (“NewCastle”).
21. According to the November 20, 2015 Application amendments, in addition to funding to be obtained from NewCastle, Procacci would contribute \$25 Million in equity to the Endeka project.

⁶ On or about December 17, 2015, the Harness Racing Commission issued an order regarding an Endeka Motion for Rehearing and Reconsideration in this matter. The Order denied Endeka’s request for a rehearing, but modified the Commission’s October 21, 2015 Order by granting a six (6) month extension to the previously imposed deadlines.

22. NewCastle filed an application as an Affiliate of Endeka on November 20, 2015.
23. NewCastle was organized on November 20, 2015.
24. The owners of NewCastle are Kurt Wise ("Wise")(60%) and Charles Long, Jr. ("Long")(40%).
25. Endeka included within its amended Application, a one paragraph letter, dated November 19, 2015, from Omar Young, a client manager with Panamanian Trust Savings & Guaranty ("PTS&G"), that stated the correspondence was "to confirm that Mr. Wise has the necessary financial ability to fully fund" a \$204 Million loan to Endeka.
26. On November 20, 2015, Endeka also filed a Petition for Withdrawal of the Principal License Applications of Tuxepo and all related individuals and entities. In its Answer, OEC objected to the Tuxepo withdrawal petition alleging that the documentation and information provided did not effectuate a proper transfer of ownership interests in Endeka and included terms in violation of the Act and Regulations⁷.
27. Based upon the filings made by Endeka on the six (6) month deadline date (November 20, 2015), OEC believed Endeka was in substantial compliance with the Board's May 20, 2015 Order.
28. On or about January 7, 2016, Wise filed a Principal application due to his 60% ownership interest in NewCastle.
29. In his application Wise listed his net worth at \$300,134,601 with \$300 Million listed as the value of a software application for an e-commerce patent and source code; however, no documentation was presented as part of his application to support the alleged monetary value of this patent and source code.
30. Endeka believed Wise was to utilize the value of his patent as collateral in order to obtain the funding for the Endeka project.
31. Wise also submitted, as part of his application, a letter dated January 7, 2016, from ACM Holdings Ltd. ("ACM") that stated notes would be issued for a total of \$204 Million and that the collateral Wise was utilizing would be guaranteed by ACM through SVS Securities PLC.
32. Wise stated in his application that he was an 80% owner of WDX Holdings, LLC and he provided a print out from Swiss Trading & Fiduciary Trust AG ("STFT"), dated June 6, 2015 and signed by Omar Young, which stated that WDX Holdings LLC held an account with STFT with a balance of \$241,595,000.
33. Also on January 7, 2016, NewCastle, Endeka, and the Procacci entities entered into a loan agreement.

⁷ The Board never acted upon this Petition and, given the outcome in this proceeding, it has now been dismissed as moot and the Tuxepo applications administratively withdrawn.

34. Subsequent to January 7, 2016, numerous communications were made between Board staff and entities involved in the Endeka Application, including the following:
- a. On or about January 14, 2016, The Board's Bureau of Licensing ("BOL") sent counsel for Endeka a letter notifying him that the documentation submitted on January 7, 2016 contained deficiencies and requested information and documentation satisfying the deficiencies within ten (10) days.
 - b. On or about January 15, 2016, BIE sent counsel for Endeka fingerprint cards, return envelope and instructions for Kurt Wise to be fingerprinted as part of his background investigation.
 - c. On or about February 6, 2016, BIE sent Kurt Wise a letter requesting he submit records and documents in connection with his background investigation.
 - d. On or about February 26, 2016, OEC sent counsel for Endeka and counsel for Procacci a letter requesting that, within ten (10) days, they provide documentation supporting the value of the patent owned by Wise.
 - e. On or about March 1, 2016, OEC sent counsel for Endeka and counsel for Procacci a letter noting that many of OEC's requests for documentation and information (including those listed above) remained outstanding. OEC asked that all requested documentation and information be provided within twenty (20) days. The information requested, included the following:
 - i. The final corrected versions of the Agreement of Sale of Interests between Tuxepo and Procacci entities;
 - ii. The final Second Amended and Restated Partnership Agreement of Endeka;
 - iii. The final Development and Management Agreement between Merit and Endeka;
 - iv. The final, corrected and complete application of NewCastle, including its Operating Agreement;
 - v. The final executed Loan Agreement between NewCastle and the Procacci entities; and
 - vi. The final and complete Principal Application of Kurt Wise.

35. Three days later, on March 4, 2016, counsel for Endeka notified BIE by email that Wise, had informed Endeka that he was withdrawing from the Endeka project, in his individual capacity, and would not participate in a requested interview in connection with his background investigation.
36. On March 7, 2016, Counsel for Endeka notified BIE that Wise's patent would not be used as collateral to fund the project.
37. On March 11, 2016, OEC sent counsel for Endeka a letter requiring that, within ten (10) days, Wise contact BIE to schedule an investigative interview if NewCastle intended to continue its participation in the Endeka project and, additionally, that any other owners or principals of NewCastle contact BIE to schedule interviews or file petitions to withdraw any application filed with the Board.
38. On April 11, 2016, Wise was interviewed by BIE. At that time, he indicated that NewCastle would be pursuing project funding domestically through Stern Brothers, and not through ACM and SVS Securities PLC as indicated in the documents provided to BOL on January 7, 2016.
39. Wise subsequently emailed BIE on April 15, 2016 indicating two (2) possible funding options for the Endeka project: A structured financing utilizing Stern Brothers to develop and sell a Bond/Note for 100% financing; or the use of profits from a "long term commodity project" which Wise was considering pursuing.
40. Four days later, on April 19, 2016, counsel for Endeka notified OEC by email that Endeka would be filing a petition to withdraw its Category 1 Application and, as a result, no further investigative work should be undertaken by BIE.
41. On May 2, 2016, counsel for Endeka notified OEC that Endeka will not be filing a withdrawal petition and that Endeka is in an internal dispute over the best course of action following "the course of conduct of Kurt Wise, which has made securing financing for the project very problematic."
42. On May 31, 2016, OEC sent counsel for Endeka and counsel for Procacci the Notice of Recommendation of Denial and/or Abandonment of Category 1 Application which is the subject of this Adjudication. The Board thereafter scheduled the matter for a public hearing on July 13, 2016.
43. Sixteen days prior to the scheduled public hearing on OEC's recommended denial and/or abandonment of the Application (June 27, 2016), counsel for Endeka sent OEC a letter stating that a new financier, Legado Investment Group, LLC ("Legado") would be providing "full and complete" financing for the Endeka project. Attached to the letter was a non-binding letter of intent executed on June 21, 2016 by Rod Simon, CEO of Legado ("Simon") and Procacci on behalf of Endeka.

44. Endeka's June 27, 2016 correspondence further indicated that:
- a. Legado will provide full and complete financing for Endeka's proposed Category 1 licensed facility and serve as a full financial backstop for the entire cost of the project;
 - b. The parties are working towards definitive financing documents "which should be in final form by July 13, 2016"; and that
 - c. Legado is "aware of the licensing requirements associated with its proposed involvement in this project and is willing to comply with PGCB's regulatory requirements".
45. At the July 13, 2016 public hearing on this matter, Endeka did not present any evidence of committed financing by Legado or any other financier.
46. Simon, in fact, testified that Legado, itself, would not be providing financing; rather, its role in securing financing was to locate a lender in exchange for a "finder's fee".
47. According to Simon, he would not even consider subjecting himself or his company to licensure by the PGCB, given he has an interest in obtaining an ownership interest in a Major League Baseball franchise and that league prohibits its owners from being involved in gaming.
48. Simon further testified that he brought the Endeka project to Merrill Lynch/Bank of America for consideration and, in fact, a representative of Merrill Lynch/Bank of America, Jeffrey Fitz ("Fitz") was available to testify.
49. As of July 13, 2016, Endeka sought to fully finance the project, up to \$205 Million, through a credit agreement with Merrill Lynch/Bank of America.
50. When called, Fitz testified that he is an employee of Merrill Lynch/Bank of America's "wealth management division" and that he could not provide the Board with a timeframe in which he thought there would be definitive loan documents because he is "not a decision maker".
51. Fitz also conceded that Merrill Lynch/Bank of America "haven't done any due diligence yet" and, as a result, Endeka has not begun to negotiate the terms of any credit agreement between it and Merrill Lynch/Bank of America⁸.

⁸ Although outside of the record in these proceedings, the Board believes it is worth noting that, two days following the July 13, 2016 public hearing on this matter (and the Board's decision), the Board's Office of Chief Counsel was contacted by Merrill Lynch/Bank of America's New York, NY based Real Estate, Gaming and Lodging Investment Banking Group. A member of that Group had read a media account of the Board's July 13th public hearing and was inquiring as to the name of the individual providing testimony on behalf of Merrill Lynch/Bank of America, as such participation was unbeknownst to anyone in that arm of the institution, which provides gaming related extensions of credit.

52. Endeka indicated that, of the \$205 Million loan, \$65 Million would pay licensing fees and \$140 Million would be used to construct the casino and racetrack, with the casino consisting of 1,500 in slot machines, 38 table games, and three different food venues; while the racetrack would have both a grandstand and paddock.
53. At the July 13, 2016 public hearing, Endeka requested sixty (60) days to negotiate a financing arrangement with Merrill Lynch/Bank of America.

Discussion

The issue before the Board is whether to grant OEC's Recommendation of Denial and/or find Endeka's Application abandoned. Since May 31, 2013, when Endeka's Application process began, the Board has committed significant time and resources into the investigation of Endeka's suitability. The Board's BOL and BIE, as well as OEC, have requested and considered extensive documentary submissions; requested additional information to correct deficiencies; and requested additional explanation of certain information, only to be disappointed by Endeka's response, or lack thereof, thereby resulting in even more requests.

In response to OEC's Recommendation, the Board has, once again, been presented with a request for an extension so that Endeka could finally obtain the necessary financing for the project through Merrill Lynch/Bank of America. Endeka makes this request notwithstanding its inability to secure such financing in the preceding three (3) and one-half (1/2) years; after being given a six (6) month extension to do just that fourteen (14) months ago; after bringing at least one questionable financier to the Board previously; after telling the Board as recently as sixteen (16) days before the public hearing that it would present "final form" "definitive financing documents" at the public hearing (which it did not); after telling Board staff that Legado would be providing the financing for the project and was fully aware of the licensing implications of doing same (both of which were untrue); and after presenting testimony from an individual

representing Merrill Lynch/Bank of America who clearly knew little, if anything, about the project, did no due diligence, and was not a “decision maker.”

In many respects, the situation surrounding Endeka is not unlike that of the stalled, and since revoked, Philadelphia Entertainment and Development Partners, LP (a/k/a “Foxwoods”) project. There, despite good intentions, the Foxwoods ownership group experienced delays, loss of financing, attempts to obtain partners to provide financing, and multiple extensions of time to meet the Gaming Act’s requirements – all to no avail. Eventually, the Board revoked the license of Foxwoods, in large part due to its failure to maintain financial fitness/suitability.

On appeal, the Commonwealth Court upheld the revocation noting that “financial fitness/suitability requires a factual showing of [an applicant’s] historical financial stability and financial wherewithal, the latter of which is represented by its ability to develop a proposed project and to maintain a steady level and growth of revenue to the Commonwealth.” *PEDP v. PGCB*, 34 A.3d. 261,713(Cmwlth. Ct. 2011), appeal denied, 615 Pa. 146 (2012). In that case, Foxwoods sought extensions of time to achieve financing but ultimately was unable to deliver a completed financing package despite multiple extensions to do so. The Court stated “while it claims to have made every effort to comply with the [Board’s] orders, it did not do so, and whether or not its failure was voluntary, its repeated requests for deadline extensions reflects an intention to bypass the established deadlines. Good faith is not mentioned in the Gaming Act or the Board’s Regulations as a basis for which [Foxwoods] can escape the provisions of Section 1518(c)(1)(iii).”⁹ *Id.* The same is true here.

⁹ The Gaming Act provision addressing revocation of a slot machine license.

Endeka is in violation of the Board's May 20, 2015 Order

Despite a rush of last minute filings on November 20, 2015, the six (6) month deadline placed in the Board's May 20, 2015 Order giving Endeka an extension of time to come into compliance with all deficiencies identified in its Application and the proposed project, eight (8) months out from that deadline, it is clear that Endeka never satisfied the Order. The May 20, 2015 Order required Endeka to meet all requirements of licensure, including the submission of applications for all principals and a showing of financial suitability through, most importantly, the ability to fund the project. What the Board has received instead, however, has been ongoing changes in some of the ownership, an inability to finance the project and, perhaps most troubling, a continuing lack of cooperation and forthrightness, if not outright untruths, by or about prospective financiers.

The Parties have stipulated to the extensive failure of Endeka to respond to requests for documentation, correct deficiencies, and provide additional information both before and after the date of the Board's Order, only some of which (for the sake of brevity) are outlined in the Findings of Fact herein. For example, even after the Board granted an extension of time to obtain financing and provide all necessary documents, Endeka failed to submit all applications for entities disclosed as sources of financing; documentation that the transfer of ownership between Tuxepo and the Procacci entities was properly finalized; and proof of the value of collateral pledged by NewCastle to fund the Project. Additionally, on April 19, 2016, Endeka notified OEC that it would be filing a petition to withdraw its Category 1 Slot Machine License Application and requested that no further work be done on Endeka's pending applications. That, of course, was never done yet, as of the date of the public hearing in this matter, Endeka had not

requested that BIE resume the investigation of it and its related pending applications thereby placing the entire agency in a virtual limbo.

Clearly, Endeka has failed to cooperate with BIE in its investigations by delaying responses; responding only in part; withholding requested documents; and by failing to provide definitive evidence of funding of the Project within the six (6) month extension granted by the Board. As a result, Endeka has directly violated the Board's Order. Endeka's violation of the Board's Order further violates the Gaming Act and the Board's Regulations. In fact, evidence of Endeka's actions or lack thereof, *requires* the Board to deny its Application.

4 Pa.C.S. § 1309. Slot machine license application.

(b) Refusal to cooperate.--Any refusal to provide the information required under this section or to consent to a background investigation shall result in the immediate denial of a license or permit. (Emphasis added).

Furthermore, Endeka's failure to comply with the Board's Order violates the Board's Regulations in that an applicant has a continuing duty to "promptly provide information requested by Board staff" and to cooperate with BIE in its investigation pertaining to its application.

Board Regulations, Title 58 Pa.Code

§ 421a.1. General requirements.

(g) An applicant for or holder of a license, permit, certification, registration or authorization shall have a continuing **duty to promptly provide information requested by Board staff** relating to its application **and cooperate with Board staff in investigations**, hearings, and enforcement and disciplinary actions. (Emphasis added).

§ 421a.3. Investigations; supplementary information.

(b) It is the continuing duty of an applicant and a holder of a license, permit, certification, registration or authorization to provide full cooperation to the Bureau in the conduct of an inquiry or investigation and to provide supplementary information requested by the Bureau.

Therefore, the Board is justified in denying Endeka's Application for failing to abide by the Board's May 20, 2015 Order and thereby violating the Gaming Act and the Board's Regulations.

Endeka has failed to show that it is suitable

Endeka has failed to demonstrate, by clear and convincing evidence, that it is suitable to be issued a Category 1 Slot Machine License under criteria set forth in the Gaming Act and the Board's Regulations.

Section 1310 of the Gaming Act, 4 Pa.C.S. §1310 provides, in relevant part:

(a) Every application for a slot machine license **shall include such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's suitability**, including good character, honesty and integrity. (Emphasis added).

§ 441a.9. Approval of a slot machine license.

(a) An applicant for a slot machine license shall prove by **clear and convincing evidence**:

(2) The good character, honesty and integrity of the applicant and its affiliates, intermediaries, subsidiaries, holding companies and principals **in accordance with section 1310 of the act** (relating to slot machine license application character requirements). (Emphasis added).

As discussed above, the evidence presented at the hearing is clear; over the course of years, Endeka has repeatedly failed to provide all documentation and information to BOL, BIE, and OEC sufficient to complete its, and many of its principals', applications. Having not provided the required documents and information, Endeka has failed to, by clear and convincing evidence, show that it is suitable to be issued a Category 1 Slot Machine License.

Endeka has failed to show it is financially suitable

Section 1313 of the Gaming Act, 4 Pa.C.S. § 1313, provides, in relevant part:

(a) Applicant financial information.--**The board shall require each applicant for a slot machine license to produce the information, documentation and assurances concerning financial background and resources as the board deems necessary to**

establish by clear and convincing evidence the financial stability, integrity and responsibility **of the applicant,** its affiliate, intermediary, subsidiary or holding company, including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall in writing authorize the examination of all bank accounts and records as may be deemed necessary by the board.

(b) Financial backer information.--The board shall require each applicant for a slot machine license to produce the information, documentation and **assurances as may be necessary to establish by clear and convincing evidence the integrity of all financial backers, investors, mortgagees, bondholders and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed.** Any such banking or lending institution and institutional investors may be waived from the qualification requirements. A banking or lending institution or institutional investor shall, however, produce for the board upon request any document or information which bears any relation to the proposal submitted by the applicant or applicants. The integrity of the financial sources shall be judged upon the same standards as the applicant. Any such person or entity shall produce for the board upon request any document or information which bears any relation to the application. In addition, the applicant shall produce whatever information, documentation or assurances the board requires to establish by clear and convincing evidence the adequacy of financial resources. (Emphasis added).

Endeka has consistently failed to demonstrate, by clear and convincing evidence, that it is financially suitable to be issued a Category 1 Slot Machine License under criteria set forth in the Gaming Act and the Board's Regulations. For over three (3) years, Endeka has indicated that it was to receive financing through several different sources. In each instance, the financing has either fallen through because the related principal decided that the project was not viable or, as may be the case with Wise and NewCastle, the money may simply not have been there. Ultimately, at this time, there remains no commitment by anyone to fund the Project despite Endeka having ample time to secure same. Moreover, if there was ever reason for any doubt about Endeka's financial suitability to build this project, that was put to rest during the public hearing when Endeka's own witnesses sealed the conclusion for the Board. Between the testimony of Simon and Fitz, it became crystal clear that this Applicant did not have commitments for financing and was not even close to obtaining such. As

a result, it is clear to the Board that Endeka is not financially suitable to hold a Category 1 Slot Machine License.

Also related to financial suitability is the concept of operational viability. Section 441a.7(f) of the Board's Regulations provides, in relevant part, the following:

(f) For the purposes of this section, an applicant's demonstration of suitability must include a showing of:

(3) Operational viability, including:

- (i) **The quality of the proposed licensed facility**, and temporary land-based facility, if applicable, including the number of slot machines proposed and the ability of the proposed licensed facility to comply with statutory, regulatory and technical standards applicable to the design of the proposed licensed facility and the conduct of slot machine operations therein. (Emphasis added).

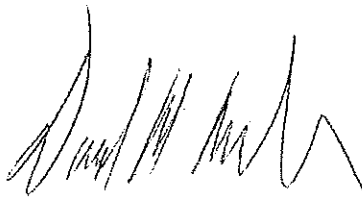
At the July 13, 2016 public hearing, during questioning by Board Member Fajt, it became evident that, even if Endeka were able to obtain funding through Legado, the funding sought would likely not be sufficient to build a Category 1 Slot Machine Licensed Facility of a quality meeting the Board's standards as is evidenced by the other casinos across the Commonwealth. Specifically, Mr. Fajt broke down the expenses with Attorney O'Riordan, first confirming that Endeka intends to obtain \$205 Million from Merrill Lynch/Bank of America and that the \$205 Million is the full funding for the Project. Of that amount, approximately \$65 Million would be paid to Pennsylvania for licensing fees, leaving approximately \$140 Million to build a casino, racetrack, and all amenities related thereto. Attorney O'Riordan made assurances to Mr. Fajt that they have worked out the numbers and that they can build the casino and racetrack for \$140 Million; however, as brought up by Ex-Officio Board Member Fred Strathmeyer, representing the Secretary of Agriculture, Endeka is required, by order of the Harness Racing Commission, to build a \$170 Million racetrack. Clearly,

under the proposed financing, Endeka does not have the resources to build a racetrack facility consistent with that Order.

Throughout this process Endeka has paraded various funding sources before the Board and continuously failed to provide financial backer information that assures the Board, by clear and convincing evidence, of the stability and integrity of the backers. It has also failed to show that it has obtained definitive financing; and it has not provided evidence of the viability of the Project. Therefore, it has not met its burden to show that it is financially suitable to obtain a Category 1 Slot Machine License.

Conclusion

Endeka has violated the Board's May 20, 2015 Order; has not proven that it meets the Gaming Act's general suitability requirements; and has also failed to prove that it is financial suitability to receive a Category 1 Slot Machine License. Based upon the foregoing, the Board hereby denies Endeka's Category 1 Slot Machine License Application with prejudice.¹⁰



Dated: August 29, 2016

By: _____
David M. Barasch, Chairman
Pennsylvania Gaming Control Board

¹⁰ As eluded to in footnote 1, all underlying and related applications are administratively withdrawn, without prejudice. All pending petitions to withdraw applications related to Endeka's Category 1 slot machine license are dismissed as moot, and all associated applications thereto are also withdrawn, without prejudice. These pending petitions are as follows: SDSSL Tuxepo Investors, LP, Docket No. 4396-2015; Tuxepo Funding, LLC, Docket No. 4397-2015; Melisa Silver Casino Trust, 4398-2015; Peter D. DePaul, Docket No. 4399-2015; Edward M. Snider, Docket No. 4400-2015; Thomas Leonard, III, Docket No. 4401-2015; Martin Ettin, Docket No. 4402-2015; Ethan Silver, Docket No. 4403-2015; Brooke Silver, Docket No. 4404-2015; Remi Silver, Docket No. 4405-2015; Armand Nannicola, Docket No. 4769-2016; Charles Nannicola, Docket No. 4770-2016; Frank Nannicola II, Docket No. 4771-2016; Kurt Wise, Docket No. 4757-2016; and the Application of NewCastle Funding, LLC; Docket No. 4758-2016.