

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

_____)
In the Matter of:)
)
 Qualifier status of Stephen A. Wynn)
 _____)

DECISION AND ORDER

In or about November 2012, The Massachusetts Gaming Commission (hereinafter “the Commission”) designated Stephen A. Wynn (hereinafter “Mr. Wynn”) as a qualifier as part of Wynn MA, LLC’s initial RFA-1 application for a Category 1 gaming license. At that time, Mr. Wynn was an officer and director of Wynn Resorts, Ltd. (the holding company for Wynn MA, LLC) as well as a major shareholder in the company. On March 27, 2018, counsel for Mr. Wynn notified the Commission of recent changes in circumstances, which raised the question of whether Mr. Wynn continues to be a qualifier under the statute. On April 27, 2018, the Commission convened a hearing to determine whether Mr. Wynn should continue to be designated a qualifier. Having conducted an adjudicatory hearing on April 27, 2018 pursuant to G.L. c.30A, the Commission now concludes that based on the present facts and circumstances Mr. Wynn continues to be a qualifier under the governing laws unless and until the upcoming Wynn shareholders meeting currently scheduled for May 16, 2018 has concluded. At that time, absent any additional change in circumstance, Mr. Wynn will no longer be a qualifier.

I. Background

In enacting *An Act Establishing Expanded Gaming in the Commonwealth*, St. 2011, c. 194, the Legislature and then Governor Patrick made clear that “ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme is the paramount policy objective of [the gaming laws].” G.L. c.23K, §1(1). An important component of that regulatory scheme is the designation and background check process relative to qualifiers.

G.L. c. 23K, §§4(11), 13(a), and 14 as well as 205 CMR 116.02 controls the manner in which the Commission determines whether individuals or entities are “qualified”. To be ‘qualified’ refers to “the process of licensure set forth by the commission to determine that all persons who have a professional interest in a gaming license, [] or the business of a gaming licensee [], meet the same standards of suitability to operate or conduct business with a gaming establishment.” G.L. c.23K, §2. Once designated, a qualifier is required to participate in the Commission’s background investigation process and ultimately be issued a positive determination of suitability in order to continue any involvement with the gaming licensee. See 205 CMR 115.00.

The narrow issue presented in the matter now before the Commission is limited to the question of whether Mr. Wynn should remain designated a qualifier under the present facts and

circumstances.¹ Accordingly, the review conducted by the Commission is limited to that of the individual qualifier provisions of the law. Further, where the Commission is reviewing the designation of a qualifier in a post RFA-2² situation, as opposed to the initial review during the RFA-1 process, the Commission looks only to those provisions of the law that pertain to qualifiers to a gaming *licensee* or to the *gaming establishment* versus to an *applicant* for a gaming license. In a post RFA-2 status, there are 7 categories the Commission considers in determining whether an individual is a qualifier. They are as set out in the following chart:

#	Individual	Cite
1	A person who has a business association of any kind with a gaming licensee.	c. 23K, §4(11); 205 CMR 116.02(2)
2	Anyone with a financial interest in a gaming establishment.	c. 23K, §14(a)
3	Anyone with a financial interest in the business of the gaming licensee.	c. 23K, §14(a)
4	Anyone who is a close associate of a gaming licensee.	c. 23K, §14(a)
5	Any person involved in the financing of a gaming establishment.	c. 23K, §14(e)
6	An individual that can exercise control or provide direction to a gaming licensee.	c. 23K, §14(h); 205 CMR 116.02(1)(e)
7	An individual that can exercise control or provide direction to a holding, intermediary or subsidiary company of a gaming licensee.	c. 23K, §14(h); 205 CMR 116.02(1)(e)

Accordingly, the Commission must determine whether Mr. Wynn presently falls into any of these categories. If Mr. Wynn falls into categories identified in #2 through #7, the statute mandates that he shall be designated as a qualifier by the Commission. However, if he falls into category #1 as having a ‘business association’ with Wynn MA, LLC, the governing law provides that the Commission may, in its discretion, designate him as a qualifier. Generally, the Commission designates a qualifier under category #1 only if the association is of the nature and quality such that one’s designation as a qualifier will in some way advance the above referenced paramount policy objectives of the gaming law.

II. Exhibits and witnesses

The following exhibits were taken into evidence at the proceeding without objection:

- EXHIBIT 1: Notice of hearing including Addendum A dated April 19, 2018 (3 pages)
- EXHIBIT 2: Cover letter and Brief of Wynn MA, LLC and Wynn Resorts, Limited in Support of a Determination by the Massachusetts Gaming Commission that Stephen A. Wynn No Longer Be Deemed a Qualifier of Wynn MA or Wynn Resorts dated April 24, 2018 (including Exhibits A through F)
- EXHIBIT 3: Memorandum of Stephen A. Wynn Regarding Qualification Status dated April 24, 2018 (including Exhibits A through M)

¹ This matter is unrelated to Mr. Wynn’s suitability or that of any other qualifiers.

² The application for a gaming license consisted of two parts. See 205 CMR 110.01. The first, called the RFA-1 application, essentially focused on the qualifications and suitability of the applicant and its qualifiers to hold a gaming license. See G.L. c. 23K, §12(a) and 205 CMR 115.00 through 117.00. The RFA-2 application focused on the site, design, operation and other attributes of the gaming facility itself. See generally 205 CMR 118.00 and 119.00. “The commission shall not entertain [an RFA-2] application for any applicant unless and until the commission has issued a positive suitability determination on that applicant.” 205 CMR 110.01; see also 205 CMR 115.05(4) and 118.01(1) (a).

- EXHIBIT 4: #wearewynn PowerPoint (6 pages)
EXHIBIT 5: Affidavit of Jacqui Krum (6 pages)
EXHIBIT 6: Qualifier Status of Stephen A. Wynn PowerPoint (7 pages)

Further, Matt Maddox, Chief Executive Officer and President of Wynn Resorts, Ltd., Kim Sinatra, Executive Vice President, General Counsel and Secretary of Wynn Resorts Ltd., and Jacqui Krum, Senior Vice President and General Counsel of Wynn Resorts Development, LLC, an affiliate of Wynn MA, LLC, all representing Wynn Resorts, were duly sworn and testified at the hearing.³ The Commission finds that each witness testified credibly. All exhibits were considered in conjunction with the witness testimony, and certain publicly available information on file with the Securities and Exchange Commission as cited throughout the discussion and which was largely included as exhibits to the briefs marked as Exhibits 2 and 3, to collectively comprise substantial evidence in support of the Commission's final decision as described below.

III. Findings

The Commission hereby finds the following facts as they relate to the question at issue in this matter. On February 6, 2018 Mr. Wynn resigned as chair of the board of directors and as chief executive officer of Wynn Resorts, Limited. See Exhibit 2 (Form 8-K filed by Wynn Resorts, Limited on February 7, 2018).⁴ On that date, the Board of Wynn Resorts, Limited, (hereinafter, "Board") appointed Matt Maddox as chief executive officer of the company in addition to serving as president of the company, which he had done since November 2013. See id. Also on that date, the Board appointed D. Boone Wayson to serve as non-executive chair. See id.

On February 15, 2018 Mr. Wynn, Wynn Resorts, Ltd., and Wynn Resorts Holdings, LLC executed a separation agreement outlining the terms of Mr. Wynn's separation from the company. See Exhibit 3 (Form 8-K filed by Wynn Resorts, Limited on February 16, 2018 (separation agreement attached)). The filing described the separation agreement as follows:

The Separation Agreement terminates Mr. Wynn's previous employment agreement with the Company and confirms that Mr. Wynn is not entitled to any severance payment or other compensation from the Company under the employment agreement.

Under the Separation Agreement, Mr. Wynn agrees not to compete against the Company for a period of two years and to provide reasonable cooperation and assistance to the Company in connection with any private litigation or arbitration and to the Board of Directors of the Company or any committee of the Board in connection with any investigation by the Company related to his service with the Company. In order to effectuate a smooth transition of Mr. Wynn's separation from the Company, and in consideration of the foregoing and other agreements described therein, the Separation Agreement provides that (i)

³ Statements and arguments made by legal counsel were not considered as evidence.

⁴ This is also confirmed in paragraph 1 of the separation agreement which provides, in pertinent part, that Mr. Wynn "hereby confirms that he resigned as an employee, director and officer and chairman of the Board of the Company, including its subsidiaries and affiliates (and each of their respective boards of directors or other governing bodies) . . ."

Mr. Wynn's lease of his personal residence at Wynn Las Vegas will terminate no later than June 1, 2018 and until such date Mr. Wynn shall continue to pay rent at the fair market value previously established by the Company based on an independent third-party expert opinion (as disclosed in the Company's 2017 proxy statement), unless Mr. Wynn elects to terminate the lease before such date, (ii) Mr. Wynn's current healthcare coverage will terminate on December 31, 2018, and (iii) administrative support for Mr. Wynn will terminate on May 31, 2018. Additionally, in order to conduct any sales of Company shares in an orderly fashion in the event that Mr. Wynn is permitted to and elects to sell any shares that he owns, the Company has agreed to enter into a registration rights agreement with Mr. Wynn, with Mr. Wynn to reimburse the Company for its reasonable expenses. Pursuant to such registration rights agreement, Mr. Wynn may not sell during any quarter after the date of such agreement more than one-third of the Company shares he holds as of the date of such agreement.

See id. Mr. Wynn has since moved out of the residence at Wynn Las Vegas. In addition, the separation agreement addresses the status of the surname agreement and assignment of trademarks between Mr. Wynn and Wynn Resorts Holdings. The surname agreement, which was entered into on August 6, 2004, was for a perpetual term for consideration already received. See Exhibits 2 & 3 (See also Form 8-K filed by Wynn Resorts, Limited on August 9, 2004). The separation agreement provides that in the event Wynn Resorts no longer wishes to make use of the name or trademarks it may notify Mr. Wynn and the agreement shall terminate. See id.

At the time of the resignations, Mr. Wynn owned approximately 12 percent of the stock in the company through the Wynn Family Limited Partnership (hereinafter, "WFLP"). The Schedule 14A Proxy Statement filed by Wynn Resorts, Limited on April 18, 2018 identifies the beneficial ownership of shares of the company by officers, directors, and shareholders owning in excess of 5% of the outstanding shares. It lists Mr. Wynn as owning 0 shares and explains that this computation is:

based upon Schedules 13D/A, dated March 21 and March 22, 2018, filed by Mr. Wynn and Wynn Family Limited Partnership ("WFLP" and together with Mr. Wynn, the "Selling Shareholder"). The Selling Shareholder reported that on March 21, 2018, it sold an aggregate of 4,104,999 shares of Common Stock at a price of \$180.00 per share in open market transactions pursuant to Rule 144 under the Securities Act of 1933, as amended, and that on March 22, 2018, the Selling Shareholder entered into stock purchase agreements pursuant to which it agreed to sell 3,026,708 shares of Common Stock at a price of \$175.00 per share to T. Rowe Price Associates, Inc. and 5,000,000 shares of Common Stock at a price of \$175.00 per share to certain funds managed or advised by Capital Research and Management Company. Upon completion of these sales, the Selling Shareholder had no remaining holdings of Common Stock.

Wynn Resorts, Ltd.'s next annual shareholders' meeting is currently scheduled for May 16, 2018. As a result of the rules governing voting rights, while Mr. Wynn no longer owns stock in

Wynn Resorts, Ltd., he is entitled to vote at that meeting based on his stock ownership in March 2018.

Based on the foregoing, the Commission makes the following findings. Mr. Wynn is no longer an officer or director of Wynn Resorts, Ltd., and accordingly, he can no longer exercise control or provide direction to Wynn MA, LLC or Wynn Resorts, Ltd.⁵ in either of those capacities as a matter of law. Further, it is clear that Mr. Wynn no longer owns stock in Wynn Resorts, Ltd., and, at the conclusion of the next annual stockholders meeting, he can no longer exercise control or provide direction in that capacity either. Mr. Wynn's resignation as an officer and director and divestiture of stock holdings further demonstrates that he no longer holds a financial interest in the gaming establishment under construction in Everett, Massachusetts or in Wynn MA, LLC, the gaming licensee which holds the license issued by the Commission. These latter factors eliminate Mr. Wynn as a qualifier under categories 2 and 3.

Further, the evidence demonstrates that Mr. Wynn is not involved in the financing of the gaming establishment under construction. Whereas he is no longer formally affiliated with Wynn Resorts, Ltd. or Wynn MA, LLC, no longer holds any stock in the company, and none of the outstanding agreements with the company to which he is a party related to the financing of the gaming establishment, no grounds exist to designate him a qualifier under category 5.

Mr. Wynn's status under categories #4 and #7 are not as clear cut at this time. Under category #4, the Commission must determine if Mr. Wynn is a "close associate" of a gaming licensee. The term "close associate" is defined, in pertinent part, as "a person who holds a relevant financial interest in, or is entitled to exercise power in, the business of [a] licensee and, by virtue of that interest or power, is able to exercise a significant⁶ influence over the management or operation of a gaming establishment or business licensed under [G.L. c.23K]." As previously noted, the facts demonstrate that Mr. Wynn no longer holds any financial interest in Wynn MA, LLC. Further, by reason of his separation from the company, Mr. Wynn is no longer entitled to exercise power in the business of Wynn MA, LLC. However, as pointed out by both CEO Maddox and counsel for Mr. Wynn, by nature of the laws governing proxy votes, Mr. Wynn can exercise his votes at the upcoming annual shareholders meeting. There is no legal prohibition that bars Mr. Wynn from changing his mind and voting at that meeting. Accordingly, until the conclusion of that meeting, Mr. Wynn is still a qualifier under category #4. The same holds true of Mr. Wynn's status under category #7 where he could "exercise control or provide direction to a holding [. . .] company of a gaming licensee" until the conclusion of that meeting. G.L. c. 23K, §14(h); 205 CMR 116.02(1)(e). The scope of the control or direction that Mr. Wynn maintains by virtue of his ability to exercise his right to vote is limited though, and does not offer him any sufficient ability to similarly influence the affairs of the gaming licensee, Wynn MA, LLC. Accordingly, this rationale does not render him a qualifier under category #6. *Id.*

While the above makes clear that Mr. Wynn remains a qualifier until the conclusion of the next Wynn shareholder's meeting, there remains the issue of whether, Mr. Wynn would continue to

⁵ Wynn Resorts, Ltd. is the holding company of Wynn MA, LLC in accordance with the definition of 'holding company' provided by G.L. c.23K, §2.

⁶ Where, as here, the statute does not define the term "significant," the Commission is guided by G.L. c.4, §6 which directs that "[w]ords and phrases shall be construed according to the common and approved usage of the language . . ." The Oxford Dictionary (2018) defines 'significant' to mean "[s]ufficiently great or important to be worthy of attention; noteworthy."

be a qualifier under the discretionary category #1 for individuals having a “business association of any kind with a gaming licensee”. G.L. c. 23K §4(11), 205 CMR 116.02(2). That is, does Mr. Wynn continue to have a business association with Wynn MA, LLC such that he should be designated a qualifier despite the steps that have been taken to separate Mr. Wynn’s interests from those of the company. Any such business association would have to afford him the ability to exercise control or provide direction to Wynn MA, LLC or Wynn Resorts, Ltd.

The term ‘business association’ is not itself defined.⁷ As such, we apply the principle of statutory interpretation “noscitur a sociis.” This term essentially means that words are known by the company they keep; that is, when attempting to define a previously undefined term one should look to words related to the term for guidance. In this case, the term ‘business association’ must be viewed in the company of its companion qualifier provisions set forth in the gaming laws. Most of those companions apply to specific individuals. Here, it is clear that the law intended to afford the Commission discretion to include other individuals who may not meet the more specific requirements in the review process. To that end, in applying the requirement, we must consider whether there exists any relationship of a nature and quality that one’s designation as a qualifier will in some way advance the paramount policy objectives of the gaming law, namely to preserve the public confidence in the integrity of the licensing process. As previously noted, though, not every association, or relationship, however small, need result in one’s designation as a qualifier. To make this determination, we must review the present ties between Mr. Wynn and the company, most of which are addressed in Exhibit 5.

It is clear that there have been some communications between Mr. Wynn and some of the individual officers and directors since his resignation. It is certainly not unusual that there would be some sort of minimal communication during a transition of the magnitude that was undertaken in this instance. Taken in that context, those types of communications are not of great concern. The most voluminous communications, however, appear to have occurred with Mr. Maddox and Ms. Sinatra. Depending on the nature of those communications, there could be concern that Mr. Wynn is still actively involved in the operation of the company. The evidence demonstrates though that these communications, when viewed in context, were largely if not entirely related to Mr. Wynn’s orderly separation from the company; whether for purposes of negotiating the terms of the separation agreement, use of the company plane, discussing fair value for the disposition of his ownership stake, ownership of the art collection, or the settlement of litigation. Each appears to have been appropriate under the circumstances. In fact, it would have been nearly impossible to achieve any of these results without such communication. Though Mr. Wynn may have inquired of Mr. Maddox as to ‘how things are going,’ it seems clear that Mr. Maddox is well aware of the pitfalls of engaging in such discussions and steered clear of offering any type of substantive responses to the inquiries. Ultimately, to allay any lingering concerns that Mr. Wynn may be directing the show from behind the curtain, Mr. Maddox stressed that this was not the case.⁸

In an effort to satisfy the Commission that Mr. Wynn would not be involved in the operation of the company moving forward, Wynn Resorts indicated that they have implemented a policy of

⁷ The Commission declines to adopt the definition of the term recommended in Mr. Wynn’s brief.

⁸ Hearing transcript at p. 32 (“And, as CEO, I can tell you, there is no association with Steve Wynn. There is no business association with Steve Wynn. I’m my own man. And Kim Sinatra is her own woman. We are moving this company forward. We’re excited to move it forward. We’re excited to think about the future.”)

sorts “asking” that all officers and directors notify Jacqui Krum, of any direct or indirect communications with Mr. Wynn within 48 hours. The companies have agreed to mandate that reporting and to forward any such notice of both the fact and nature of the communication to the Commission. The Commission will expect those notifications to be timely provided. While it would be impossible to expect that there be no communications between Mr. Wynn and any officers or directors, it is reasonable to expect that any such communications be minimal and unrelated to the operation of the company or its future endeavors.

The separation agreement addresses a number of ongoing connections between the company and Mr. Wynn though none of them rise to the level of necessitating his designation as a qualifier. Under the terms of the agreement, Mr. Wynn was permitted to remain in his villa at the Wynn Las Vegas until June 1, 2018. The Commission was advised that he has already vacated the premises. Further, the agreement afforded a healthcare continuation and administrative support which are similarly not of concern here. Finally, the agreement provides that Mr. Wynn is entitled to any accrued obligations he is owed by the company. According to the testimony at the hearing, and Exhibit 5, the only outstanding obligation relates to his ‘city ledger account’ which amounts to over \$200,000. The Commission finds as follows for the discretionary category #1 provided that the city ledger account obligation shall be satisfied prior to this decision becoming effective.

The only other existing contractual arrangement worthy of note is the previously described surname rights agreement. Though that agreement is for a perpetual term which of course results in some ongoing relationship between Mr. Wynn and the company, there are no royalty or other payments associated with the arrangement. As such, this arrangement is not the business association of the nature and quality that supports Mr. Wynn’s designation as a qualifier.

It is also notable that on March 8, 2018 the relevant parties settled part of the litigation involving the company, Mr. Wynn, Universal Entertainment Corp., and others, see Form 8-K filed by Wynn Resorts, Limited on March 9, 2018, and that the company, Mr. Wynn, Ms. Elaine Wynn, and others settled the remainder of the case on April 16, 2018. See Schedule 14A filed by Wynn Resorts, Limited on April 18, 2018. In the context of the present inquiry, the result is that Mr. Wynn is unable to exert any type of residual influence over the company via the litigation.

Based on the evidence presented, Wynn Resorts has worked quickly to separate itself from Mr. Wynn including emblematically changing the name of the Everett property to Encore Boston Harbor. The Commission rejects the characterization by Mr. Wynn’s legal counsel that he is nothing more than an ordinary private citizen of the State of Nevada vis-à-vis Wynn Resorts. There is, however, substantial evidence that the relationship between Mr. Wynn and Wynn Resorts has been terminated in a meaningful way such that Mr. Wynn no longer falls with the definition of qualifier at the conclusion of the upcoming annual shareholders meeting.

IV. Conclusion and Order

For the foregoing reasons, after careful consideration of the evidence presented at the hearing of this matter, the Commission finds that effective upon (1) the conclusion of the next scheduled Wynn Resorts, Ltd. annual shareholders meeting, and (2) the discharge of the city ledger account, Stephen A. Wynn is no longer a qualifier to Wynn MA, LLC or Wynn Resorts, Ltd. As grounds therefore the Commission finds that, as discussed, Mr. Wynn does not meet any of the

criteria to be designated an individual qualifier in accordance with G.L. c.23K, §§4(11) or 14. Provided, however, this decision shall not take effect until (1) written verification is received from Wynn Resorts that Mr. Wynn did not exercise his voting rights at the 2018 annual meeting of shareholders for Wynn Resorts, Ltd., and (2) written verification is received from Wynn Resorts that Mr. Wynn's outstanding balance on his city ledger account has been resolved. Further, the Commission expects Attorney Krum to forward any reports of contact by Steve Wynn with current officers or directors of Wynn Resorts or Wynn MA, LLC to the Investigations and Enforcement Bureau of the Commission as previously described.

This decision is based on the facts as determined at the hearing. Should any of the information provided to the Commission change in any material fashion the Wynn MA, LLC and/or Wynn Resorts, Ltd. is expected to promptly report such change so the Commission may consider its impact on this decision, if any.

SO ORDERED.

MASSACHUSETTS GAMING COMMISSION



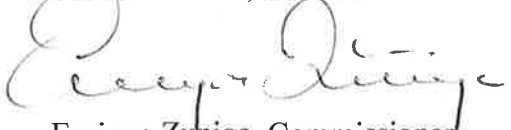
Stephen P. Crosby, Chair



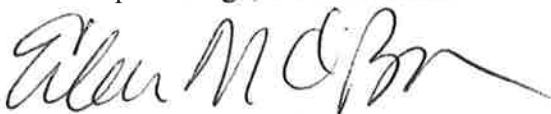
Gayle Cameron, Commissioner



Bruce Stebbins, Commissioner



Enrique Zuniga, Commissioner



Eileen O'Brien, Commissioner

DATED: May 7, 2018