

ILLINOIS GAMING BOARD



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RESOLUTION

Member Winkler offered the following resolution:

WHEREAS, Emerald Casino, Inc. (Emerald), formerly known as HP Inc., was initially granted an owner's license to conduct riverboat gaming cruises departing from East Dubuque, Illinois on July 9, 1992. The Illinois Gaming Board (Gaming Board) renewed Emerald's license in July 1995 and again in July 1996.

WHEREAS, on June 24, 1997, the Gaming Board voted not to renew Emerald's license and issued a Notice Of Denial on June 27, 1997. On July 2, 1997 Emerald requested an administrative hearing regarding the denial of its renewal application, and an Administrative Law Judge was appointed.

WHEREAS, on July 29, 1997, Emerald ceased all gaming operations.

WHEREAS, on May 5, 1999, the Administrative Law Judge recommended that the Gaming Board deny Emerald's application for renewal of its license.

WHEREAS, before the Gaming Board took final action on the denial of Emerald's 1997 renewal application, the Illinois General Assembly amended the Illinois Riverboat Gambling Act (the Act) by adding Section 11.2, which became effective June 25, 1999.

WHEREAS, on September 7, 1999, the Gaming Board declared the pending license renewal proceeding moot in light of the addition of Section 11.2 to the Act, and advised Emerald that it could file a new Application For Renewal Of Owner's License.

WHEREAS, Emerald filed with the Illinois Gaming Board an Application For Renewal Of Owner's License on September 24, 1999 (Renewal Application), and indicated its intention to relocate its license to the Village of Rosemont (Rosemont).

WHEREAS, on January 30, 2001, the Gaming Board voted to deny Emerald's Application For Renewal Of Owner's License and to issue a written notice of denial. On March 6, 2001, the Gaming Board issued a Notice Of Denial Of Emerald's

Application For Renewal Of Owner's License, commencing Gaming Board Matter No. 01-01 (Renewal Proceeding). On March 13, 2001, Emerald filed a verified Request For Hearing in the Renewal Proceeding.

WHEREAS, on January 30, 2001, the Gaming Board voted to issue a disciplinary complaint against Emerald seeking the revocation of its license. On March 6, 2001, the Gaming Board issued a five-count Complaint For Disciplinary Action seeking revocation of Emerald's license, commencing Gaming Board Matter No. DC-01-05 (Revocation Proceeding). On March 26, 2001, Emerald filed a Verified Answer to the Complaint in the Revocation Proceeding.

WHEREAS, on May 21, 2001, Emerald filed a Complaint in the Circuit Court of Cook County in which it alleged that Section 11.2 of the Act imposed on the Gaming Board a mandatory duty to grant Emerald's September 24, 1999 application for renewal of its license and to approve relocation of its operations to Rosemont. The Circuit Court granted the Gaming Board's motion for summary judgment and denied Emerald's motion for summary judgment. On December 30, 2003, the Appellate Court issued its decision in Emerald Casino, Inc. v. Illinois Gaming Board, 346 Ill. App. 3d 18 (1st Dist. 2003) (Emerald I). Emerald I reversed the Circuit Court, concluded that the Gaming Board's interpretation of Section 11.2 of the Act was reasonable but incorrect, and held that Section 11.2 of the Act imposed on the Gaming Board a mandatory duty to grant Emerald's September 24, 1999 Application For Renewal Of Owner's License. Emerald I also noted that the Gaming Board had begun proceedings to revoke Emerald's license in 2001, held that, in passing Section 11.2, "the legislature did not intend to tinker with the Board's authority to revoke Emerald's license," and further held that "[n]othing in section 11.2(a) prevents the Board from moving to revoke Emerald's license."

WHEREAS, on June 9, 2005, the Circuit Court, on remand from Emerald I, directed the Gaming Board to grant Emerald's September 24, 1999 Application For Renewal Of Owner's License.

WHEREAS, on June 29, 2005 the Gaming Board adopted a Resolution by which it granted "Emerald's September 24, 1999 Application For Renewal Of Owner's License, as of September 24, 1999, for a period of four (4) years"

WHEREAS, on September 22, 2005, the Illinois Supreme Court issued its decision in Crusius v. Illinois Gaming Board, 216 Ill. 2d 315 (2005) (Crusius). Crusius rejected a constitutional challenge to Section 11.2 of the Act, as interpreted in Emerald I. Crusius further held:

[Section 11.2] did not diminish the regulatory authority of the Board in any way. . . . If any riverboat gambling licensee, including Emerald, fails to comply with the Act's requirements, the Board has the authority to investigate and take appropriate disciplinary action. . . . The Act's license revocation provision still applies to Emerald with full force . . . , and revocation proceedings have, in fact, been initiated against it.

Thus, regardless of Emerald's eligibility for license renewal and relocation under section 11.2(a), if Emerald has failed to comply with the requirements of the Act, it could lose its riverboat gambling license in accordance with the Act's provisions, as is the case with any other licensee.

WHEREAS, on December 20, 2005 the Gaming Board unanimously issued a final administrative order in the Revocation Proceeding revoking Emerald's license (Revocation Order). On January 18, 2006, Emerald filed a petition pursuant to Section 17.1 of the Act for administrative review of the Revocation Order in the Appellate Court, pending as Case No. 4-06-0051 (Revocation Appeal).

WHEREAS, on June 13, 2006 the Appellate Court held in Emerald Casino, Inc. v. Illinois Gaming Board, 366 Ill. App. 3d 113 (1st Dist. 2006) (Emerald II) that the mandate in Emerald I required the Gaming Board to renew Emerald's license prospectively for a 4 year period, subject to revocation proceedings.

WHEREAS, on January 29, 2007 the circuit court, pursuant to the Appellate Court's mandate in Emerald II, entered an order stating: "Within 30 days of this Order, the Illinois Gaming Board shall issue Emerald's license for renewal and relocation, effective as of the date of the issuance and remaining in effect for four years, subject to revocation proceedings."

NOW, THEREFORE,

BE IT RESOLVED, that pursuant to the Appellate Court's decision in Emerald II and the Circuit Court's January 29, 2007 order on remand, Emerald's license is issued for renewal and relocation, effective as of this date and remaining in effect for four years, subject to revocation proceedings.

BE IT FURTHER RESOLVED, that this Resolution does not constitute a finding or adjudication by the Gaming Board on any matter, is not a waiver of, and is without prejudice to, the Gaming Board's rights or position in any other matter or proceeding, including without limitation the Revocation Order and the Revocation Appeal.

Member Winkler moved that **the Gaming Board adopt this resolution**. Member Moore seconded the motion. The Board approved the motion unanimously by role call.

VOTED BY THE ILLINOIS GAMING BOARD this 21st day of February, 2007.

Illinois Gaming Board

By: _____
Monica Thomas