

STATE OF ILLINOIS
THE ILLINOIS GAMING BOARD

IN RE THE DISCIPLINARY ACTION OF:)
EMERALD CASINO, INC.) DC-01-05
)

Recommendations to the Illinois Gaming Board

In the Matter of Emerald Casino, Revocation of License Proceeding

Abner J. Mikva

Administrative Law Judge.

This matter officially commenced on March 6, 2001 when the Illinois Gaming Board (IGB, the Board) formally revoked the license of Emerald Casino, Inc. (Emerald) pursuant to Section 5(c) of the Illinois Riverboat Gambling Act (The Act) and Subpart K of the Rules of the IGB (Rules). Emerald duly answered (Answer) the complaint for disciplinary action (complaint) and an Administrative Law Judge (ALJ) was appointed to hear the matters in dispute concerning the revocation.

Protracted hearings were held by Herbert Holzman, ALJ, until August 4, 2004 when he recused himself from further proceedings o the matter. On April 14, 2005 the undersigned was appointed as successor ALJ and

continued the hearings until their conclusion. A short procedural history of Emerald and its Owner's license follows.

On July 9, 1992, Emerald, then known as H.P. Enterprises, was issued a three - year Owner's License by the IGB for a riverboat gaming operation in East Dubuque, Illinois. Subsequent renewals of that license were granted in July, 1995 and July, 1996.

On December 1, 1994, the Board issued a disciplinary complaint against Emerald for its failure to obtain prior Board approval to change its equity and debt capitalization and for failure to notify the Board of its source of funds. Emerald had entered into various loan agreements in July, 1994 that were not timely disclosed to or approved by the Board. Emerald was fined \$30,000.00.

In June, 1997 IGB denied Emerald's renewal application for its failure to submit a responsive renewal application, significant compliance shortcomings and failure to adhere to the overall requirements of the Act. Emerald stopped gaming operations in July, 1997. Emerald requested an administrative hearing regarding the denial of its renewal application and in

1999, at the conclusion of hearings, the ALJ concurred with the Board and recommended that the Board take final action to deny the renewal of Emerald's license.

However, before the Board acted on the ALJ's recommendations, the Illinois General Assembly amended the Act by adding a provision that "A licensee that was not conducting Riverboat Gambling on January 1, 1998 may apply to the Board for renewal and approval of relocation to a new home dock location and the Board shall grant the application and approval upon receipt by the licensee of approval from the new municipality or county as the case may be in which the licensee wishes to relocate....". This provision, Section 11.2 of the Act, became effective June 25, 1999.

Emerald accordingly applied for renewal of its license and for relocation for its operations to Rosemont Illinois. IGB undertook an investigation of Emerald and its key persons and proposed stockholders. The Board denied the renewal of Emerald's license on January 30, 2001. Emerald took an appeal from IGB's denial of the license and the case was heard both by the Appellate Court of Illinois and the Supreme Court of Illinois. Both these courts agreed with Emerald's contention that "shall" is

mandatory in Section 11.2 of the Act and that the Board had no discretion in terms of the renewal of the license. However, both courts specifically upheld IGB's authority and discretion in all other respects under the Act and specifically told IGB that it could pursue the revocation hearings, which had previously been instituted. (Philip N. Crusius v. The Illinois Gaming Board, et al., Case No. 98351 September 22, 2005) IGB accordingly modified its directive to the undersigned to pursue only the revocation proceeding and to discontinue any reference to the denial of the renewal which had been previously been heard as part of the same proceeding. The findings of fact and conclusions of the law, which follow, pertain, therefore, to the revocation.

Two lengthy and complete staff reports were prepared pertaining to the Board's revocation action. Both of those reports are included in the record and made available to Emerald as part of this proceeding. There were 59 hearing days in this matter. The record consists of 6498 pages. The Board offered 440 exhibits and Emerald offered 112 exhibits, all of which are made a part of this record. All subpoenas requested by Emerald were carried out except that I rejected efforts to call Chairman Jaffe as a witness in this proceeding, since he is one of the ultimate adjudicators. (R. 5223)

The Inspector General also resisted a subpoena as to one of its investigations of a board employee. Emerald conducted interrogation as to that investigation through another witness. And in both instances Emerald made offers of proof which are part of the record. The Board made an offer of proof in lieu of cross-examining one of Emerald's witnesses. I did not deem any of the allegations in any of the offers of proof to be pertinent to the outcome of this proceeding.

I recommend to the IGB that it confirm its order of revocation against Emerald and that order be made final pursuant to the Act. My Findings of Fact and Conclusions of Law are as follows:

FINDINGS OF FACT

1. EMERALD AND ITS PRINCIPALS DISSEMBLED ABOUT ITS PLANS TO MOVE THE LICENSE LOCATION TO ROSEMONT, ILLINOIS.

Emerald's gambling operations at East Dubuque, Illinois had been financially unsuccessful for some time. At least since 1995 Emerald had been making efforts to move those operations either by obtaining permission

from IGB or by lobbying to get legislation passed, which would allow such relocation. IGB did not have the legal authority to authorize such relocation.

(R. 2846)

In November, 1997 an entity known as Lake County Riverboat LP entered into negotiations with Emerald to create a joint venture for gaming operations in Lake County, Illinois. (R. 1880) On or about November 6, 1997, the parties entered into a non-disclosure agreement. (R. 1887) On November 12, 1997, the parties entered into a joint venture agreement. Neither of the agreements were ever disclosed to the IGB and were not discovered by the IGB until subsequent litigation between Emerald and the Davis Companies. (R. 473-75, 485-88, 2963) These negotiations were largely conducted by Joe McQuaid and Kevin Flynn on behalf of Emerald. Their roles in this matter will be further discussed below.

In 1997, Kevin Flynn and Victor Cassini, on behalf of Emerald met with Rosemont Mayor Donald Stephens at the mayor's office (R. 393, R. 5301-5304). At that meeting, Flynn and Stephens discussed the possibility of relocating the Emerald Casino operation to the Village of Rosemont, according to Stephens in his sworn statement and in his testimony in this

hearing. (R. 395-96) Kevin Flynn acknowledged that he met with Mayor Stephens, but testified that they only talked about the Flynn's Blue Chip operation in Indiana. Kevin Flynn's testimony in this aspect was not credible. (R. 2431-32)

In October, 1998 Kevin Flynn and David Filkin, then Vice President and General Counsel of Duchossois Industries, met with other representatives of Duchossois to discuss legislative efforts which would allow the relocation of the Emerald Casino. (R. 1783) Kevin Flynn commented that the Village of Rosemont was "a no brainer" as far as relocation. (R. 1785-86) At or about that same time the Davis Companies of California were also interested in owning or investing in a casino in Illinois, particularly in Rosemont. Michael Colleran was a Vice President of the Davis Companies. (R. 1789) In December, 1998, Kevin Flynn agreed to sell an ownership interest in the Emerald operation to the Davis Companies and to the Duchossois group. The Davis Companies would purchase 37.5 percent of the Emerald operation, while the Duchossois group would purchase 20 percent of the Emerald operation. The parties agreed to cooperate to pass legislation that would allow the casino to relocate. (R. 1806-07) This was all set forth in the First Amended Complaint in the Davis

litigation. In addition to the three way split between the Flynns, the Davis Companies, and the Duchossois group , a 5 percent ownership interest in the casino was reserved for “local investors”. (R. 1806-07) In Mayor Stephens sworn statement to IGB of September 2000, Mayor Stephens testified that as to the 5 percent designated for local investors, “that was for me”. (Stephens sworn statement at 69-70) At or about that same time, Filkin telephoned Kevin Flynn and Kevin Flynn confirmed to Filkin the terms of the agreement. (R. 1809-10) The IGB was not notified of any of these agreements at any time until the Davis Companies tried to enforce the agreements through litigation. (R. 1844-45)

Throughout 1998 and 1999, the Duchossois group and the Davis group were actively involved in and supported the legislative initiative to authorize Emerald’s relocation. (R. 1815-16) The Village of Rosemont and Mayor Stephens also participated in the lobbying efforts in 1998-99 to pass the legislation allowing relocation of Emerald’s license. (R. 5352) In his sworn statement Mayor Stephens stated “you get a bill down there and I can probably kill it with people that I know in the forty-five years I have been around. I can convince enough people to squash your bill unless it is something the public really wants.” (Stephens sworn statement at 47).

Emerald repeatedly told IGB that it never considered Rosemont as its prospective site until after Section 11.2 of the Act was passed by the General Assembly. As late as the filing of its Verified Answer in this proceeding, paragraph 15, it maintained that position. Everybody else seemed to know differently. The legislative history of the debate during which Section 11.2 of the Gaming Act was approved, was replete with references to Rosemont as the designated city for the relocation.

Representative Hoeft said “We’re [taking the riverboat] and putting it in Rosemont and anyone here that tells me that we’re not doing that, pardon the pun folks, but you want to make a bet, because that is where this boat is going.” (Transcript from May 21, 1999, Illinois House of Representatives debate on SB 1017, at 102). Senator Shaw said: “and most of us do not come from such rich districts as up in Rosemont and up in Arlington ...I do not have anything against Rosemont.... [Now] the argument is going to be, but do I know it is going to Rosemont. Let me tell you this; Those of us who are elected to this Body we did not come out of the dust closet to get here: we understand this process.” (Transcript from May 24, 1999, Illinois Senate debate on SB 1017 at 117)

Senator Welsh stated, “the question that we have to ask is why it is going where it is going. Is that really economic development or are we just cutting a deal that started out being dock site gambling for ----- to keep a few boats going.... [W]e’ve come to some kind of – secret agreement that it is going to Rosemont. And to get it there, another person, who wanted it up in Arlington Heights, agreed to give up his contention that he deserved it in exchange for a piece of the pie... what we have here is akin to a run-away train.” (Transcript from May 24, 1999, Illinois Senate debate on SB 1017 at 123)

It was not until July, 1999, that Emerald’s attorney advised IGB that it intended to move its operation to Rosemont. (R. 182, 183)

In October, 1999, the parties who had cooperated to see that the legislation allowing the new location had passed were still cooperating with each other and with Mayor Stephens. A fundraiser for the Donald E. Stephens Committeeman Fund produced the following contributions:

- a. American Trade Show Services Inc. –donated \$25,000 to the Fund. Nick Boscarino- husband of a new Emerald investor, Sherri Boscarino, is a principal of that company. The

Boscarino interests, persons who were called to testify in these hearings, asserted their Fifth Amendment rights and refused to answer any questions. The Individuals contributed \$21,000 to the Fund.

- b. D & P Construction, which ended up a contractor for Emerald, contributed \$5,000 to the Fund.
- c. The Davis interests contributed \$20,000 to the Fund.
- d. The Duchossois interests contributed \$21,000 to the Fund.
- e. The Flynn interests contributed \$25,000 to the Fund.

Loans to by Parkway Bank to the Fund were extensive. Apparently there was one gift of over \$208,000 (R. 6095) As will be detailed below, principals of Parkway were included as secret investors in Emerald. These included its president, Rocco Suspenzi. Mr. Suspenzi as well as Jeffrey Suspenzi were subpoenaed to testify in this proceeding, but exercised their Fifth Amendment rights.

The refusal of Mr. Rocco Suspenzi and Mr. Jeffrey Suspenzi to testify at these board proceedings, notwithstanding their secret investment in Emerald, and notwithstanding their closeness to Mayor Stephens and his

activities, entitled IGB to draw inferences from these political loans and contributions, notwithstanding the “legality” and “timing” of such loans and contributions.

Counsel for Emerald insisted that all of these contributions were legal and indeed they are. Illinois has no limit on contributions nor does it prohibit contributions from investors or would-be investors in the gaming industry. However, IGB was entitled to infer from contributions and their timing and the lobbying efforts acknowledged by the parties involved that there was indeed an agreement in 1998-99 to get such legislation passed through the General Assembly, to relocate the Emerald gaming operations to Rosemont, and to divide the pie in some kind of secret arrangement.

**2. THE RENEWAL APPLICATION FILED BY EMERALD ON
SEPTEMBER 28, 1999 WAS NEITHER ACCURATE NOR
COMPLETE.**

Joe McQuaid testified that as the responsible official of Emerald, he completed and filed the Renewal Application. He testified that he reviewed the instructions for the application carefully. (R. 3176-77) As would be

detailed, Mr. McQuaid had extensive experience as the Chief Enforcement Officer and Interim Administrator of IGB for many years immediately prior to being employed by Emerald. Indeed he was the official of IGB who signed the first disciplinary action against Emerald in 1994, which resulted in the \$30,000 fine against Emerald.

Notwithstanding Mr. McQuaid's experience and his testimony that he had reviewed the instructions, the application stated that none of the shareholders were public officials or relatives of public officials. A list of stockholders submitted to IGB included a relative of State Representative Ralph Caparelli, one of the prime movers of the relocation amendment to the Act, as well as two other public officials. McQuaid never asked any of the persons involved whether or not they were public officials and testified that he thought that it was not important to ask such questions because none of the stock purchased and transferred to these public officials had ever been approved by the IGB. Therefore, even though the proceeds of such sales and others were used by Emerald, McQuaid's position was that it was of no consequence who the stockholders were until the IGB finally approved the transfer. Neither McQuaid nor anyone else at Emerald had ever examined

the Personal Disclosure Forms (PDF) which were submitted to the Board directly.

The application also requested that Emerald submit “all agreements, arrangements, and commitments related to proposed gaming facility and related projects”. Emerald submitted five agreements, none of which were pertinent to this inquiry and stated it had not executed any other agreements. In fact, Emerald had executed a letter of intent with the Village of Rosemont; Emerald made no reference to any of the arrangements that it had made with the Davis interests (which were about to lead into a law suit filed by Davis).

The application specifically asked whether the licensee or any of its affiliates had been a party to any legal action, including pending or threatened litigation. Emerald did not include any information about the threatened litigation by the Davis companies, even though the Davis companies had already planned a complaint and notified Emerald of that fact.

One of the questions asked whether any current or proposed shareholders had been arrested, charged, indicted, convicted etc. of any felony or misdemeanor. Emerald answered by saying it relied on the PDF's that were submitted directly to the Board. Emerald thus sought to absolve itself of any responsibility for the identity of the stockholders other than perfunctory interviews by Mr. McQuaid. As will be detailed below, several proposed stockholders were covered by that question, but not disclosed to IGB.

In July and August 1999 Rosemont and Emerald entered into several letter agreements relating to the development of the proposed casino on the Rosemont property. (R. 3229) These letter agreements were not disclosed to IGB until sometime in 2000. IGB became aware of these letter agreements with Rosemont in September, 2000, pursuant to a letter received from the attorney for Rosemont. Emerald did not disclose these agreements with IGB until December, 2000. (R. 3220)

3. EMERALD FAILED TO NOTIFY IGB OF ITS CONSTRUCTION ACTIVITIES OR ITS LEASE AND DEVELOPMENT AGREEMENT WITH ROSEMONT IN A TIMELY FASHION.

It would appear that after Emerald and its principals were successful in obtaining the amendment to the Act from the legislature pertaining to relocation, it decided that the rules and procedures of IGB need not be given too much concern. On July 21, 1999, Rosemont and Emerald had entered into a Letter of Intent regarding the construction of a casino at the site agreed upon between them. The Letter of Intent was “intended to memorialize key items that had been agreed to which are to be incorporated into a lease and development agreement”. (R 1235-36) This Letter of Intent was extended and augmented by various letter agreements signed in August 1999 and December 1, 1999. Emerald did not include the Letter of Intent or any of the documents previously signed with Rosemont in its September 24, 1999 application. Indeed none of those agreements were sent to IGB by Emerald until December, 2000 more than one year after commencing construction and after IGB had obtained these letters from the Village of Rosemont in September, 2000. (R. 1235-36)

On February 10, 2000 Emerald submitted a fully executed copy of the Lease and Development agreement between Emerald and Rosemont. That Agreement contained many of the identical terms originally memorialized in

the July 21 Letter of Intent. This February submission to IGB was long after Emerald had commenced construction at the site, and Rosemont had commenced construction of a parking garage. Indeed, on or about February 29, 2000 Emerald informed IGB that it had ceased all construction activities at the site as of that date.

The Lease and Development Agreement contained many provisions violative of IGB's rules and procedures. That Agreement allowed the Village of Rosemont to waive the requirement that Emerald obtain necessary regulatory approval from IGB prior to commencing construction of the casino. That Agreement committed Emerald to fund the construction of the parking garage addition even though Emerald did not have sufficient financing dedicated to do so. That Agreement failed to provide Emerald the ability to exercise appropriate control or supervision over the management of the contractor or sub-contractors for the casino and parking garage construction project. At the hearings, Emerald took the position that submission of construction contracts or review of construction contractors was not necessary because IGB would always have an opportunity to reject anything that had been built in the final instance before the "casino" became a "casino". Such a position is contrary to the statute.

At least one of the subcontractors doing work on the casino construction project was a company known as D & P Construction. The FBI in its memorandum of April 16, 2003 identified D & P Construction as controlled by Peter and John DiFronzo. The Memorandum stated that D & P obtained contracts through illegal payoffs or intimidation (IGB Exhibit 397). During the hearings, none of the witnesses, either for Emerald or for any other party would admit that they hired D & P Construction.

4. KEVIN FLYNN, AS A MAJOR STOCKHOLDER AND PROPOSED CHIEF EXECUTIVE OFFICER OF EMERALD, CONSISTENTLY DISSEMBLED TO IGB AS TO HIS ACTIVITIES ON BEHALF OF EMERALD.

Kevin Flynn identified himself as a stockholder of Emerald in December, 1996. However Kevin Flynn, both in sworn statements and letters to the IGB, insisted that he did not become involved in the activities or management of Emerald until June of 1999 when he was appointed to the new post of Chief Executive Officer of Emerald.

As far back as November, 1997 Kevin Flynn had negotiated on behalf of Emerald with the Lake County Riverboat L.P. to discuss a joint venture for a riverboat in Lake County Illinois. Kevin Flynn acted as the primary spokesman for Emerald in those negotiations. (R. 1890-91, R. 1900-01) In November, 1997 Emerald and Lake County Riverboat entered into a non-disclosure agreement and a joint venture agreement to pursue a Lake County operation. (R. 1887) These agreements and Kevin Flynn's role in negotiating these agreements were not disclosed to IGB. IGB only become aware of the circumstances through a review of material produced in the Davis litigation at a much later time. (R. 473-75, R. 485-88)

In 1997, Kevin Flynn met with Mayor Stephens at the Mayor's office. They discussed the possibility of moving the Emerald Casino operation to Rosemont. (Stephens' sworn statement at 12; R. 5301-04) Kevin Flynn insisted that Rosemont "was not anything considered as far as I know until the legislation passed" in 1999. (R. 2439) Kevin Flynn lied about his 1997 meeting with Mayor Stephens and the possibility of moving to Rosemont.

In October, 1998, Kevin Flynn met with representatives of Duchossois Industries including David Filkin, Vice President and General

Counsel for Duchossois. Kevin Flynn stated at that meeting that Rosemont was a “no brainer” as to relocation. (R. 1785-86) While Kevin Flynn testified that he was just there listening, that he “had no role” as to Emerald. (R 70) Filkin and others testified that Kevin Flynn was the primary spokesman for Emerald. (R 1785-86) In the Fall of 1998 Kevin Flynn told Filkin that any negotiations or deal among Emerald, Davis, and the Duchossois group, need be kept secret. (R. 1802-03) Kevin Flynn had meetings with representatives of the Davis Companies around the same time. (R. 1793-98) At a meeting on December 1, 1998, Kevin Flynn agreed or reached an understanding to sell an ownership interest in the Emerald operations to the Davis Companies and to the Duchossois group. (R. 2463-64, R. 1799-1801) (R. 1806-07) In addition to agreeing about the division between the three groups at the meeting, a 5 percent interest was reserved for “local” investors. (R. 1806-07) Mayor Stephens in his sworn statement to IGB testified that the 5 percent designated for local investors, “that was for me.” (Stephens sworn statement 69-70)

After talking to the parties representing Davis, Filkin called Kevin Flynn and Kevin Flynn confirmed that the terms of the agreement that had been outlined to Filkin were correct. (R. 1809-10)

In 1998 and 1999 the Duchossois group and the Davis Companies were actively involved in lobbying the legislature to allow Emerald to relocate. (R. 1815-16)

After the legislation was passed which allowed the relocation, Filkin learned that Emerald might not abide by the agreement that had been reached in December 1998. (R. 1814-15) McQuaid advised Filkin in the summer of 1999 that the Duchossios group would be able to invest in Emerald but that the Davis Companies may be cut out of the deal. (R. 1816-17)

On September 20, 1999, Emerald organized a meeting with the Duchossios group. At the meeting Kevin Flynn told the Duchossios group that they would not be given the opportunity to invest in Emerald regardless of the prior agreement or understanding. Kevin Flynn stated that, “things change.” (R. 1817) (R. 2495)

Notwithstanding all these negotiations and agreements, Kevin Flynn repeatedly denied that he had made any kind of deal with the Davis

Companies or the Duchossios group. (R. 423-24; Kevin Flynn sworn statement 107-08) Indeed, in all his presentations to IGB and in subsequent litigation with the Davis Companies, Kevin Flynn insisted that he had nothing to do with running Emerald until June, 1999.

Kevin Flynn attended four of the five Emerald Board of directors meetings held between April, 1997 and April, 1999. Kevin Flynn insisted that the only reason he was at the Emerald meetings was because they coincided with the dates of the Blue Chip Casino Board meetings. Kevin Flynn testified that at some Emerald meetings he would get up and leave and sometimes he would stay. Donald Flynn gave similar testimony about Kevin Flynn's attendance at board meetings. Donald Flynn, father of Kevin and principal stockholder of Emerald, was not in town often and apparently relied heavily on his son to represent his interest. In fact, only one of the five Emerald Board of Directors meetings coincided with a Blue Chip Casino Board of Directors meetings. (R. 499-501; R. 2451)

In sum, the record is replete with clear and convincing evidence that Kevin Flynn dissembled to IGB about his activities on and in behalf of Emerald prior to June of 1999. Whether his reasons for such dissembling

was to establish deniability of responsibility for agreements reached with such groups as the Davis Companies and the Duchossios group or negotiations with other dissenting stockholders or to deny how long Emerald was involved in its desire to relocate to Rosemont, he did not tell the truth to IGB.

Between April 1996 and 1999 Kevin Flynn was the CEO of Blue Chip Casino, a gambling boat operating in Michigan City, Indiana. In 1999, Blue Chip was sold to Boyd Gambling. (R. 5704-05) On June 27, 1999 as part of the sale of Blue Chip to Boyd, Kevin Flynn created a company known as Field Street. That company entered into a consulting and lobbying agreement with Boyd. Under this agreement, known as the Field Street Agreement, Kevin Flynn agreed to lobby to prevent tribal gambling from entering into southwest Michigan; such gambling would compete with Blue Chip in Michigan City. The agreement was also to cover activities in Indiana and Illinois. (R. 5726-27) Under the agreement Kevin Flynn was to be paid \$500,000 a year plus expenses. If Kevin Flynn was successful in keeping tribal gaming out of southwest Michigan for five years, he would be paid five million dollars as a bonus. One of the activities that Kevin Flynn agreed to pursue was to facilitate the funding of money from Boyd to grass

roots anti-gambling interests that were opposed to gambling and the expansion of gambling in Michigan. (IGB Exhibit 306, page 129, R. 5726-27)

Neither Kevin Flynn nor Boyd disclosed the existence of the Field Street Agreement either to Indiana or Illinois authorities. The Indiana authorities determined that it was Boyd's responsibility to disclose the agreement and for such non-disclosure the Indiana Gaming Board fined Boyd the equivalent of one million dollars. IGB first learned of the Field Street Agreement in late 1999 on receipt of a telephone call from the Indiana Gaming Commission. (Supplemental staff report at 63) Kevin Flynn did not disclose the existence of the Field Street Agreement until June 29, 2000. (IGB Exhibit 210) Whether such an agreement would or would not be against public policy under Illinois precedents, such a contract could affect the gaming industry and the reputation of persons in the gaming industry in Illinois.

5. EMERALD FAILED IN ITS OBLIGATION TO PREVENT INELIGIBLE INTERESTS FROM INVESTING IN ITS CASINO. AS A RESULT, NUMEROUS INELIGIBLE INTERESTS WERE SOLD STOCK IN THE CASINO AND THE

**PROCEEDS OF SUCH SALES WERE USED TO FINANCE
CONSTRUCTION OF THE NEW CASINO FACILITY AT
ROSEMONT.**

Throughout these proceedings Emerald insisted that it was IGB's obligation to investigate the eligibility and background of investors in the casino, since no stock purchase was complete until IGB approved it. It claimed its only responsibility was a very perfunctory review of the eligibility of the proposed stockholders; it caused such stockholders to fill out a Personal Disclosure Form 1 (PDF) and submit it directly to IGB. Emerald insisted that it could not look at the PDF's, since they were confidential. As a result, at least three of the individuals to whom stock was sold were ineligible because of their status as public officials or relatives of public officials. (R. 233) This has been covered above.

In addition to persons ineligible to be stockholders as a result of the public official disqualification, several persons and interests who had some association with organized crime were allowed to purchase stock in Emerald. In a complicated transaction involving a trust instrument with his daughter and a loan from Parkway Bank in the amount of \$1,500,000, Nick

Boscarino was allowed to acquire an interest in Emerald. Boscarino did business with the Village of Rosemont and was a partner in a company with Mayor Stephens' son, Mark Stephens. The company cleans office buildings including the Rosemont Exposition Center. Mayor Stephens acknowledged that he had been close to Nick Boscarino until Boscarino was indicted and convicted for defrauding the Village of Rosemont. (R. 5330-32)

Boscarino, his mother Ida L. Hansen, and his wife were all subpoenaed to testify in this proceeding; all of them took the Fifth Amendment and refused to answer questions regarding the transactions or anything else about their background.

Vito Salamone was identified by the FBI as being close with members and associates of organized crime. (R. 1353) The stock certificate issued by Emerald was originally in the name of Vito Salamone but was changed to Joseph Salamone, his brother. Whatever the effect of this crude change of ownership, there was in fact a secret memorandum of agreement, not provided to the Gaming Board, which showed that both brothers, as well as officers of the Parkway Bank and Trust Company, were sharing in the ownership interest purchased in the name of Joseph Salamone. Rocco

Suspenzi was the chairman of Parkway Bank and Trust, and he as well as the Salamone brothers and Jeffrey Suspenzi were all subpoenaed to testify in this proceeding. All of them refused to testify, claiming their Fifth Amendment rights when asked questions about the secret agreement or any other questions pertaining to Emerald. Parkway Bank served as Mayor Stephens' bank in many other transactions.

Agent John Mallul (Mallul) testified as a special agent employed by the Federal Bureau of Investigations since 1986. In 1988, Mallul was assigned to an organized crime squad and has been assigned to that position since that time. For the last two years Mallul has been a supervisory special agent within the organized crime division of the FBI. (R. 2178) Mallul testified as to various terms used to describe organized crime in Chicago. (R. 2182-85) Mallul directed the preparation of five letterhead memorandums, which were introduced into evidence. (R. 2186-94) These memoranda, from confidential sources, provided information regarding Nick Boscarino and the Salamone brothers and their relationships to organized crime. They also described activities of Peter DiFronzo and Joseph DiFronzo and D & P Construction Company, one of the contractors performing work at the Rosemont casino site. (IGB Exhibit 251, 252, 397, 396) Agent Mallul

testified that he was satisfied as to the veracity and credibility of the source information which was used in these memoranda. (R. 2199-2200) Agent Mallul's testimony was credible and the FBI had determined to its satisfaction that the sources of the material contained in the memoranda were credible. IGB was entitled to use this information to make decisions concerning Emerald's conduct and its relocation move to Rosemont. This is particularly true since most of the individuals identified in the FBI memoranda that were involved in stock ownership in Emerald or construction activities in Rosemont refused to testify in these proceedings.

Mayor Stephens, who was identified in several of the FBI memoranda, vigorously denied any associations with organized crime. He stated that he severed his personal relationship with Mr. Boscarino after Boscarino was indicted. He acknowledged knowing Mr. DiFronzo (Sworn statement at 99-100) and others identified by Mallul. Mayor Stephens acknowledged that he at one time purchased a hotel from Sam Giancana who was then the head of the Chicago Outfit. (R. 5368-71) Mayor Stephens acknowledged that he had brushes with law enforcement early in his career. (R. 5337) However, he vigorously denied that he was present at a meeting where organized crime figures planned their involvement in the Rosemont

Casino. He also denied that he had anything to do with selecting shareholders in Emerald or contractors that Emerald hired for the construction. He did not make any effort to explain his earlier statement to IGB that under the arrangement that Emerald made prior to the amendment allowing the relocation to Rosemont, 5 percent of the stock was set aside for him. (Stephens statement at 69-70).

It is not necessary to resolve the conflicts between Mayor Stephens' testimony and the information provided by the FBI. It is not even necessary to resolve the conflict between Mayor Stephens testimony as to the selection of shareholders at the hearing as compared to his earlier sworn statement. There was sufficient credible evidence about Emerald's stock transactions, about its construction activities and about its lack of candor in its statements and submissions to IGB to warrant the revocation action taken by IGB.

Similarly it is not necessary to rely on the tape of a conversation between James and Michael Marcello, which has been recorded by the FBI pursuant to court authorization. (R. 5921-24) James Marcello is a member of organized crime and was in prison at the time the tape was made. Michael Marcello was visiting his brother and the tape of the conversation

was made at that time. An approximate two and one half minutes portion of recorded tape was presented at the hearing and agent Mallul stated that no other portion of the conversation pertained to Mayor Stephens or the casino in Rosemont. (R 5932) The tape and the accompanying testimony of agent Mallul were not useful in resolving any of the controversies involved in this proceeding. The tape itself had very poor fidelity and the brothers were speaking in some kind of cryptic code. Agent Mallul had to testify as to the words and as to the true meaning. Even if he were confident as to both fidelity and his interpretation of code words and phrases, there is no way that anybody could verify the facts related in the conversation. The brothers may have been puffing their own exploits and influence to each other, or they may have been deliberately trying to confuse law enforcement or anybody else that might be overhearing their conversation. In any event, notwithstanding the admissibility and relevance of agent Mallul's testimony concerning this conversation, I give it no weight in my findings of fact.

6. THERE WAS NO EVIDENCE OF BIAS ON THE PART OF THE STAFF OR OF THE MEMBERS OF IGB IN THIS REVOCATION PROCEEDING.

Throughout the proceedings, attorneys for Emerald insisted that staff and members of IGB were biased against Emerald. These bias challenges raised questions about everyone from former Governor James Edgar to Chairman Aaron Jaffe to the staff of the U.S. Attorney's office, to the various ALJ's that were involved in this proceeding and to numerous members of the IGB staff. No evidence was presented to back up the charges. Emerald presented some evidence concerning a "voodoo doll" which was given to a departing employee on the day of her departure from IGB. She allegedly stuck a pin into it and stated that the pin was for Joe McQuaid. (R. 4481-82) There was never any connecting evidence to show that if this incident took place, it was anything more than jest or an expression of irritation against Mr. McQuaid who had previously been the employee's supervisor. There was nothing to indicate that this employee did anything, said anything, or wrote anything which affected the decision to revoke Emerald's license because of any bias.

It is always unfortunate when lawyers decide to challenge the tribunal or the process rather than present their case. In this instance, Mr. Ficaro, then attorney for Emerald, delivered his opening statement in this proceeding by turning his back to the presiding officer, ALJ Holzman, and

announcing to the assemblage of reporters and others who were present in the room “ I would like to welcome everybody to Kangaroo Court. This proceeding is a sham.” At the same time, various computers were displayed to the audience showing kangaroos jumping on the screen.

Four separate motions to disqualify previous ALJ Holzman were made; he granted the fourth one. I denied three separate motions to disqualify me; two were taken to the Gaming Board for review. Motions were made to disqualify Chairman Jaffe, and add him as a witness. The motions were all denied. On two occasions I had to remonstrate with Mr. Clifford to behave in a professional manner. (R 4919-20, 5084-85)

CONCLUSIONS OF LAW

1. When gambling was first authorized in Illinois in 1990, the Legislature declared, that gambling would only be good for Illinois

“if public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process is maintained. Therefore, regulatory provisions of this Act are designed to strictly regulate the facilities, persons, associations and practices related to gambling operations pursuant to the police powers of the State, including comprehensive law enforcement supervision.” (230 ILCS 10, Riverboat Gambling Act)

2. IGB rules adopted pursuant to the Act provide that licensees shall be subject to revocation of their licenses

“for any act or failure to act...that is injurious to the public health, safety, morals, good order and general welfare of the people of the State of Illinois or that will discredit or tend to discredit the Illinois Gaming industry of the State of Illinois. (IGB Rules 3000.110(a))

As examples of such acts which can lead to revocation, the rule provides in subsection 5:

“associating with, either socially or in business affairs, or employing persons of notorious or unsavory reputation or who have extensive police records, or who have failed to cooperate with any officially constituted investigatory or administrative body and would adversely affect public confidence and trust in Gaming.”

Section 3000.140(a) of such Rules states that “Board licensees and applicants for licenses issued by the Board shall have a continuing duty to disclose promptly any material changes in information provided to the Board.” Section (b) of that same rule requires licensees to disclose agreements, whether oral or written relating to “construction contracts”, “agreements with or involving Key Persons”, “agreements to sell... or otherwise transfer or share”, “agreements in lieu thereof, relating to ownership interest or interest in an owner’s license.”

Subsection (c) of the same rule specifically provides that the failure to meet the requirements of subsection (a) or (b) may result in discipline “up to and including revocation of a license.”

Emerald insist that revocation of its license was too harsh a remedy even some or all of the alleged conduct occurred. It suggests that transgressions of other riverboat gambling licensees were disciplined by settlement short of revocation of their licenses. Indeed, the instant matter was tentatively settled at one point and the hearing process was held in recess; however Emerald violated the terms of the tentative settlement, and the hearings were resumed. In any event the Board has discretion to judge the seriousness of the transgressions and the fitness of the penalty that should be applied. The fact that no license had been revoked before would not cause the revocation authority of the Board to lapse.

The record discloses that numerous lawsuits were filed in both federal and state court seeking to halt or terminate these proceedings and to challenge the Board's authority to act. As previously indicated, both the Appellate Court of Illinois and the Supreme Court of Illinois specifically found that IGB had continued authority to engage in these disciplinary proceedings for revocation notwithstanding the action of the legislature in making the renewal process for Emerald a mandatory matter. Most recently, Judge Thomas P. Quinn of the Circuit Court of Cook County and Judge

Matthew T. Kennelly of the United States District Court for the Northern District of Illinois specifically refused to halt these proceedings or to intervene. (Emerald Casino, Inc. v. Aaron Jaffe, et al Case No. 05 C 4077, October 12, 2005)

3. Section 3000.1140(a) of the Rules states “the licensee bears the burden of rebutting the charges contained in the complaint by clear and convincing evidence.” Section 3000.1145(a) states that

“the hearing need not be conducted according to technical rules of evidence. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.”

Hearsay evidence, which might normally be inadmissible in a civil action, thus was allowed to be admitted into evidence. Specifically, the FBI reports and the testimony accompanying such reports by agent Mallul were admitted under the evidence rules adopted by IGB. The reports which were identified as reliable by agent Mallul and which were made in the course of law enforcement procedures of the FBI, were admitted and given appropriate weight. The tape conversation between the Marcello brothers, while

admitted, was not given weight because of the circumstances described above.

4. Case law of this state and of other states where gambling is allowed, is replete with statements of reviewing courts that the regulatory authorities of gambling have wide discretion in exercising their judgement on matters relating to licensure and revocation thereof. See Archview – Casino Cruises Inc. v. the Illinois Gambling Board 263 ILA 3rd 375 (1994); Balmoral Racing Club v. Illinois Racing Board 240 ILA 3rd 112 (1991); Oklahoma Park Inc. v. Oklahoma Horseracing Commission 716 P2d 666 (1986); Circuit Court of Virginia v. City of Richmond and Harold R. Wall, 1982 WL215-291 (VA Circuit Court, (1982)).

Section 3000.1105 of IGB Rules provides that

“ All Board licensees have a continuing duty to maintain suitability for licensure. A Board license does not create a property right, but is a revocable privilege granted by the State contingent upon continuing suitability for licensure.”

This provision has been in the Rules since 1993 and makes clear IGB’s authority to revoke a license if it finds that the licensee is not suitable to maintain its license.

At least since 1997, when Emerald first lost its license, it and its principals have played fast and loose with the law and with the rules and regulations of IGB. Its modus operandi seemed to be “Catch me if you can”, rather than abide by the legal and ethical standards that the law imposes on those privileged to get a gambling license.

Kevin Flynn flat - out lied and others dissembled as to when Emerald first attempted to move its gambling operations to Rosemont. Instead of advising IGB of its plan to sell interests in its operations to others, Emerald claimed that “Letters of Intent” do not count as anything and that Kevin Flynn did not have “authority” to make such deals. When Emerald was confronted with undeniable facts that persons ineligible by law to be stockholders because they were public officials or related to public officials, Emerald said it was IGB’s responsibility to determine such facts. When Emerald was confronted with evidence that persons associated with organized crime had obtained interests in Emerald’s operation, Emerald’s defense was that it was IGB’s responsibility to determine such facts and that such stock transactions were not binding. When asked about making Joe McQuaid its principal enforcement officer even before he had gone off the State Police payroll for his terminal leave, (R. 2607) Emerald insisted that it

was not against the law at that time. When Emerald was asked about the propriety of the Field Street Contract and why it was not reported to either the Indiana or the Illinois authorities, Emerald insisted that it was somebody else's responsibility, not Kevin Flynn's.

Any one of these defaults probably would have been sufficient to justify IGB's action in revoking Emerald's license. The sum of the parts far exceeded the making of a prima facie case against Emerald's suitability.

The rebuttals by Emerald were wholly insufficient.

The operation of gaming by Emerald in Rosemont would greatly undermine "public trust and confidence in that credibility and integrity of the gambling operations and of regulatory process" in Illinois.

I recommend that IGB make permanent its order of revocation and that any efforts by Emerald to engage in gambling in Illinois at any location be denied.

Dated : November 15, 2005

Abner J. Mikva
Administrative Law Judge