

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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PUBLIC MEETING EXCERPT FOR STADIUM CASINO

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BEFORE: DAVID M. BARASCH, CHAIR

Dante Santoni, Jr., Sean Logan, Richard G. Jewell, Anthony C. Moscato, William H. Ryan, Jr., Kathy M. Manderino, Members, Fred Strathmeyer, representing Russell Redding, Secretary of Agriculture; Jennifer Langan, representing Joseph Torsella, State Treasurer; Robert P. Coyne, representing C. Daniel Hassell, Secretary of Revenue

HEARING: Wednesday, August 9, 2017

10:00 a.m.

LOCATION: PA Gaming Bureau of Hearing & Appeals

303 Walnut Street

Strawberry Square Complex

Harrisburg, PA 17101

Reporter: Bernadette M. Black

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DISCUSSION AMONG PARTIES

6 - 14

P R O C E E D I N G S

ATTORNEY SHERMAN: The next matter before the Board's consideration pertains to the Stadium Casino, LLC's -.

CHAIRMAN: One second. I think - now that the request for intervention's been denied, I think it's appropriate that we're going to close the evidentiary record in this remand proceeding and take up the underlying Stadium licensing matter. I think that's where we're at technically, Doug. So, now you can proceed.

ATTORNEY SHERMAN: All right.

CHAIRMAN: The record is closed.

ATTORNEY SHERMAN: With the intervention decided, the next matter pertains to Stadium Casino's Category 2 License. Per the direction of the Supreme Courts partial remand regarding the Category 2 Licensure of Stadium, an evidentiary hearing was, in fact, held by this Board on July 31st to provide additional information and to gain additional information as to whether Stadium's equity financing structure violates Section 1330 of the Gaming Act which prohibits an owner of the Pennsylvania casino from possessing

1 more than a 33.3 percent ownership or financial
2 interest in another Pennsylvania Casino.

3 The record in that matter is now
4 closed and it's ready for the Board's consideration
5 relative to whether Watche Manoukian possesses a
6 financial interest in excess of 33 and a third
7 percent in the Stadium Casino entity.

8 CHAIRMAN: Recognizing the Board gave
9 each party to the proceeding an opportunity to make
10 argument at the close of the evidentiary proceeding
11 last week, I don't know whether any party wishes to
12 make a further argument at this time. In the event
13 any party does, they are to come forward and again I
14 would ask - I would ask that they limit their
15 comments to five minutes. Mr. McKeon?

16 ATTORNEY MCKEON: Thank you, Chairman
17 Barasch. My comments will be directed to primarily
18 the brief that Market East filed - post hearing
19 brief and to just correct for the record a couple of
20 points.

21 The first is that it - Market East's
22 essential argument is that the July 20, 2017 funding
23 agreement is not enforceable and that the 2012
24 commitment letter that Mr. Manoukian gave the Board
25 was enforceable. And that's just simply not

1 correct. The commitment letter is not enforceable.
2 It's - it was a promise to the Board to the extent
3 that the Board needs that kind of a promise.

4 It has it in the testimony of Mr.
5 Manoukian from July 31st, 2017 on this very record.
6 It's at page 17 of the transcript. Mr. Manoukian
7 made it very clear and he promised to the Board that
8 he would fund the trust to the degree that the trust
9 needs to be funded up to the level that previously
10 was stated. So, that will happen and that
11 commitment is on the record.

12 With respect - and so to the extent
13 that Market East is making an issue that the funding
14 agreement has been - or the funding agreement
15 supersedes the commitment letter, you have before
16 you and on the record something even better than the
17 commitment letter. You have Mr. Manoukian's
18 statement from last week, July 31st, 2017, telling
19 the Board that he will fund the trust and promising
20 to do it. So, that is - that addresses that issue.

21 With respect to the funding agreement
22 and whether it is enforceable, it's generally
23 accepted common law that agreements to make gifts
24 such as the July 20, 2017 funding agreement are
25 enforceable if there's consideration given or if

1 there's reliance. Here we have both. There was
2 consideration, there is consideration in that
3 agreement.

4 The trustee agreed to limit its
5 trustee fees as part of the consideration. And in
6 other covenants in that agreement that I'm sure you
7 will take another look at it, but there are
8 covenants in that agreement by persons other than
9 Mr. Manoukian that are part of the consideration if
10 you will in the agreement. As far as reliance goes,
11 the parties expressly stated in that agreement
12 that's now part of the record that they are relying
13 on the funding agreement for Stadium Casino's
14 transaction and in pursuit of the licensing with
15 this Board, there's the reliance.

16 That is why Mr. Everett testified at
17 the July 31 hearing that the funding agreement is
18 binding and enforceable, he's correct. The whole
19 point behind Market East's brief on this issue is
20 that there's now a reason to revisit Section 1313's
21 determination on financial fitness. I think I've
22 covered that point. There's no reason to resurrect
23 any inquiry into Section 1313.

24 Finally, Market East has made a point
25 that the funding agreement modifies the trust but it

1 does not. There are separate agreements in the
2 funding agreement between the fiduciary and the
3 settlor of the trust that the fiduciary will limit
4 its trustee fees to levels lower than otherwise
5 permitted by the trust. But that doesn't modify the
6 trust. So, it's just again misdirection in the
7 argument.

8 As to everything else, we stand on our
9 - on the brief - the post hearing brief that we
10 submitted on the issues that are actually the very
11 narrow issues that are actually before the Board for
12 consideration.

13 CHAIRMAN: Thank you. Cyrus?

14 ATTORNEY PITRE: We'll stand by our
15 briefs submitted in this matter.

16 CHAIRMAN: Thank you.

17 And Market East is - there we go.

18 MR. DOWNEY: Good morning, Mr.
19 Chairman. Bill Downey, D-O-W-N-E-Y, from Market
20 East Associates. Mr. Chairman, I had anticipated
21 coming up here and simply asking that we rely on our
22 papers. I would offer one comment though and that
23 is that in respect of the changes that we cite to
24 the trust, we would acknowledge that while they
25 might not affect a technical change to the document

1 describing the establishment of the trust, I think
2 it's essentially beyond argument that there are
3 operate elements of that trust that are changed by
4 subsequent writings. And I think that's the point
5 we were driving there.

6 With that, we have - we have no
7 further -

8 CHAIRMAN: Okay. Thank -.

9 MR. DOWNEY: - and rely on our papers.

10 CHAIRMAN: Thank you very much.

11 MR. DOWNEY: Thank you.

12 CHAIRMAN: Are there any questions or
13 comments?

14 MR. JEWELL: Just make one comment.
15 We have been tasked with looking and considering
16 both written representations and oral
17 representations, written representations from the
18 20th of July or oral representations from our
19 hearing a week ago yesterday. And as I understand
20 it, there is an ongoing duty which we have as a
21 Board and which Mr. Pitre and his colleagues have in
22 carrying that duty out to look carefully at the
23 execution of all of the promises, written and oral,
24 at the time they occur. And I'm assured and I know
25 that that will happen and that will occur.

1 Suitability, too, is not an issue that just stops
2 dead once a decision is made. Suitability is always
3 open for review and concerns and that, too, will
4 occur I'm sure.

5 CHAIRMAN: Any other questions or
6 comments? I just have one for Cyrus, please. Mr.
7 McKeon made the point about the commitment to
8 provide these funds. If the funds do not come from
9 an appropriate source or do not come, what's - what
10 are - what are your options?

11 ATTORNEY PITRE: It's simply to
12 recommend that the Board not issue a License and to
13 - we've been down this road before where we've had
14 to ensure that funds were there. It's the whole -
15 was the whole hold up behind Rivers Casino being
16 built. We've had to go through this previously with
17 the Category 2 - Category 2 applicant in the past
18 with Foxwoods in Philadelphia. So, there are
19 methods for us to determine whether or not those
20 funds come from a reputable source that the
21 applicants are all suitable and that the funds come
22 from sources to ensure that there's no violation of
23 the - of the Act.

24 So, while it will - what will occur is
25 that once there's a final resolution on the

1 application, the BIE will - before any License is
2 issued will request one last time to go through the
3 funding mechanisms for Stadium Casino. We have been
4 tracking all money spent and the sources of those
5 monies on Stadium thus far because there has been
6 some money spent and we've been tracking those
7 sources. However, the money has not been towards
8 the outright funding of building the project and
9 that remains to be done prior to the issuance of a
10 License.

11 CHAIRMAN: Thanks for clarifying that.
12 Is there a motion?

13 MR. JEWELL: Mr. Chairman, I move that
14 the Board find that Watche Manoukian does not
15 maintain a financial interest in Stadium Casino, LLC
16 through either the Sterling Investors Trust or
17 Sterling Fiduciary Services, Inc. and that the Board
18 issue an adjudication outlining the basis for that
19 finding.

20 MR. LOGAN: Second.

21 CHAIRMAN: In this matter I'd like us
22 to take a roll call if that's okay. Pam, could you
23 please call the roll?

24 MS. LEWIS: Commissioner Jewell?

25 MR. JEWELL: Aye.

1 MS. LEWIS: Commissioner Logan?

2 MR. LOGAN: Aye.

3 MS. LEWIS: Commissioner Manderino?

4 MS. MANDERINO: Aye.

5 MS. LEWIS: Commissioner Moscato?

6 MR. MOSCATO: Aye.

7 MS. LEWIS: Commissioner Ryan?

8 MR. RYAN: Aye.

9 MS. LEWIS: Commissioner Santoni?

10 MR. SANTONI: Aye.

11 MS. LEWIS: Chairman Barasch?

12 CHAIRMAN: Aye.

13 MS. LEWIS: Thank you.

14 CHAIRMAN: With the vote being seven
15 to zero, the motion is adopted and the adjudication
16 on this matter will be issued shortly. Order and
17 adjudication will be issued shortly.

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19 • EXCERPT CONCLUDED

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CERTIFICATE

I hereby certify that the foregoing proceedings, except of a hearing held before Chairman Barasch was reported by me on 8/9/17 and that I, Bernadette M. Black, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.



Bernadette M. Black,

Court Reporter