

STATE OF ILLINOIS
ILLINOIS GAMING BOARD

Pug Mahones, Inc.)	
d/b/a Pug Mahones Irish Pub & Grill,)	
Licensed Establishment)	
		Petitioner,
)	
v.)	
)	
Gaming & Entertainment Management –)	
Illinois LLC, et al.,)	
Licensed Terminal Operator)	
		Respondent.
)	

FINAL BOARD ORDER

This matter comes before the Illinois Gaming Board (the “Board” or “IGB”) pursuant to the Video Gaming Act (the “VGA”), 210 ILCS 40, and Section 1800.320(b) of the Board’s Adopted Rules for Video Gaming (the “Rules”). 11 Ill. Adm. Code 1800.320(b).

FINDINGS OF FACT

The Board has before it the entire record of *Pug Mahones, Inc. d/b/a Pug Mahones Irish Pub & Grill, Petitioner*, (“Pug”) v. *Gaming & Entertainment Management – Illinois LLC, Respondent*, (“GEM”), Docket No. 18-UP-017, including the petition filed, all other pleadings received, and the Administrator’s Recommended Decision.

On February 1, 2018, Pug submitted a Rule 320 Petition asking the Board to examine the use agreement (the “UA”) between itself and GEM and allow Pug to enter into a new UA with a different terminal operator. Pug’s Petition disputes the UA start date and its automatic renewal provision. On April 3, 2018, the Board notified Pug that its Petition failed to comply with the requirements set forth in 11 Ill. Adm. Code 1800.320(b)(2). Specifically, the Petition did not include a signature, verification, or notarization as required by 11 Ill. Adm. Code 1800.320(b)(2)(C), 1800.320(b)(2)(D), and 1800(b)(2)(E) respectively. The Board instructed Pug to file an amended Petition that complied with Rule 320. Pug failed to do so. On August 19, 2021, Board Administrator Marcus D. Fruchter issued the Administrator’s Recommended Decision that the Board deny Pug’s Petition for failure to comply with the requirements of Rule 320. No exceptions were filed.

CONCLUSIONS OF LAW

Pursuant to the VGA, Rules, and *J&J Gaming Ventures, LLC v. Wild, Inc.*, 2016 IL 119870, the Board has exclusive and original jurisdiction over agreements that purport to control the placement and operation of video gaming terminals. In *Wild*, the Illinois Supreme Court affirmed

the long-established rule that there is no common law right to profit from gambling. *Wild* at ¶ 32. The court further held that the VGA's legalization of video gaming is an exception to the general prohibition on gambling, that video gaming is allowed only as authorized by the VGA or Rules, and that by "legalizing the use of video gaming terminals for commercial gambling purposes, the legislature enacted a comprehensive statutory scheme, creating rights and duties that have no counterpart in common law or equity." *Wild* at ¶ 32.

Pug's failure to submit a Petition that comports with Rule 320(b)(2) is fatal to its case and the Board does not need to consider any issues raised in the Petition beyond its facial deficiencies. In *Doxsie v. Ill. Gaming Bd.*, 2021 IL App (1st) 191875, the First District Appellate Court affirmed the Board's authority to interpret and administer the Rules and deny requests for hearing if the requests fail to comply with any of the relevant requirements. *Doxsie* at ¶ 17.

Pug's Petition failed to comport with Rule 320(b). Indeed, Pug failed to cure the defects even after the Board notified Pug of the Petition's deficiencies and gave it an opportunity to get into compliance with Rule 320(b). Compliance with Rule 320(b)(2) is a necessary requirement of the Rule 320 Petition process. 11 Ill. Adm. Code 1800.320(b)(3). Thus, after careful review and consideration of the record, the Board hereby:

- (1) Adopts the Administrator's Recommended Decision;
- (2) Denies Pug's February 1, 2018, Petition for failure to comply with Rule 320(b)(2); and
- (3) Makes no findings of facts or conclusions of law on the merits of Pug's Petition regarding the use agreement start date or the validity of its automatic renewal provision.

This is a Final Order subject to judicial review under the Administrative Review Law pursuant to 230 ILCS 10/17.1. The Rules of the Illinois Gaming Board do not permit motions or requests for reconsideration of this Order.

VOTED THIS NINTH DAY OF SEPTEMBER 2021



Charles Schmadeke, Chairman



Dionne R. Hayden



Anthony Garcia

Ruben Ramirez

SERVICE LIST

Pursuant to Board Rules 1800.320(b)(2)(A), 1800.320(b)(12), and 1800.140, this Final Order is being served via e-mail upon all parties of record in 18-UP-017—Pug Mahones, Inc. d/b/a Pug Mahones Irish Pub & Grill (License no. 120701996) v. Gaming & Entertainment Management, Illinois LLC—at the following addresses:

Pug Mahones Irish Pub & Grill
c/o Carol Burgess
info@pugmahones.com
pugmahones@sbcglobal.net
282 E. Grand Ave.
Fox Lake, IL 60020

Gaming & Entertainment Management - Illinois LLC
c/o David Sloan
GEM_Notify@gemillinois.com
1572 Shore Road
Naperville, IL 60563

Delaware North Companies Gaming & Entertainment, Inc.
c/o Compliance Officer
bsalansk@delawarenorth.com
mmccabe@delawarenorth.com
250 Delaware Avenue
Buffalo, NY 14202

Office of General Counsel
IGB.320@igb.illinois.gov
Illinois Gaming Board
160 North LaSalle Street
Suite 300
Chicago, Illinois 60601

CERTIFICATE OF SERVICE

I, James Jozefowicz, certify that I served a copy of the attached Combined Final Order by email on September 13, 2021, to all parties of record in the following matter:
18-UP-017—Pug Mahones, Inc. d/b/a Pug Mahones Irish Pub & Grill (License no. 120701996)
v. Gaming & Entertainment Management, Illinois LLC.—at the following addresses:

Pug Mahones Irish Pub & Grill
c/o Carol Burgess
info@pugmahones.com
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282 E. Grand Ave.
Fox Lake, IL 60020

Gaming & Entertainment Management - Illinois LLC
c/o David Sloan
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1572 Shore Road
Naperville, IL 60563

Delaware North Companies Gaming & Entertainment, Inc.
c/o Compliance Officer
bsalansk@delawarenorth.com
mmccabe@delawarenorth.com
250 Delaware Avenue
Buffalo, NY 14202

Office of General Counsel
IGB.320@igb.illinois.gov
Illinois Gaming Board
160 North LaSalle Street
Suite 300
Chicago, Illinois 60601

Illinois Gaming Board
160 North LaSalle Street
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STATE OF ILLINOIS
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Pug Mahones, Inc.)	
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v.)	
)	
Gaming & Entertainment Management –)	
Illinois LLC, et al.,)	
Licensed Terminal Operator)	
Respondent,)	

ADMINISTRATOR'S RECOMMENDED DECISION

This dispute comes before the Illinois Gaming Board (the “Board” or “IGB”) under Section 1800.320(b) of the Board’s Adopted Rules (the “Rules”). 11 Ill. Adm. Code 1800.320(b). This Recommendation issues under Rule 320(b)(6). 11 Ill. Adm. Code 1800.320(b)(6).

Pug Mahones, Inc. d/b/a Pug Mahones Irish Pub & Grill (“Pug”) asks the Board to examine the use agreement between Pug and Respondent Gaming & Entertainment Management – Illinois LLC (“GEM”) so that Pug may enter into a use agreement with a different terminal operator.

I recommend the Board deny Pug’s Petition because it fails to comply with the requirements for Rule 320 Petitions set forth in 11 Ill. Adm. Code 1800.320(b)(2).

I. JURISDICTION

The Video Gaming Act (the “VGA” or the “Act”) confers jurisdiction and authority upon the Board to supervise all video gaming operations in Illinois. 230 ILCS 40/78; *J&J Gaming Ventures, LLC v. Wild, Inc.*, 2016 IL 119870 ¶¶ 3, 39-40. The Board has all powers necessary and proper to effectively execute the VGA, including authority to adopt regulations for the purpose of administering the VGA and “provide for the prevention of practices detrimental to the public interest and for the best interests of video gaming.” *Wild*, 2016 IL 119879 ¶ 3. The VGA provides “a comprehensive statutory scheme that

vests jurisdiction over video gaming operations” with the Board. *Id.* ¶ 42. The Board’s broad authority over all aspects of video gaming includes the “exclusive, original jurisdiction” to determine the validity and enforceability over agreements that “purport to control placement and operation of video gaming terminals.” *Wild*, 2016 IL 119879 ¶ 42; *see also* 11 Ill. Adm. Code 1800.320(b)(1).¹

II. RELEVANT BACKGROUND

On June 20, 2010, Pug entered into a use agreement (the “UA”) with All American Entertainment. On May 18, 2011, All American Entertainment assigned the UA to GEM. Pug became a licensed establishment on June 25, 2012. On April 18, 2013, video gaming went live at Pug. On February 1, 2018, Pug submitted a Petition asking the Board to examine the UA and allow Pug to enter into a new UA with a different terminal operator. Pug’s Petition disputes the UA start date and its auto renewal provision. On April 3, 2018, the Board notified Pug that its Petition failed to comply with the requirements set forth in 11 Ill. Adm. Code 1800.320(b)(2). Specifically, the Petition did not include a signature, verification, or notarization as required by 11 Ill. Adm. Code 1800.320(b)(2)(C), 1800.320(b)(2)(D), and 1800(b)(2)(E) respectively. The Board instructed Pug to file an amended Petition. Pug failed to file an amended Petition that complies with Rule 320.

III. DISCUSSION

Pug’s Petition does not comply with the requirements of 11 Ill. Adm. Code 1800.320(b)(2). In disregard of Rule 320(b)(2), Pug’s Petition failed to include a signature, verification, and notarization. Pug ignored the Board’s instructions to file an amended Petition that corrected the deficiencies. Pug had

¹ “The Board shall determine a Petition brought by a terminal operator, licensed video gaming location or other interested party to determine the validity or enforceability of an agreement, or portion of an agreement, that purports to control the location or operation of video gaming terminals.” 11 Ill. Adm. Code 1800.320(b)(1).

ample time and opportunity to follow the Board's instruction and file an amended Petition. This threshold deficiency is fatal to Pug's Petition. Accordingly, I recommend the Board take no position on the merits of Pug's Petition regarding the UA start date or the validity of its auto renewal provision.

IV. CONCLUSION

For the foregoing reasons, I recommend that the Board enter an Order:

1. Denying Pug's Petition for failure to comply with Rule 320(b)(2).

Pursuant to Rule 320(b)(7), any party to this Petition wishing to file exceptions must do so no later than 14 days after receipt of the Recommend Decision.

DATED: August 19, 2021

RESPECTFULLY SUBMITTED,

**MARCUS D. FRUCHTER
ILLINOIS GAMING BOARD ADMINISTRATOR**