



PEORIA TRIBAL GAMING COMMISSION

1100 Buffalo Run Blvd. • Miami, Oklahoma 74354

ORDER REVOKING GAMING LICENSE OF DAVID J. QUALLS

This matter comes on before The Peoria Tribal Gaming Commission (the "Commission") on the 14th day of May, 2019, for review of the Decision that the Commission issued March 13, 2019 (copy attached), concerning the gaming license of David J. Qualls. The Commission finds that David J. Qualls has not paid the fine of \$2,067,561.00 as ordered in that Decision and, therefore, finds that his gaming license should be revoked permanently.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the gaming license of David J. Qualls should be and is hereby revoked permanently.

DATED AND ENTERED this 14th day of May, 2019.

Marcel Walther, Acting Chair

Emmett "Bud" Ellis

Jonas Rabel



PEORIA TRIBAL GAMING COMMISSION

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Decision of Peoria Tribal Gaming Commission

On January 31st, 2019, the Peoria Tribal Gaming Commission conducted a hearing concerning the matter of The Peoria Tribal Gaming Commission (“Commission”) and Tony D Holden and David J. Qualls (“Respondents”). The hearing was scheduled to determine certain matters related to the Respondents, to include the management/operations of Buffalo Run Casino and concerns related to several communications from the National Indian Gaming Commission. The following persons were in attendance: Commissioners Bud Ellis, Jonas Rabel and Acting Chair Marcel Walther; Respondents, Tony D. Holden and David J. Qualls and their counsel Graydon D. Luthey III; Tonya Mathews, Executive Director of the Commission; counsel N. Georgeann Roye; and counsel for the Commission Jimmy Goodman. The hearing was transcribed by Cassy Kerr, CSR.

The hearing was scheduled pursuant to the Second Amended Gaming License Hearing Notice dated December 14, 2018, which was introduced into the record as Commission Exhibit 1.

The Peoria Tribal Gaming Commission conducted the hearing to determine its opinion on the following matter:

1. Methodology and actual calculation used to determine management fee paid to Direct Development Enterprise Development, LLC. It was the Commission’s obligation to ensure proper accounting was used to determine those payments considering the NIGC on two separate instances indicated the management fee was being paid in conflict of the recommended accounting standards used to determine “Net Revenues”.¹

FINDINGS:

1. It is the Peoria Tribal Gaming Commission finding that Direct Enterprise Development, LLC, Tony D Holden and David J. Qualls improperly received management fees in excess of \$2,000,000.00 by way of an accounting practice inconsistent with GAAP and ignored on two separate occasions

¹ This is the second bullet point set out in the Second Amended Gaming License Hearing Notice. After objection from Respondents’ counsel, the Commission decided not to hear evidence on the items set forth in the other bullet points, without prejudice to addressing those items pursuant to further notice.

from the NIGC to adjust the “net revenue” calculation thus resulting in an overpayment to the casino manager.

EVIDENCE

The Commission heard testimony from several witnesses and received documentary evidence from both sides.

In addition to the other evidence set forth below, the Commission notes that Respondents put on no evidence to disprove several important items of objection in the NIGC letter of September 28, 2017, attached to the Second Amended Gaming License Hearing Notice:

- IGRA and NIGC regulations do not allow for any adjustments to the basis for determining operating expense and net revenue.
 - The depreciation add-back doesn’t comply with IGRA and NIGC regulations
 - The NIGC consistently interpreted the Third Amended and Restated Management Agreement (2007) and the Modified Third Amended and Restated Management Agreement (2012) to not permit use of the depreciation add-back
 - Under GAAP and GASB, depreciation is an operating expense and there is no basis under GAAP for excluding depreciation expense related to “certain fixed assets” as claimed by Respondents
 - The NIGC raised these objections in its February 16, 2007 letter to Respondents and the tribe. In response, the Respondents sent a February 21, 2007 letter to the NIGC noting that “[T]he requested changes have been made to the Tribe’s Business Plan.” The revised Business Plan received by the NIGC on May 21, 2007 reflected that interest and depreciation would be deducted in determining Net Revenue which was used to calculate the management fee. Subsequently, and after the NIGC Chair approved the 2007 Management Agreement, the Respondents reverted to the previously unapproved method of computing the management fee.
 - The use of the affirmatively disapproved depreciation add-back resulted in them receiving over \$2 million in excess management fees
1. February 21, 2007 letter from the NIGC showing concern for the “Net Revenue” calculation.
 - a. Direct Development agrees with the letter and decided to modify the calculation by way of a response letter dated May 21, 2007.
 - b. Direct, for several months, ceased the previous “Net Revenue” calculation as agreed.
 - c. Direct, in clear violation of their own letter dated May 21st, 2007, returned to the previous disapproved “Net Revenue” calculation in March of 2009 without approval from the NIGC or Peoria Tribe Business Committee.
 - d. Neither letter from the NIGC was given to the Business Committee for review or to any Independent Auditors. Only Chief Froman and David Qualls were in receipt of the letter.

2. September 28, 2017 letter from the NIGC indicating they would be unable to approve a contract renewal between Direct and the Tribe due to concerns related to the 2007 NIGC letter previously discussed.
3. During the hearing on January 31st, 2019, the casino's independent auditor gave testimony that the "Net Revenue" calculation was noted and questioned by the auditor but not cited in the audit due to the amount of the annual management fee being below the scope of the audit. The cumulative amount of the management fee was not used to determine scope. It is also noted that independent auditor testified that he has never seen any correspondence from the NIGC regarding this matter. Again, only Chief Froman and David J Qualls had this letter.
 - a. David J Qualls and Chief John Froman, both of whom were in receipt of both the 2007 and 2017 letters from the NIGC questioning the management fee failed to provide copies to the independent auditor for several years thus protecting the management fee calculation from scrutiny.
 - b. David Qualls and Tony D Holden while withholding information from the independent auditors (NIGC Letters) did seek a legal opinion on the matter of the management fee. The legal (professional) opinion was provided by Stuart Campbell, of Baxcase. Stuart Campbell and Baxcase (consulting company owned by Mr. Campbell) received payments out of the casino manager's net income and represents a significant Conflict of Interest. Stuart Campbell was also employed by Buffalo Run Casino by way of the legal firm hired to take on general litigation matters, thus further providing an ethical and professional conflict. Why would they seek an opinion on the matter yet fail to provide the independent auditors with the same? Also, his opinion does not even mention IGRA or NIGC regulations, GAAP or GAASB. It is not persuasive to the Commission.
4. Settlement Agreement between The Peoria Tribe of Indians and Direct Enterprises Development, LLC.
 - a. The offer of a settlement agreement while does not admit guilt does offer the idea that the calculation of the management fee was at the very least overvalued. In fact, the agreement seems to admit that the calculation used by Direct disagrees with their letter and agreement to the NIGC dating back to the 2007.

REMEDIES

The Peoria Tribe of Indians of Oklahoma Gaming Ordinance (the "Ordinance") requires that the conduct of gaming activities "shall conform" to IGRA and the regulations promulgated by the NIGC. Ordinance, Section 1.1(c). The use of the depreciation add-back by Respondents in computing their management fee did not comply with IGRA and NIGC regulations, and is a violation of the Ordinance.

When a licensee violates the Ordinance, the Commission may limit, condition, suspend, restrict or revoke that person's license and assess fines for the violation or violations. Ordinance, sections 3.1(h), 15.1(a) and 15.1(c). Where the violation is a continuing one, a fine may be imposed for each day of such violation. Ordinance, Section 15.1(a).

CONCLUSION AND ORDER

The Peoria Tribal Gaming Commission after deliberation has determined that the following remedies are appropriate.

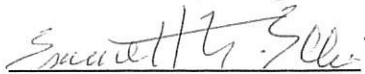
1. Continued suspension of the Gaming Licenses issued to Tony D Holden and David J Qualls, which shall be suspended for sixty (60) days.
2. The Gaming Commission is also issuing a fine against the Respondents, individually and together, in the amount of \$2,067,561.00. This amount represents the total dollar amount of "Management Fees" paid after Direct Enterprise Development, LLC acknowledged the NIGC 2007 memorandum questioning the accounting practice and thus the management fee calculation. Direct, by way of a response letter agreed to change the calculation. Then it reverted to the disapproved practice without notice to the NIGC.
3. In the event this fine is paid in full within sixty (60) days from the date of this decision, the licenses of Respondents will be reinstated. In the alternative, if the Respondents present a reasonable and verifiable, secured method of payment to the Commission within thirty (30) days from the date of this decision, and the Commission finds it acceptable and approves it, the licenses of Respondents will be reinstated, subject to Respondents not defaulting in any of the agreed payments. Should they default, the Commission reserves the right to revoke their licenses permanently. Any such plan shall include consent and waiver by Respondents giving the Commission continuing jurisdiction over their licenses during the pendency of the plan, notwithstanding the licenses might otherwise expire by their own terms before the plan was completely executed by Respondents.
4. In the event that Respondents do not pay the fine in full within sixty (60) days from the date of this decision or present a plan for its payment within thirty (30) days from the date of this decision, which is accepted by the Commission, then the licenses of Respondents shall be revoked permanently.

Pending the sixty (60)-day period noted herein, the Commission will not release this decision to anyone beyond Respondents and the Commission in order to provide Respondents with time to pay the fine and absolve the violations found by the Commission in accordance with this decision.

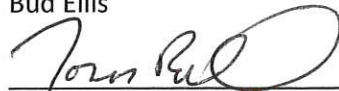
DATED this 13th day of March, 2019.



Marcel Walther, Acting Chair



Bud Ellis



Jonas Rabel