The Commonwealth of Massachusetts
Massachusetts Gaming Commission

NOTICE OF MEETING and AGENDA
July 10, 2012 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Tuesday, July 10, 2012
1:00 p.m.
Division of Insurance
1000 Washington Street
1st Floor, Meeting Room E
Boston, Massachusetts

PUBLIC MEETING - #15

1. Call to order
2. Approval of minutes
    a. July 2, 2012 Meeting
3. Administration
    a. Executive search firm update
    b. Additional Hires
    c. Discussion of MGC Internal Policies
    d. Project Management Consultant
4. Racing Division
    a. Status Report
5. Project Work Plan
    a. Notice of Proposed Rulemaking
        i. Report on comments
    b. Consultant status report
        i. Review of consultant schedule and scope
    c. Technical and other assistance to communities
        i. Ombudsman job description and process
        ii. Protocol for Interactions with State Agencies
        iii. Community advisory
6. Charitable gaming
    a. Status report
7. Finance / Budget
8. Public Education and Information
    a. Community outreach/responses to requests for information
    b. Report from Director of Communications and Outreach
    c. Speaking engagements
    d. Discussion of Western Massachusetts Forum

9. Research Agenda
10. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at www.mass.gov/gaming/meetings, and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

July 3, 2012
(date)

Stephen P. Crosby
Stephen P. Crosby, Chairman

Date Posted to Website: July 3, 2012 at 4:00 p.m.

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July 5, 2012

BY HAND

Chairman Stephen Crosby
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Sterling Suffolk Racecourse LLC's Response to MGC's Request for Comments on Proposed Phase I of the Gaming License Application Process

Dear Chairman Crosby:

I write to submit comments on behalf of Sterling Suffolk Racecourse, LLC ("SSR") in response to the public notice issued by the Massachusetts Gaming Commission ("MGC" or "Commission") requesting comments on the regulations it is developing to implement a Request for Application process for gaming licenses to be issued pursuant to General Laws Chapter 23K (the "Gaming Act"). This firm serves as general counsel to SSR and I serve as the company's Secretary.

SSR owns and operates Suffolk Downs, New England's only thoroughbred race track, which is located in East Boston and Revere, Massachusetts. As a racing meeting licensee, SSR is currently regulated by the Commission. SSR intends to submit, itself or through an affiliate, an application to the Commission pursuant to the Gaming Act for a Category 1 casino license in Region A. It has partnered with world-renowned gaming operator Caesar's Entertainment, Inc. ("Caesars") for the development of its proposed casino. In the event SSR obtains a license, an operating subsidiary of Caesar's will manage the facility. These comments reflect the knowledge that Caesar's personnel as well as others in the SSR organization have gained from years of experience with gaming licensing processes across many jurisdictions.

SSR supports the Commission's plan to meet its suitability review obligation under the Gaming Act, by dividing the Request for Application ("RFA") process into two phases, with Phase I dedicated to the suitability review of applicants. SSR agrees with the Commission that, if structured correctly, use of a Phase I process can expedite the ultimate selection of gaming license recipients. Our comments below focus on five areas:

1. Discretion. In promulgating suitability review regulations, the Commission should enable itself to exercise, during the review process, the considerable discretion granted by the Gaming Act to determine which entities and individuals associated with an applicant must qualify for licensure in order for the applicant to be so qualified, all with an emphasis on ensuring the probity and integrity of those that actually control and direct an applicant. Included in this is the Commission's ability to exercise administrative discretion to grant waivers in the

event that it determines that review of a particular individual or entity is not necessary or required.

2. Application Form. The Commission should affirmatively state that it will use the Multi Jurisdictional Personal History Disclosure Form and that prospective applicants can begin filling it out. This will serve the public interest as it will give guidance to prospective applicants and allow the Commission to expedite Phase 1 with standards utilized in established gaming jurisdictions.

3. Scope of Licensing. The Commission should create a framework for the scope of licensing that, on the one hand, gives meaning to and provides guidance as to the distinctions created by the Legislature within Section 14 of Chapter 23K while, on the other hand, preserves flexibility and discretion for the Commission and its staff to identify those who must be qualified as necessary to protect the public interest. Prospective applicants need guidance on, for example, such issues as who within their organizations must qualify for licensure, the standards the Commission will employ for granting waivers to institutional investors and others, and how the Commission will implement its discretion to review small equity owners of an applicant.

4. Use of the Bureau of Investigations and Enforcement to protect confidentiality. The Commission must build out the Bureau and have it conduct suitability reviews, as required by the Gaming Act, in order to obtain confidential treatment of application materials under the Public Records Law. Doing so will facilitate the free flow of information between the applicant and the Commission and between the Commission and regulators and law enforcement in other established gaming jurisdictions (and with its own dedicated State Police unit), consistent with the Gaming Act.

5. Development Activities Alongside Phase I Review. The Phase I regulations should not preclude developers and permit-granting authorities from having traditional meetings while the suitability review process plays out, which the Commission has estimated will be completed nine to twelve months from now. Restrictions on such meetings will slow down, rather than expedite, the overall Request for Application process.

I. Discretion

In general, the Phase I regulations should be crafted in a fashion that ensures that the Commission and its personnel have adequate flexibility to exercise discretion in reasonably applying the statutory qualification requirements.

One way to achieve this goal is, where possible consistent with statutory requirements, to set forth details of procedures or parameters for applying scope-of-licensing guidelines in policy documents rather than to codify them in regulations. The Commission, of necessity, is developing these regulations without having been through the process of applying suitability

review criteria to applicants. Maximizing flexibility for the Commission and its staff would allow the Commission to change details as the process unfolds without having to go through the cumbersome procedures for revising regulations. In addition, it will allow the Commission to flexibly apply its requirements to the various applicants, each of whom will have its own unique organizational structure.

To have a smooth and reasonably efficient review process, the Commission should craft regulations that protect the integrity of the process but also preserve the statutory framework pursuant to which institutional investors, financing entities, and holders of small equity interests are subject to appropriate scrutiny and review but approached in a manner different from the full suitability review applied to those who control and direct an applicant. Also, given the Commission's power to require any particular individual to qualify for licensure at any time based on his or her role within the applicant's structure, the Commission should avoid codifying in the regulations that certain categories of persons must qualify unless the statute mandates it.

II. Application Form

Based on discussion at Commission meetings, it appears the MGC intends to use the Multi Jurisdictional Personal History Disclosure Form (the "Multi Jurisdictional Form") as the primary application form for individuals who must qualify, which SSR applauds. The Commission should confirm now, even in advance of issuing Phase I regulations, that it intends to do so, which would allow prospective applicants to begin the process of completing the form.

The Multi Jurisdictional Form was established by leading jurisdictions after years of investigatory experience and has a proven track record with regulators. It has been adopted by such leading jurisdictions as New Jersey and Nevada. Using it is more efficient for the Commission, which has many other important, substantive issues to address besides reinventing a questionnaire, and is also more efficient for applicants, as many individuals who will be involved with Massachusetts gaming license applicants have filled the form out previously in other jurisdictions.

Some jurisdictions have felt a need to develop their own form in its entirety, in lieu of the Multi Jurisdictional Form. SSR believes the MGC is choosing wisely by not going down this path. Experience in other jurisdictions shows that developing a separate form can be a lengthy, progress-delaying process that will ultimately yield no benefit to the Commonwealth. It also imposes an unnecessary burden on applicants and persons required to qualify, who spend hours reformatting essentially the same information to fit a different form. Indeed, Louisiana and Colorado, which originally developed their own forms, have now abandoned them in favor of the Multi Jurisdictional Form.

The Commission also appears to be intending to issue a supplemental questionnaire to inquire about statutorily required or otherwise essential facts not covered by the Multi

Jurisdictional Form. SSR supports this method of obtaining such information, which is common in jurisdictions that have adopted the Multi Jurisdictional Form. In order to facilitate the licensing process, SSR urges the Commission to limit the scope of the supplemental form to essential questions or statutorily required elements.

Finally, in light of the fact that the Multi Jurisdictional Form is addressed to individuals, we encourage the Commission to develop an entity questionnaire for the applicant itself and for other entities that must qualify due to their relationship to the applicant. Most other jurisdictions, including New Jersey and Nevada, have done so. In addition, the Commission should develop forms for institutional investor waivers consistent with other jurisdictions, as well.

III. Scope of Licensing

In implementing the Gaming Act's directive to qualify for licensure persons who have a financial interest in a gaming establishment or the business of an applicant or who are close associates of the applicant, G.L. c. 23K, § 14(a), the Commission should be guided by the detailed balance of Section 14 in crafting regulations that will allow it to determine who must qualify, both as a general matter and with respect to a particular applicant. For example, among persons with a financial interest in the applicant, Section 14 contemplates differing treatment for at least four categories of people: 1) those who direct and control the applicant; 2) institutional investors; 3) those who own between 5% and 15% of an applicant; and 4) those who own less than 5%.

Synthesizing the various provision of Section 14, the universe of people who could be required to qualify for licensure can be separated into the following categories:

A. Persons expressly required to qualify; no waiver available.

   1. If the applicant is an LLC, its members, managers and directors (§ 14(b)).

   2. If the applicant is a non-public corporation, its officers and directors (§ 14(b)).

   3. If the applicant is a limited partnership, each general partner and limited partner (§ 14(b)).

   4. If the applicant is a subsidiary, then each holding company, intermediary company and other entity having an interest in the applicant (§ 14(g)).

B. Persons expressly required to qualify unless the Commission grants a waiver:

   1. Any company or individual that can exercise control or provide direction to the applicant or a holding, intermediary or subsidiary company of the applicant who

is not excused by the Commission through an institutional investor waiver (§ 14(h)).

2. Any person involved in the financing of an Applicant's proposed gaming establishment who is not excused by the Commission through an institutional investor waiver (§ 14(e)).

C. Persons whom the Commission may require to qualify:

1. A person who owns, directly or indirectly, more than 15% of the common stock of an applicant (§ 14(c)).

2. A person who owns more than 15% of the common stock of a holding, intermediary or subsidiary company of an applicant (§ 14(c)).

3. A person who owns, directly or indirectly, between 5% and 15% of the common stock of the applicant who does not receive an institutional investor waiver (§ 14(c)).

4. A person who owns between 5% and 15% of the common stock of a holding, intermediary or subsidiary company of the applicant and who does not receive an institutional investor waiver (§ 14(c)).

D. Persons who, as a category, the Commission should not require to qualify absent some individual circumstance that warrants qualification:

1. A person who owns less than 5% of the common stock of an applicant or a holding, intermediary or subsidiary company of an applicant.

Whatever category designations the Commission makes, they must be applied to the individuals and entities that make up the applicant. Based on experience in other jurisdictions, SSR suggests that the review and designation of those required to qualify cannot be conducted efficiently in a full meeting of the regulatory body. The process requires interactive, individualized scrutiny of the applicant in one or more meetings between the applicant's representatives and the Commission's designee or staff and the exercise of discretion by the designee or staff in determining who will be required to qualify.

The Commission's Phase I regulations should empower its designee/staff or others employed in suitability review to meet with applicants at the beginning of the process to reach agreement, subject to Commission ratification, on the individuals within the applicant's structure who must be qualified. Such meetings should begin as soon as possible. Indeed, the Commission might find it helpful to have such meetings prior to finalizing its scope of licensing

criteria so that before regulations are set it can see the results of applying any proposed criteria to real-world applicants, including the number of persons of who would have to qualify.

After the applicant and the designee/staff have agreed upon those who must be qualified, the recommendation should go to Commission for review and approval. Once approved by the Commission, the list should expand only if investigators reasonably determine during their work that good cause exists for the addition of a person omitted originally, presumably because the person did not obviously meet the Commission's criteria. Also, the Commission may want to consider a process whereby an applicant is permitted conditionally to move from Phase I to Phase II or to receive a license in the event such a person is added to the list of those who must qualify close to the time the Commission is otherwise prepared to act. In such circumstances, most other jurisdictions allow licensure to move forward with a requirement that the additional person file qualification forms within a specified period of time (e.g., 45-60 days).

IV. Confidentiality

The Commission must ensure that the Phase I review process is carried out by its Bureau of Investigations and Enforcement (the "Bureau") and other law enforcement agencies, as required by the Gaming Act (G.L. c. 23K, § 12), to protect the confidentiality of materials submitted by those seeking qualification and gathered during investigations and to ensure that information is freely shared among law enforcement agencies.

With the exception of trade secrets and other sensitive or proprietary information, the Gaming Act does not expressly establish the confidentiality of personal and business information that will be submitted or gathered during the Phase I investigatory process.[1] It does, however, provide for such protection through the Massachusetts Public Records Law, found in the General Laws at Chapter 66, Section 10.

The Gaming Act provides that "[a]pplications for licenses shall be public records under section 10 of chapter 66; provided, however, that trade secrets, competitively-sensitive or other proprietary information ..., the disclosure of which would place the applicant at a competitive disadvantage, may be withheld from disclosure under chapter 66." G.L. c. 23K, § 9(b).[2] Under the Public Records Law, documents are subject to disclosure unless they come within one of the statutory exceptions set forth in General Laws Chapter 7, Section 4, Clause 26. The Gaming Act

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[1] In this respect, the Gaming Act is different from statutes in other jurisdictions with which industry professionals may be more familiar. For example, Section 5:12-74.1 of the New Jersey Casino Control Act establishes confidentiality protection for certain materials submitted as part of the qualification and background investigation process.

[2] The result would be the same even if this provision were not included, as the Public Records Law applies to any papers and other documents received by any officer or employee of a commission. G.L. c. 7, § 4, cl. 26.

brings suitability review information within the Public Records Law exception for law enforcement investigatory materials by requiring that the background investigations be done by the Bureau, G.L. c. 23k, § 12, and by creating the Bureau as a law enforcement agency, G.L. c. 23K, § 6(b).

The law enforcement exception immunizes records from production if they constitute "[i]nvestigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." G.L. c. 4, § 7, cl. 26(f). The exception applies to suitability review materials because the Bureau and the Massachusetts State Police will not be able to perform effective background checks if they cannot assure applicants and other providers of information that the materials will remain confidential.[3]

The Legislature understood that among the most important sources of background investigation information are gaming regulatory and law enforcement personnel in jurisdictions where a person is already qualified. For example, in the same sentence that it designates the Bureau to be a law enforcement agency, the Gaming Act provides that the Bureau "has the power to receive intelligence on an applicant or licensee under this chapter." G.L. c. 23K, § 9(b). The Act also provides that, "[t]o further effectuate the purposes of this chapter with respect to the investigation and enforcement of gaming establishments and licensees, the bureau may obtain or provide pertinent information regarding applicants or licensees from or to law enforcement entities or gaming authorities and other domestic, federal or foreign jurisdictions, including the Federal Bureau of Investigation, and may transmit such information to each other electronically." G.L. c. 23K, § 6(e).

Protecting confidentiality as outlined above is critical to facilitating the free flow of information to the Commission and to establishing a successful regulatory structure because, in SSR's experience, other jurisdictions will not share their investigatory materials with the Commission if they are not convinced that those materials will remain confidential in the hands of the Commission.

It appears from discussion at Commission meetings and memoranda prepared by the Commission's consultants that the Commission may employ third-party contractors or firms to assist with background investigations until its builds its own investigatory staff. To the extent that it looks to contractors, the Commission should take care to engage them in a manner that preserves the law enforcement agency protection under the Public Records Law.

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[3] Suitability review materials should also be considered protected under the invasion of privacy exception, which applies to "materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." G.L. c. 4, § 7, cl. 26(c).

Finally, SSR suggests that the Commission should establish a procedure to give an applicant or person required to qualify notice and an opportunity to be heard before the Commission releases any confidential information to any person, whether as a result of the person's challenge to the Commission's invocation of the law-enforcement or other exception to the Public Records Law or otherwise.

V. Development processes in parallel with the Phase I development and implementation process.

Conducting suitability review as a first phase of the application process while Phase II procedures are being developed provides an opportunity to expedite the ultimate award of licenses, but the opportunity will be hindered and the development of robust proposals, compliant with the statutory criteria, will be delayed if the usual early consultations between developers and permit-granting authorities are not allowed to go forward in parallel with Phase I. SSR encourages the Commission to focus on using Phase I to hasten the overall licensing process.

To meet the goals of the Gaming Act, both the Commission and applicants must have confidence before licenses are awarded that projects can be developed consistent with the proposals. For example, the Act requires a gaming license applicant to state in its application that it will comply with the Massachusetts Environmental Policy Act, G.L. c. 30, §§ 61-62H. See G.L. c. 23K, § 15(12). No applicant will be able to make that covenant credibly unless it has had substantive meetings with, and commenced review of its project by, the relevant regulatory officials. More generally, the statute requires the Commission to base its grant or denial of licenses on certain factual findings about proposals supported by "clear and convincing evidence." For the Commission to accurately assess the merits of an application on such key evaluation metrics as number of construction and permanent jobs and the likely generation of revenue for the state, it must be able to determine the likelihood that the project will be developed as proposed. In the absence of fully developed applications that reflect consideration of the project by permit granting authorities, the Commission will not be able to make informed judgments on those issues. Finally, the fact that a successful applicant must pay the $85,000,000 licensing fee within 30 days of the award of the license and may be subject to a $50,000,000 fine if it suffers a permitting or construction delay of more than one year, G.L. c. 23K, § 10, further underscores that most of the permitting for a gaming facility will have to occur prior to the granting of licenses.

SSR endorses the motivations that have led the Commission to develop the protocol to have an ombudsman coordinate meetings between developers and state agencies and to limit those meetings until the developer becomes an applicant. As SSR understands from discussion at Commission meetings, the motivations include: a) a concern that agencies typically involved in large real estate developments may become overwhelmed with requests for meetings from prospective casino developers who are not committed to pursuing an application; and b) an

interest in ensuring a level playing field so one developer is not disadvantaged because it does not know where to go in government to address development issues.

To meet the Commission's goal of having the ombudsman advance, rather than impede, progress toward the benefits of expanded gaming envisioned by the Gaming Act, it will be important that he or she be a facilitator, rather than a gatekeeper, of the extensive meetings required with state agencies.

With respect to the concern for agency resources, SSR notes that, from a development and permitting perspective, the proposed gaming facilities are not different in kind from other significant development projects that state agencies deal with as a matter of course. To the extent that the Commission and state agencies would like the assurance of a developer's intent to follow through that is demonstrated by its payment of the application fee, that can be secured by payment of the fee in advance of the Phase I application submittal. Because the meetings are required to allow full development of the application, it would be appropriate to attach the payment of the fee to the filing of an optional notice of intent to apply.

As to the latter concern, it arises only in cases where a potential developer does not have experience in Massachusetts and has neither partnered with someone who does nor hired Massachusetts advisers or counsel who can guide it through the process, identifying the agencies and officials with whom the prospective applicant must engage. For such cases, creating the ombudsman position will alleviate the concern.

VI. Conclusion

SSR hopes that the Commission finds these comments useful as it develops regulations to implement Phase I. SSR looks forward to an opportunity to provide further input on the regulations when they are published for public comment and to working with the Commission to implement other elements and phases of the Gaming Act.

Respectfully,

Charles A. Baker III

cc: Mr. William J. Mulrow, Chairman, Sterling Suffolk Racecourse, LLC

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY	MASSACHUSETTS GAMING COMMISSION RACING DIVISION
In the Matter of Walter Case License Applicant	License Denial Plainridge Judge Ruling No. 1001-12

TENTATIVE DECISION

Procedural History

The Massachusetts Gaming Commission ("Commission") conducted formal adjudicatory proceedings on June 21, 2012 pursuant to M.G.L. c. 30A, §§ 10, 11, and 801 CMR 1.01, *et. seq.* before Commissioner Gayle Cameron, Presiding Officer for the Commission. This matter was held pursuant to an appeal by Walter Case ("Appellant"), an applicant for a driver's license. The Appellant was denied a license by a Plainridge Racecourse judge ruling finding that the Appellant had a "lack of requisite integrity." The Appellant was present at the hearing and was represented by counsel.

A. Witnesses: The following witnesses presented evidence at the hearing:

Appellee:

1. Lawrence Rooney, Plainridge Racecourse Judge
2. Sal Panzera, Plainridge Racecourse Judge
3. Trooper Joseph Sinkovich, Massachusetts State Police

Appellant:

1. Walter Case
2. Harold Raymond
3. Joseph Fitzgerald

B. The Commission took administrative notice of the following:

Ruling No. 1001-12 denying application for licensure, dated April 26, 2012
Request for Appeal from Appellant, dated May 8, 2012; and
Letter notifying the Appellant of the Hearing, dated June 14, 2012

C. The Commission accepted the following additional evidence:

1. Appellant Walter Case Submissions:
   a) Ruling by Massachusetts State Racing Commission, dated April 26, 2012.
   b) USTA Rulings, dated June 18, 2012.
   c) New Hampshire Racing Commission Ruling dated Dec. 13, 2011.
   d) Pennsylvania Racing Commission Ruling dated Feb. 16, 2012.
   e) Meadowlands Racetrack Conditional Participation Agreement dated January 4, 2012.
   f) Christopher Krummick recommendation email, dated February 17, 2012.
   g) Joseph Paolucci Jr. recommendation letter, undated.
   h) John Polvinale recommendation letter, dated June 20, 2012.
   i) Transfer of probation from Ohio to Orange County, NY, dated October 27, 2008.
   j) New York Department of Corrections and Community Supervision release from probation dated December 5, 2011.
   k) Email from David Carr on behalf of the United States Trotting Association discussing Walter Case's career wins, dated June 15, 2012.
   l) USTA wins and purse earnings for Case, dated June 15, 2012.
   m) USTA lifetime earnings and wins, undated.
   n) Nine pages of races that Case drove at Plainridge, dated June 15, 2012.

o) Photos of Sulky showing studs that assist driver in keeping his feet on the Sulky, undated.

p) Four page document titled by the Appellant "Analysis of rulings", undated.

q) Letter of recommendation from Hall of Fame driver Herve Filion, three pages, dated June 15, 2012.

2. Appellee submissions:

a) Massachusetts State Racing Commission License application from Walter Case Jr., dated December 19, 2011.

b) Ruling by Plainridge Racecourse Board of Judges, dated April 26, 2012.

c) Denial letter from Ohio State Racing Commission, dated March 25, 2004.

d) Rulings report from United States Trotting Association (short version), multiple dates.

e) 205 CMR 300: Harness Horse Racing Rule 3:13(5), dated April 3, 2008.

f) USTA Rule Book (Massachusetts Part One), undated.

g) USTA History for Walter Case Jr., multiple dates.

Findings of Fact

The Commission finds the following as facts established by a preponderance of the evidence the following:

1. The predecessor to the Commission, the State Racing Commission, previously issued the Appellant a license to practice as a Driver in the Commonwealth of Massachusetts. Specifically, he was last licensed in 2008, and prior to that, he was last licensed in Massachusetts in 2000.

2. In 2004, the Appellant was convicted in Ohio of felonious assault against his wife. After serving approximately four years in prison, the Appellant was released on probation, which terminated on or about December 5, 2011.

3. The Appellant was suspended from racing in Ohio in 2004 after multiple racing-related violations.

4. The Appellant has been denied licensure in Pennsylvania, New York, New Jersey, and Maryland. At this time, the Appellant is not licensed in any other jurisdiction.

5. The Appellant was licensed in Massachusetts in 2008 by the unanimous decision of the three Plainridge Judges. This decision was not reviewed by the State Racing Commission at the time.

6. The decision to issue a license to the Appellant in 2008 came prior to the completion of a state police background check.

7. On April 26, 2012, the Appellant's application for a 2012 racing driver's license in Massachusetts was denied by a unanimous decision of the three Plainridge Judges. One of these Judges, Peter Tomilla, granted the Appellant a license in 2008, however, Mr. Tomilla was not present at this hearing. The other two Judges did not preside over the 2008 licensure determination.

Applicable Law and Regulations

1. "The commission shall have full discretion to refuse to grant a license to any applicant for a license or to suspend or revoke the license of any licensee." M.G.L. c. 128A, §11.

2. "Such application shall be submitted first to the Judges. In considering each application for a license the Judges may require the applicant, as well as his endorsers, to appear before them and show that said applicant is qualified in every respect to receive the license requested. Ability as well as integrity must be clearly shown by the applicant in order to receive the Judges' recommendation for the granting of the license." 205 CMR 3.14(4).

Conclusions of Law

1. Based on the Findings of Fact above, the Commission has jurisdiction to hear this matter.

2. Based on the Findings of Fact above, the Appellant's conduct constitutes valid grounds for the denial of a license to the Appellant pursuant to M.G.L. c. 128A, § 11 and 205 CMR 3.14(4).

Discussion

The Commission received evidence and testimony regarding the application for licensure by the Appellant. During the hearing, the evidence demonstrated that the Appellant , after multiple racing violations, was denied a license from the state of Ohio in 2004. See USTA rulings submitted by Appellant. That same year, the Appellant was convicted of felonious assault on his then wife. This conviction resulted in a four year prison sentence, as well as a lengthy period of probation ending in 2011. Such a serious matter could justify a blanket denial of the Appellant's racing license. The Supreme Judicial Court has held that, when considering its discretion to deny a license, the Commission must take into account "the public interest in determining what action in particular circumstances will conform to the usual standards of public convenience, health, safety, morals, and welfare." *Bay State Harness Racing & Breeding Ass'n, Inc. v. State Racing Commission*, 342 Mass. 694, 699-700 (1961) (referring to the authority conveyed by M.G.L. c. 128A, § 11).

The Appellant did not dispute the facts presented at the hearing, nor the serious nature of his criminal and racing background. He instead asked the Commission to take into account his mitigating testimony, as well as the fact that he was licensed in Massachusetts in 2008, after the criminal conviction. That mitigating testimony included testimony from the Appellant that he has not engaged in any wrongful conduct since that for which he was punished in 2004. He also provided testimony from witnesses and other evidence that he possessed skill at harness racing sufficient to justify his return to racing. Finally, he testified that in 2008, the Judges at Plainridge Racecourse issued him a license to drive in Massachusetts. The Appellant stated that although he was only able to race for a couple weeks in 2008, that period of licensure in Massachusetts passed without incident, and it was only because of a change in probationary requirements (due to a move from Ohio to New York), that he has not sought licensure in Massachusetts since that time.

In considering all of the evidence, the Commission is mindful of its overarching goal of public protection and acting in the best interests of racing. To that end, the Commission takes note of the 2008 licensing of the Appellant, as well as the fact that the Appellant is not licensed in any other state. As to the previous decision, the Commission finds that is not bound by the 2008 licensing action made by the Judges at Plainridge Racecourse. TThe evidence in the record shows that a full review of the Appellant's record was not made in 2008. For example, the records shows that this 2008 decision cannot be relied upon as (1) that decision was made prior to the completion of the state police background check; (2) that decision was made by three judges, none of which testified at this hearing to describe their rationale; and (3) that granting of the license in 2008 was not made or reviewed by the State Racing Commission, the predecessor to the Commission.

Although the Appellant seeks a license in Massachusetts, it does not appear that he has a long history of racing in Massachusetts. Prior to 2008, the Appellant was last licensed as a driver in Massachusetts in 2000. The record shows that the Appellant has been denied licenses in numerous other states, including New York, New Jersey, Maryland, Ohio, and Pennsylvania. Although the Appellant testified that some of these

states might be willing to reconsider their decisions, to date he holds no other licenses, so the Commission is unable to credit that testimony. When questioned why he wants to be licensed in Massachusetts, the Appellant testified that he enjoyed his time here. The Commission did not find that response credible; to the contrary, it appears that the Appellant seeks licensure in Massachusetts primarily as a means of getting licensure in other states.

Reviewing the full record, the Commission finds that the licensure of the Appellant in Massachusetts must be denied based on the severe nature of the Appellant's criminal record, in particular a crime of violence. The record since that conviction, although void of any new crimes, does not contain any evidence that the Appellant has attempted to rehabilitate himself or conduct any charitable acts to mitigate his heinous conduct in the past. All that is in the record is evidence that the Appellant was a skilled driver. In such areas of moral character, the Commission must make its decisions on a case by case basis. Here, it appears that the Appellant committed a violent crime, served his sentence, and now wishes to use Massachusetts as a vehicle to restart his career. Such a decision, however, is not in the best interests of racing, and is not in the best interests of the public's health, safety, morals, and welfare.

Conclusion and Order

In keeping with its duty to promote the best interests of racing as well as the health, welfare and safety, of those involved, and based on the Findings of Fact and Conclusions of Law set forth above, the Commission finds that Appellant lacks the integrity to operate as a race driver in Massachusetts.

The Commission therefore **ORDERS** the following:

To uphold the denial of licensure of the Appellant.

RIGHT TO RECONSIDERATION

This is a tentative decision of the Commission. The Appellant is hereby notified of the right to seek reconsideration of this Tentative Decision by filing written objections within thirty (30) days of the issuance of this decision (date below) with the Commission at the following address:

Massachusetts Gaming Commission
Racing Division
1000 Washington Street
Boston, MA 02118

The Commission will not hold additional hearings; the written submission is the sole opportunity of the parties to make any further arguments regarding this matter.[1] The Commission will review this matter after the expiration of the thirty day period, receipt of objections from the Appellant, or after receiving a notice from the Appellant waiving the right to file objections, whichever comes first. Thereafter the Commission will issue a final decision which will outline any applicable appellate rights.

MASSACHUSETTS GAMING COMMISSION
RACING DIVISION

By: Gayle Cameron
Commissioner Gayle Cameron, Presiding Officer

Dated:

[1] 801 CMR 1.01(11)(c), the rule establishing the procedures as to Tentative Decisions, provides that where, as in this case, the full Commission did not preside at the reception of evidence, the presiding officer shall issue a Tentative Decision. The parties are entitled to an opportunity to "file written objections to the Tentative Decision... which may be accompanied by supporting briefs." 801 CMR 1.01(11)(c)(1). The Commission then considers the record, including the Tentative Decision and any objections and responses filed thereto and either modifies, reverses, or affirms and adopts the Tentative Decision, "making appropriate response to any objections filed..." 801 CMR 1.01(11)(d).

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

MASSACHUSETTS GAMING COMMISSION
RACING DIVISION

In the Matter of Richard C. Retamoza Appellant	State Police Ejection

TENTATIVE DECISION

Procedural History

The Massachusetts Gaming Commission ("Commission") conducted formal adjudicatory proceedings on June 21, 2012 pursuant to M.G.L. c. 30A, §§ 10, 11, and 801 CMR 1.01, *et. seq.* before Commissioner Gayle Cameron, Presiding Officer for the Commission. This matter was held pursuant to an appeal by Richard C. Retamoza ("Appellant"), a patron of the Suffolk Downs Racecourse Park, who was ejected by the State Police on November 17, 2011. The Respondent was present at the hearing and was not represented by counsel.

A. Witnesses: The following witnesses presented evidence at the hearing:

Appellee:

1. Trooper Winnie Rennie, Massachusetts State Police
2. Susan K. Walsh, Steward

Appellant:

1. Richard C. Retamoza

B. The Commission took administrative notice of the following:

Ejection Report, dated November 17, 2011, authored by Trooper Winnie Rennie.

Request for Appeal, dated May 28, 2012.

Notice of Hearing, dated June 15, 2012.

C. **The following additional evidence was accepted by the Commission:**

Appellee Submissions:

Bill of Sale.

Checks showing sale of horse.

Findings of Fact

The Commission finds the following as facts established by a preponderance of the evidence:

1. The Appellant was a former horse trainer for Patricia and Daniela Mafford ("the Maffords").

2. In September of 2011, the Appellant still worked for the Maffords. The Appellant had a dispute with the Maffords concerning money he believed the Maffords owed to him.

3. That month, the Appellant, due to debts allegedly owned him by the Mafford's, purported to act as an authorized agent of the Maffords and, without proper licensure or authority from the Maffords, sold one of the Maffords horses to an individual in New York for $3,00

4. The Appellant is not able to recover the horse; however, on November 12, 2011, he agreed to repay the Mafford's $2,700 from the proceeds of the sale.

5. The Appellant has been arraigned on criminal charges regarding the selling of the Maffords' horse.

6. To date, the Appellant has not repaid the Maffords the $2,700 from the sale of the horse, as promised.

7. As a result of failing to make the above referenced payment, the Appellant was ejected from Suffolk Downs by the State Police on November 17, 2011.

Applicable Law and Regulations

1. "Any commissioner or representative of the commission… shall have the right to refuse admission to or eject from its premises any person whose presence on said premises is detrimental, in the sole judgment of the commissioner or representative of the commission or of said licensee, to the proper and orderly conduct of a racing meeting… Any person so excluded by any commissioner or representative of the commission or by a licensee shall have a right of appeal to the commission. The commission shall hold a hearing within ten days after any such person requests an appeal and may after such hearing by vote allow such person admission to such meeting.[1]" M.G.L. c. 128A, § 10A.

Conclusions of Law

1. Based on the Findings of Fact above, the Commission has jurisdiction to hear this matter.

2. Based on the Findings of Fact above, the Appellant's conduct constitutes valid grounds for the ejection of the Appellant pursuant to G.L. c. 128A, § 10A.

Discussion

The Commission received evidence and testimony regarding the ejection of the Appellant. During the hearing, the evidence demonstrated that the Appellant, without authorization, sold the horse of his employers. He has alleged that the reason for this was a past debt and testified extensively as to the nature of his past debts and his need to get paid. The Commission declines to determine whether or not such debts are valid, such matters are better left to a civil court of competent jurisdiction.

[1] The Commission notes that the appeal was made several months after the ejection, however, the matter was agreed to be heard at a mutually agreeable time.

It is undisputed, however, that the Appellant was not authorized, by law or its owners, to seize and sell the horse of his employer. It is also undisputed that after this sale, he agreed to repay his employer, the Maffords, $2,700 from the proceeds of the sale of that horse, yet has failed to do so. The Commission finds that the ejection under such circumstances was appropriate. Although the Appellant may be entitled to certain funds, he may not take the law into his own hands. Whether the criminal charges are appropriate here is not within the Commission's jurisdiction. In any event, the conduct of the Appellant, as found by the Commission was dishonest and was unprofessional, such conduct is therefore detrimental to the proper and orderly conduct of a racing meeting. The Commission finds that an an appropriate sanction in these circumstances is to maintain the exclusion from race tracks until the Appellant has made restitution of $2,700 to the Maffords, as originally promised. Prior to this being done, the ejection is confirmed and the exclusion shall remain.

Conclusion and Order

In keeping with its duty to promote the best interests of racing as well as the health, welfare and safety, of those involved, and based on the Findings of Fact and Conclusions of Law set forth above, the Commission finds that Appellant is subject to appropriate sanctions.

The Commission therefore **ORDERS** the following:

1) To uphold the ejection of the Appellant;

2) To lift the ejection of the Appellant upon the State Police receiving satisfactory confirmation that the Appellant has repaid the Maffords $2,700 in good funds for restitution of the sale of their horse.

RIGHT TO RECONSIDERATION

This is a tentative decision of the Commission. The Appellant is hereby notified of the right to seek reconsideration of this Tentative Decision by filing written objections within thirty (30) days of the issuance of this decision (date below) with the Commission at the following address:

Massachusetts Gaming Commission
Racing Division
1000 Washington Street
Boston, MA 02118

The Commission will not hold additional hearings; the written submission is the sole opportunity of the parties to make any further arguments regarding this matter.[2] The Commission will review this matter after the expiration of the thirty day period, receipt of objections from the Appellant, or after receiving a notice from the Appellant waiving the right to file objections, whichever comes first. Thereafter the Commission will issue a final decision which will outline any applicable appellate rights.

MASSACHUSETTS GAMING COMMISSION
RACING DIVISION

By: _____
Commissioner Gayle Cameron, Presiding Officer

Dated:

[2] 801 CMR 1.01(11)(c), the rule establishing the procedures as to Tentative Decisions, provides that where, as in this case, the full Commission did not preside at the reception of evidence, the presiding officer shall issue a Tentative Decision. The parties are entitled to an opportunity to "file written objections to the Tentative Decision... which may be accompanied by supporting briefs." 801 CMR 1.01(11)(c)(1). The Commission then considers the record, including the Tentative Decision and any objections and responses filed thereto and either modifies, reverses, or affirms and adopts the Tentative Decision, "making appropriate response to any objections filed..." 801 CMR 1.01(11)(d).

MGM RESORTS INTERNATIONAL™

Bifurcation Comments

Massachusetts Gaming Commission

6 July 2012

INTRODUCTION

The Massachusetts Gaming Commission (the "Commission") is developing regulations that will implement the bifurcated process required under Chapter 23K of Massachusetts General Laws enacted by the Expanded Gaming Act of 2011 to allow for the determination of the background qualifications and suitability of applicants for Category 1 (casino) and Category 2 (slot machine) gaming licenses in advance of the determination of an applicant's entire application. This is a pre-qualification process developed in an effort to expedite licensing.

The Commission has requested interested parties to provide early input concerning the proposed two-phased approach as the Commission develops its regulations. Comments may address but need not be limited to:

- Whether the proposed two-phased regulatory approach will best serve the interests of the Commonwealth, its cities and towns, the regulated community and the public;
- What considerations the Commission should take into account in developing the proposed regulations;
- Whether the proposed regulations will either save costs or incur more costs; and
- Whether the proposed regulations will either save time or require more time in the context of the overall licensing process.
- Other suggestions for making the application process comprehensive, thorough and efficient.

MGM Resorts International ("MGM") one of the world's leading global hospitality companies, is pleased to provide comments in response to the Commission's notice of the proposed two-phased regulatory approach.

MGM strongly supports the Commission's desire to open this process to the public to ensure the highest level of confidence and transparency. The Commission has been thoughtful and deliberate with its proceedings to date. The emphasis the Commission has placed on economic development, corporate and community responsibility and responsible gaming fits in well with the MGM mission. Accordingly MGM applauds the Commission for its proactive approach to these issues and its efforts to ensure a transparent and efficient application process.

BIFURCATION COMMENTS

MGM would like to address two issues in response to the Commission's request for comments on the proposed two-phased approach:

1. Whether the Commission should initiate the licensing and vetting process of potential applicants in advance of the RFP process and host community negotiations (i.e. responsive to bullets 1 through 4 above).

2. Within the context of making the application process efficient, whether Category 1 licenses should be awarded in different stages versus issuing them substantially simultaneously (i.e. responsive to bullet 5).

1. A Bifurcated Licensing and RFP Process

MGM recognizes the perceived benefits of the Commission's proposal to bifurcate its application process into an initial licensing/vetting stage, which if successful will potentially result in "pre-approved" applicants who would be "eligible" to obtain a license, and therefore, would be in a better position to negotiate with host communities and proceed with the detailed RFP application process.

While we applaud the Commission's proactive efforts to simplify the overall process and save the host communities and applicants the potential time and effort that would come from negotiations with a potential applicant that will not be ultimately licensed, we believe the concerns of the Commission will not be realized. Instead, we are concerned that such an effort by the Commission will result in significant resources, time and money of the Commission being expended unnecessarily. Furthermore, we believe that a bifurcated approach will lengthen the overall process, in particular because it will divert the Commission's resources away from the development of the detailed RFP process and criteria.

Respectfully, it is our view that the process already established by the Gaming Act, which requires applicants to expend very significant effort, time and money undertaking "on-the-ground" activities (establishing local development teams, entering into discussions with host and surrounding communities, securing suitable land etc.), will itself limit the number and quality of applicants. Indeed, as the Commission is aware from various press reports and other public statements of interest from potential bidders, many of the potential applicants for many of the sites in the three regions are large regional, national and international gaming developers who are already licensed in one form or another in other jurisdictions. While prior licensing should not substitute the Commission's own judgment nor negate the need to vet new local equity participants who may be part of the proposed licenses, it should speak to the threshold quality of the potential applicants that the Commission will largely be investigating. It is also important to highlight the fact that all of these potential applicants have already invested many millions of dollars in efforts to date and would prefer that the entire application process going forward be as short as possible.

It is our experience that the regulatory resources that will need to be devoted to a thoughtful and thorough vetting of potential licenses may be substantial, particularly for a newly formed body such as the Commission that is building up its processes from the ground up. If the Commission were to bifurcate the process and invite or require potential applicants to initially apply for licensing, the Commission could be inundated by requests from many participants that will not ultimately enter into, much less, succeed in host community negotiations. We would recommend that the Commission consider requiring potential applicants to undergo an initial background investigation prior to the RFP response submittal date (i.e. simultaneous with the RFP response preparation).

2. Timing on Category 1 License Applications

Within the context of making the overall application process efficient, we would like to take this opportunity to comment on the issue of timing of the multiple Category 1 license process. We note that this issue has been discussed by the Commission at recent meetings.

While a key component of the law requires that Request for Applications for a Category 2 license (slots) be issued before Category 1 licenses (casino), the law is silent on whether Category 1 licenses between the three regions will be sequenced or will run substantially simultaneously. One of the attributes

behind sequencing in this context is that as the licenses are staged, bidders losing out in the first round will rebid and the value of the remaining licenses increases. However, in Massachusetts, licenses are to be awarded in three distinct regions. Because of the cost associated with a rebid, the prospective gaming operator would need to cross the established regional boundary lines, find a suitable community, take land under control, enter into a mitigation agreement and successfully complete a referendum. Therefore, the opportunity to maximize the value of a second or potentially third round of bids is unlikely to ever materialize.

Moreover, one of the significant problems with a staged bid in terms of the goals of the law is that it further delays the contribution of tax revenue from the deferred regions and all of the financial benefit to those communities. Delaying the awarding of a license to any particular places, a gaming operator, and a region, creates a significant competitive disadvantage for those deferred locations and operators. The goal of the law was to create the framework for an industry and new economic development opportunity for the Commonwealth, without preference or advantage for any particular region. In order to truly maximize revenue and put jobs on line in an appropriate timeframe, we believe the application processes should run concurrently.

It is our experience, which we believe will be proved out in the case of Massachusetts that the best applications for each of the respective regions will come from applicants who have invested significant amounts of time and resources establishing a relationship with the community in which they seek to locate their facility. That kind of investment in time and resources cannot come from an approach in which unsuccessful bidders from one region are able to descend on a community in an entirely different region, when for whatever reason, that community was not that applicant's first choice.

3. Conclusion

As detailed herein, MGM applauds the Commission's efforts to design an efficient and thorough application process and is pleased to participate in the discussion leading to the RFA process. As discussed MGM respectfully requests that the Commission give every consideration to (i) delaying the licensing and vetting of potential applicants to those who successfully negotiate a host community agreement, and perform all of the necessary precedent work that is required to get to that stage (allowing the Commission to focus more immediately on the detailed development of the RFP process and criteria); and (ii) recognizing the importance of an application process for the Category 1 licenses that runs concurrently. This will ensure that the casino landscape is level amongst all regions and will for deliver the highest value for the Commonwealth. We thank you for the opportunity to contribute our views in this important dialogue and we would be pleased to sit down with the Commission to discuss these comments, in addition to our thoughts on all other aspects of the Gaming Act and the activities of the Commission.

ABOUT MGM RESORTS INTERNATIONAL:

MGM Resorts International (NYSE: MGM) is one of the world's leading global hospitality companies, operating a peerless portfolio of destination resort brands, including Bellagio, MGM Grand, Mandalay Bay and The Mirage. The Company has significant holdings in gaming, hospitality and entertainment, owns and operates 15 properties located in Nevada, Mississippi and Michigan, and has 50% investments in four other properties in Nevada, Illinois and Macau. One of those investments is CityCenter, an unprecedented urban resort destination on the Las Vegas Strip featuring its centerpiece ARIA Resort &

Casino. Leveraging MGM Resorts' unmatched amenities, the M life loyalty program delivers one-of-a-kind experiences, insider privileges and personalized rewards for guests at the Company's renowned properties nationwide. Through its hospitality management subsidiary, the Company holds a growing number of development and management agreements for casino and non-casino resort projects around the world. MGM Resorts International supports responsible gaming and has implemented the American Gaming Association's Code of Conduct for Responsible Gaming at its gaming properties. The Company has been honored with numerous awards and recognitions for its industry-leading Diversity Initiative, its community philanthropy programs and the Company's commitment to sustainable development and operations.

COMMUNICATIONS

Kindly provide all communications concerning these comments to:

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Massachusetts Gaming Commission
Expenses Processed FY2012
Data as of June 30, 2012

Fiscal Year	Object Class Name	Detailed Description	Payment Amount
2012	PAYROLL	Salaries	$ 209,249
2012	PAYROLL	Fringe	$ 35,351
2012	ADMINISTRATIVE EXPENSES	Audio Visual / Streaming	$ 25,500
2012	INFRASTRUCTURE:	Capital Expense - Office Buildout (includes some furnishings)	$ 85,570
2012	CONSULTANT SVCS (TO DEPTS)	Communications	$ 58,671
2012	CONSULTANT SVCS (TO DEPTS)	Consultants	$ 125,000
2012	ADMINISTRATIVE EXPENSES	Educational Forums	$ 21,519
2012	ENERGY COSTS AND SPACE RENTAL	Electricity	$ 688
2012	CONSULTANT SVCS (TO DEPTS)	Legal	$ 79,191
2012	OPERATIONAL SERVICES	Meeting Expenses	$ 14,071
2012	ADMINISTRATIVE EXPENSES	Office & Administrative Supplies	$ 17,696
2012	EQUIPMENT PURCHASE	Office Furnishings	$ 7,716
2012	ADMINISTRATIVE EXPENSES	Parking	$ 10,430
2012	OPERATIONAL SERVICES	Printing/Photocopy & Micrographics Equip Rent/Lease	$ 3,203
2012	ADMINISTRATIVE EXPENSES	Rent - Main Office	$ 85,267
2012	ADMINISTRATIVE EXPENSES	Space Rental - Conference / Meetings	$ 2,475
2012	IT Non-Payroll Expenses	Telecommunications Services - Voice	$ 749
2012	IT Non-Payroll Expenses	Information Tech (IT) Equipment Maintenance & Repair	$ 1,052
		Total FY 2012	$ 783,396