

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: NRT TECHNOLOGY CORPORATION AND NRT  
TECHNOLOGIES, INC.

JOINT PETITION FOR RELIEF: OHA #7882-2018

\* \* \* \* \*

ORAL ARGUMENT

\* \* \* \* \*

BEFORE: DAVID M. BARASCH, CHAIRMAN  
Richard G. Jewell, Obra S. Kernodle, IV,  
Sean Logan, Kathy M. Manderino,  
Merritt C. Reitzel, Dante Santoni, Jr.,  
Members  
Jorge M. Augusto, representing Russell  
Redding, Secretary, Department of  
Agriculture; Jen Langan, representing Joe  
Torsella, State Treasurer; Radee  
Skipworth representing Secretary of  
Revenue, Dan Hassell

DATE: Wednesday, August 15, 2018

Reporter: Rhonda K. Thorpe

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LOCATION: Pennsylvania Gaming Control Board  
Strawberry Square Complex  
2nd Floor  
Harrisburg, PA 17101

## A P P E A R A N C E S

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OFFICE OF ENFORCEMENT COUNSEL

JAMES ARMSTRONG, ESQUIRE

Assistant Chief Enforcement Counsel

PA Gaming Control Board

P.O. Box 69060

Harrisburg, PA 17106-9060

Counsel for the Pennsylvania Gaming Control Board

LLOYD D. LEVENSON, ESQUIRE

Cooper Levenson

1125 Atlantic Avenue

Atlantic City, NJ 08401

Counsel for NRT Technology Corporation and NRT

Technologies, Inc.

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## P R O C E E D I N G S

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CHAIRMAN: Just identify yourself and proceed.

ATTORNEY LEVENSON Lloyd Levenson, L-E-V-E-N-S-O-N, Counsel for NRT. I feel kind of lonely up here without all the other people.

Can I borrow some people?

CHAIRMAN: Let's call random people out of the audience.

ATTORNEY LEVENSON: Right. This petition, Mr. Chairman and members of the Board, concerns direct, indirect investors NRT, a privately-held company, which is merging with Sight Line to become NRT Sight Line.

NRT is not a newcomer to Pennsylvania. It's been licensed here since February of 2006 and never asked for this type of review previously.

The Act provides that a direct holder from a beneficially-interested applicant or Licensee needs to file as well as an investor, which has the controlling interest in an applicant or a Licensee unless the presumption of control is provided by clear and convincing evidence.

The direct investor here is Fifth

1 Third Capital Holdings, a subsidiary of two bank  
2 holding companies, Bank Fifth Third Financial and  
3 Fifth Third Bancorp.

4 The direct investor, Fifth Third  
5 Capital Holdings, will only hold approximately eight  
6 percent of NRT Sight Line, with only a 4.99 voting  
7 interest in the new company.

8 That company, Capital Holdings, has  
9 filed an application and a report.

10 The issue is whether the two indirect  
11 owners of that holding company need to file. By your  
12 law, they don't need to file. As they are not direct  
13 owners. And we believe we have rebutted, by clear and  
14 convincing evidence, the question of control.

15 As acknowledged by Mr. Armstrong in  
16 his brief, you do have the discretion to waive your  
17 regulations, to waive the two indirect investors, the  
18 two bank holding companies.

19 The facts here present such unique AND  
20 compelling circumstances that sort of cry out for your  
21 discretion. What are those compelling, unique  
22 circumstances?

23 Very quickly, John Dominelli, who  
24 founded this company decades ago, will continue to own  
25 82 percent.

1           So he'll be in full control of the  
2 company, Chairman of the Board. The direct investor  
3 to Third Capital has just a 4.99 percent voting  
4 interest, but no Board seat and no Board observation -  
5 observer rights, and he has filed an application.

6           The two indirect owners, the bank  
7 holding companies, are closely regulated by three  
8 federal regulatory bodies, the Federal Reserve Board,  
9 the Consumer Financial Protection Bureau and the FDIC,  
10 all of which have the power to impose civil and  
11 criminal penalties if the direct investor even  
12 attempts to exercise control.

13           That exposure to federal, civil and  
14 criminal penalties is sufficient in itself, I believe,  
15 to rebut, by clear and convincing evidence. The bank  
16 holding companies are passive investors.

17           There are institutional investors  
18 that have to decide whether it's a publicly-held  
19 company. The bank holding companies would be  
20 routinely waived.

21           Lastly, the legislature recently, in  
22 the Internet Gaming Bill, provides for the waiver of  
23 institutional investors in privately-owned companies.

24           It sort of demonstrates a present  
25 legislative state of mind that there is no public

1 policy in Pennsylvania prohibiting waivers of  
2 institutional investors in privately-held companies.

3 I'm not going to go into the GPI case  
4 that you decided some time ago, because there's apples  
5 and oranges. We are still far away from the facts in  
6 that case.

7 So, - so, we think it cries out for  
8 the relief that we request. Thank you. Six minutes  
9 and 46 seconds. Thank you.

10 CHAIRMAN: Enforcement Counsel?

11 ATTORNEY ARMSTRONG: James Armstrong.

12 CHAIRMAN: You'll get to keep those  
13 two minutes for Rebuttal.

14 ATTORNEY ARMSTRONG: James Armstrong,  
15 A-R-M-S-T-R-O-N-G, with OEC.

16 Chairman, Commissioners, it is OEC's  
17 position that the Petitioners have not met their  
18 burden under the Gaming Act, the rules and regulations  
19 that were dissuading for the Board to waive the  
20 application of its regulations requiring a Principal  
21 licensure.

22 As such, OEC is of the opinion that  
23 Fifth Third Capital Holdings, Fifth Third Financial  
24 and Fifth Third Bankcorp meet the definition of  
25 Principal.

1                   They must file the appropriate  
2 applications with the Board to obtain licensure prior  
3 to holding the proposed ownership interest in NRT  
4 Technology Corp and NRT Technologies, Inc.

5                   Commissioners, the definition of  
6 Principal in the Act identifies specific categories in  
7 which a person or entity would be considered a  
8 Principal, based on their relationship through an  
9 Applicant or a Licensee.

10                   NRT Technology Corp. and NRT  
11 Technologies, Inc. are Licensees.

12                   Under the third category for Principal  
13 the, quote, a person who directly holds a beneficial  
14 interest in or ownership of the securities of an  
15 Applicant or Licensee. Under this third category,  
16 Fifth Third Capital Holdings will be the specific  
17 category Principal that will be required to obtain  
18 licensure prior to obtaining an 8.4 percent direct  
19 interest in the Petitioners, when the Petitioners go  
20 through with the acquisition of Sight Line -.

21                   Petitioners can see in the Joint  
22 Petition and in the Stipulations of Fact that Fifth  
23 Third Capital Holdings will file a Principal under the  
24 application once the opposition is settled, effective  
25 current.

1           But Fifth Third Capital Holdings is  
2 not an independently-owned entity. It is 100 percent  
3 owned by Fifth Third Financial Corporation, which is  
4 100 percent owned by Fifth - Fifth Third Bancorp.

5           This ownership chain requires Fifth  
6 Third Financial Corporation, Fifth Third Bancorp to  
7 also be licensed as Principals.

8           In accordance with Board regulation  
9 433(a)(4)(b)(2), Fifth Third Financial and Fifth Third  
10 Bancorp should be required to submit application  
11 since, through chain of ownership, they will both  
12 direct - indirectly own more than a one-percent  
13 interest in a Pennsylvania license Manufacturer and a  
14 Pennsylvania license Manufacturer designee.

15           This is what the Act and the Board  
16 regulations mandate, which Petitioners do not offer  
17 any arguments or evidence persuasive enough to  
18 convince the Board to waive its own regulations and  
19 give some alternative - or give some alternative  
20 interpretation of Principal as defined in the Act.

21           And it is important to note that the  
22 term Principal, as defined in the Act, may be  
23 interpreted, but cannot be waived by the Board.

24           Petitioner's argument in support of  
25 their request for a waiver of the regulation are

1 misplaced and irrelevant, red herrings.

2           The Petitioner's arguing that they  
3 successfully complied, that Third Capital Holdings -  
4 Fifth Third Holdings, Fifth Third Financial and Fifth  
5 Third Bancorp had controlling interest in the  
6 Petitioners, as found under the definition of  
7 Principal.

8           But this argument holds no weight,  
9 since it was cloaked in the fourth category of  
10 Principal, which is not applicable to the set of facts  
11 set forth in this matter.

12           Second, the Principals argue that  
13 Fifth Third Financial and Fifth Third Bancorp are  
14 licensed under the federal statute, the Bank Holding  
15 Company Act. This is already subject to extensive  
16 federal and state laws and regulations.

17           Petitioners argue that these  
18 circumstances should support a waiver of Principal  
19 licensure.

20           Petitioners also argue that since  
21 Fifth Third Financial and Fifth Third Bancorp's  
22 acquisition of 8.4 percent of Petitioners through  
23 Fifth Third Capital Holdings will be in compliance  
24 with the Bank Holding Company Act -. And that it only  
25 acquired a 4.99 percent of the voting shares of

1 Petitioners - which are non-acting companies, that  
2 this is more evidence that they will not have a  
3 controlling interest, and are only passive investors,  
4 unless entitled to a waiver of the requirements under  
5 the Board's regulations and other legal authority.

6           They further argue that under the  
7 circumstances, Fifth Third Capital Holdings, Fifth  
8 Third Financial and Fifth Third Bancorp may be found  
9 qualifying for an institutional investor status  
10 waiver.

11           Finally, the Petitioners tried to  
12 distinguish the relief they are seeking from the  
13 Board's decision in the petition filed in Gaming  
14 Partners International USA, but they failed, because  
15 the relief sought in both petitions are the same.

16           Both petitions sought to have the  
17 Board advocate its legal and regulatory  
18 responsibilities. The facts of both cases indicate  
19 that the subjects for whom relief was sought needed to  
20 be licensed as Principals.

21           And the subjects of the relief sought  
22 in the petition filed by Gaming Partners International  
23 USA were required to file physical license  
24 applications.

25           Commissioners, the Petitioners are a

1 privately-held entity licensed by the Board as a  
2 Manufacturer -. Since the Petitioners hold  
3 Pennsylvania Gaming Licenses, the Board has a  
4 responsibility to discern the ownership of the  
5 Licensees and properly vet anyone who may or will  
6 possess more than a one-percent interest of the  
7 Licensees and license them as Principals.

8                   These are fundamental Board  
9 responsibilities. Accordingly, I would ask the Board  
10 reject the Petitioner's arguments and deny the relief  
11 that they seek in the petition.

12                   Petitioners and Fifth Third Capital  
13 Holdings did - Fifth Third Capital Holdings intended  
14 to go through with the acquisition of Sight Line  
15 payments, that - so the Board regulation  
16 433(a)(4)(b)(2), Fifth Third Financial, Fifth Third  
17 Bancorp should be required to file Principal License  
18 Applications. Thank you.

19                   CHAIRMAN: Thank you. Are there any  
20 questions for either Counsel from the Board?

21                   MS. MANDERINO: Thank you. Questions  
22 for Enforcement Counsel. Can you go back to your  
23 statement that I believe you said the Board does not  
24 have the authority under the law to waive the  
25 Principal definition?

1                   And first, did I hear you correctly?  
2 And if so, can you explain how you come to that  
3 conclusion?

4                   ATTORNEY ARMSTRONG:   Okay.

5                   MS. MANDERINO:   And I may have another  
6 follow-up.

7                   ATTORNEY ARMSTRONG:   Commissioner, the  
8 regulations are - are subject to waiver. They have  
9 some authority there.

10                   The statute itself, you - you cannot  
11 waive things that are in the law, so -.

12                   MS. MANDERINO:   And - and the  
13 reference in the law is what again?

14                   ATTORNEY ARMSTRONG:   That the  
15 defaulted - the third category of - a Principal is to  
16 what's there -.

17                   MS. MANDERINO:   And the notion of  
18 unique circumstances of a case, is that regulatory or  
19 statutory, is the Board's authority?

20                   ATTORNEY ARMSTRONG:   It's - the  
21 statute defines Principal. Then the regulation  
22 defines - further defines that Principal. And is  
23 designed actually to be able to address circumstances  
24 like this, by following chain of ownership that the  
25 one entity coming into invest in the Licensee doesn't

1 sit independent of itself. It's owned by several  
2 other entities.

3 That - that the Bureau of Licensing  
4 will follow that chain of ownership and then require  
5 that these other - the chain of ownership will also be  
6 required to file applications of Principal.

7 MS. MANDERINO: So - as a follow-up.  
8 So the - is it your position that the allowance of  
9 consideration and unique circumstances is limited to  
10 things not defined by the statute, versus the ability  
11 to consider unique circumstances of things that are  
12 defined by the statute? I guess I'm a little  
13 confused.

14 ATTORNEY ARMSTRONG: Well, if the  
15 definition - if the Principal is defined in the  
16 statute, in the very beginning of the statute, Third -  
17 Fifth Third Capital Holdings falls under that.

18 MS. MANDERINO: I understand that -

19 ATTORNEY ARMSTRONG: So they are -

20 MS. MANDERINO: - part.

21 ATTORNEY ARMSTRONG: - they are a  
22 Principal. Under the regulation 433, that that is  
23 designed to say, well, it's that entity identified as  
24 the Principal than they're owned by something else,  
25 some other entity that follows the chain of ownership.

1           And those are other entities go up the  
2 chain - that ownership will also be required to file  
3 Principal applications.

4           MS. MANDERINO: So I don't mean to  
5 beat a dead horse. I'm kind of lost a little bit. So  
6 the idea of the Board is - can consider unique  
7 circumstances, is that written in our regulations? Is  
8 that written in our statute?

9           And - and if it - if it doesn't apply  
10 to unique circumstances that might be - appear to be  
11 contrary to the definition of the statute, what does  
12 it apply to?

13           ATTORNEY ARMSTRONG: For - by unique  
14 circumstances - I'm not sure I follow your question.

15           What would be -?

16           MS. MANDERINO: You're saying there's  
17 no - there's no language in the statute or the  
18 regulations that gives the Board discretion or ability  
19 to consider unique - that's not a statutory or  
20 regulatory piece of language?

21           ATTORNEY ARMSTRONG: You mean  
22 circumstances?

23           MS. MANDERINO: Right.

24           ATTORNEY ARMSTRONG: Oh. I can't tell  
25 you for sure. I'd have to research it and brief it.

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MS. MANDERINO: Thank you.

CHAIRMAN: Are there any other questions? We're going to press ahead for a while. If there's no -.

Okay.

Thank you very much for coming.

ATTORNEY ARMSTRONG: Thank you.

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ORAL ARGUMENT CONCLUDED

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