

**STATE OF ILLINOIS  
ILLINOIS GAMING BOARD**

<b>Top Notch Entertainment, LLC,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>No. 21-UP-008</b>
	)	
<b>Gold Rush Amusements, Inc. d/b/a</b>	)	
<b>Gold Rush Gaming,</b>	)	
	)	
<b>Respondent.</b>	)	

**RE: LUCKY DOG III, INCORPORATED d/b/a Lucky Dog (Lic. No. 150702129)**

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**FINAL BOARD ORDER**

This cause is before the Illinois Gaming Board (the “Board” or “IGB”) pursuant to the Video Gaming Act (the “VGA”), 230 ILCS 40, and Section 1800.320(b) of the Board’s Adopted Rules (the “Rules”). 11 Ill. Adm. Code 1800.320(b).

**FINDINGS OF FACT**

Before me is the entire record of *Top Notch Entertainment, LLC, Petitioner* (“Top Notch”) v. *Gold Rush Amusements, Inc. d/b/a Gold Rush Gaming, Respondent* (“Gold Rush”) *In Re Lucky Dog III, Inc. d/b/a Lucky Dog* (“Lucky Dog”), Docket No. 21-UP-008. The record includes the Petition, the Response, other documents filed, and the Administrator’s Recommended Decision.

On May 5, 2021, Top Notch petitioned the Board to declare Top Notch’s July 28, 2020 agreement with Lucky Dog to be valid for the placement and operation of video gaming terminals (“VGTs”) in Lucky Dog; find that the February 5, 2015 agreement between Gold Rush and Lucky Dog terminated upon the expiration of its initial term on August 27, 2020; order Gold Rush to remove its VGTs from Lucky Dog; and assign to Top Notch any Net Terminal Income earned at Lucky Dog by Gold Rush after the expiration of the Gold Rush Agreement. On June 1, 2021, Gold Rush filed its Response to Top Notch’s Petition. I issued an Administrator’s Recommended Decision (“ARD”) on March 12, 2024 recommending the Board grant in part and deny in part Top Notch’s Petition. No parties filed Exceptions to the ARD.

**CONCLUSIONS OF LAW**

Pursuant to the VGA, the 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 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 and the 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.” *Id.*

On March 12, 2024, I issued an ARD recommending the Board grant in part and deny in part Top Notch’s Petition. On February 9, 2023, the Board delegated to the IGB Administrator authority to issue a Final Board Order to dispose of a Rule 320 Petition where none of the parties file Exceptions to the ARD. On February 8, 2024, the Board again delegated this authority to the Administrator. As noted above, none of the parties filed Exceptions in this matter.

Therefore, after careful review and consideration of the entire record, I hereby adopt the Administrator’s Recommended Decision as a Final Board Order.

**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.**

**DATED: March 28, 2024**

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

**STATE OF ILLINOIS  
ILLINOIS GAMING BOARD**

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	)	
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<b>v.</b>	)	<b>No. 21-UP-008</b>
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<b>Gold Rush Amusements, Inc. d/b/a</b>	)	
<b>Gold Rush Gaming,</b>	)	
	)	
<b>Respondent.</b>	)	

**RE: LUCKY DOG III, INCORPORATED d/b/a Lucky Dog (Lic. No. 150702129)**

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**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 pursuant to Rule 320(b)(6). 11 Ill. Adm. Code 1800.320(b)(6).

Petitioner Top Notch Entertainment, LLC (“Top Notch”) asks the Board to find that: (1) the February 5, 2015 agreement between Gold Rush Amusements, Inc. d/b/a Gold Rush Gaming (“Gold Rush”) and Lucky Dog III, Incorporated d/b/a Lucky Dog (“Lucky Dog”) (the “Gold Rush Agreement”) terminated upon the expiration of its initial term on August 27, 2020; and (2) the July 28, 2020 agreement between Top Notch and Lucky Dog (the “Top Notch Agreement”) is valid and enforceable for the placement and operation of video gaming terminals (“VGTs”) in Lucky Dog as of August 27, 2020. Top Notch also asks the Board to direct Gold Rush to remove Gold Rush’s VGTs from Lucky Dog and assign to Top Notch any Net Terminal Income (“NTI”) “share earned at Lucky Dog III by Gold Rush” after the expiration of the Gold Rush Agreement.

After considering the parties' submissions, and for the following reasons, I recommend the Board grant in part and deny in part Top Notch's Petition.

## I. JURISDICTION

The Video Gaming Act (the "VGA") confers jurisdiction and authority upon the Board to supervise all video gaming operations in Illinois. 230 ILCS 40/78; *J&J Ventures Gaming, 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 it 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.* at ¶ 42. The Board's broad authority over all aspects of video gaming includes the "exclusive, original jurisdiction" to determine the validity and enforceability of agreements that "purport to control placement and operation of video gaming terminals." *Id.*; *see also* 11 Ill. Adm. Code 1800.320(b)(1).

## II. RELEVANT BACKGROUND

On February 5, 2015, Gold Rush and Lucky Dog executed the Gold Rush Agreement for the placement and operation of VGTs in Lucky Dog. (Petition ¶ 5, Ex. A; Response ¶ 5.) According to its terms, the Gold Rush Agreement is for a period of five years from the date Gold Rush's VGTs are "installed and become operational for public use" in Lucky Dog. (*Id.*) Gold Rush's VGTs were installed and became operational in Lucky Dog on August 27, 2015, (Petition ¶ 6, Ex. B; Response ¶ 6), meaning that the initial term of the Gold Rush Agreement would expire on August 27, 2020. The Gold Rush Agreement also states that it "automatically renew[s] for the same term and consecutive five (5) year terms unless terminated in writing . . . via certified mail return receipt requested, no fewer than forty-five (45) nor more than ninety (90)

days prior to the expiration of any term or renewal term.” (Petition ¶ 5, Ex. A; Response ¶ 5.) The Gold Rush Agreement further provides that “[t]he parties agree to modify and amend this Agreement to comply with the requirements of the IGB or any change in the Video Gaming Laws.” (*Id.*)

On July 28, 2020, Top Notch and Lucky Dog signed the Top Notch Agreement. (Petition Ex. F.) The Top Notch Agreement is limited to an eight year term and otherwise complies with the Minimum Standards for Use Agreement in effect on July 28, 2020. (*Id.*)

In early September 2020, the respective gaming attorneys for Top Notch and Gold Rush exchanged emails regarding the status of the Gold Rush Agreement. On September 3, 2020, Top Notch’s attorney informed Gold Rush’s counsel that Lucky Dog sent Gold Rush a June 22, 2020 letter terminating the Gold Rush Agreement after its initial term. (the “Termination Notice”). (Petition Ex. G; Response Ex. A.) Top Notch’s attorney also claimed to have a Certified Mail Receipt (“POS”) from the United States Postal Service (“USPS”) showing Gold Rush received Lucky Dog’s Termination Letter within the termination window provided for by the Gold Rush Agreement. (*Id.*)

On September 4, 2020, Gold Rush’s counsel denied that Gold Rush received Lucky Dog’s Termination Notice. Specifically, Gold Rush’s counsel wrote: “[s]ee attached. That notice was for Cicero and I received it. No notice was received for Berwyn.” (Petition Ex. G; Response Ex. A.) The e-mail response from Gold Rush’s counsel contained a link to an attachment labeled “6.22.20 – Followup.Letter.pdf.” (Response Ex. A.) The attachment includes a June 20, 2020 letter from Lucky Dog to Gold Rush terminating a use agreement relating to a Lucky Dog location in Cicero, Illinois. The attachment also contains an envelope addressed to Gold Rush’s counsel showing a receipt date of June 25, 2020 and the following POS number: 7011-0470-0003-4194. (*Id.*)

Shortly after receiving the response from Gold Rush’s attorney, Top Notch’s attorney replied on September 4, 2020: “This is for Berwyn. Two letters sent dated the 22nd, one relating to Berwyn Lucky Dog and one relating to Lucky Dog II in Cicero. The POS below has a tracking number and I verified it on the USPS site and it shows as delivered on 6/25 in Hoffman Estates.” (Petition Ex. E.) The email from Top Notch’s attorney indicates it contains two attachments labeled respectively JunePOS wReceipt (1).PDF and 62220BerwynLtr (1).PDF. (*Id.*) The contents of the two attachments cannot be ascertained as the links are not active. However, Top Notch affixed to its Petition a copy of Lucky Dog’s June 22, 2020 Termination Notice to Gold Rush regarding Lucky Dog’s Berwyn location. (Petition Ex. D.) Top Notch also appended as Petition Ex. E a POS numbered 7011-0470-0003-4194, showing delivery of a document to Gold Rush on June 25, 2020. (*Id.*) As noted above, the Gold Rush Agreement requires Lucky Dog to deliver any termination notice between 90 days (May 30, 2020) and 45 days (July 14, 2020) prior to the end of the Gold Rush Agreement’s initial term. The June 25, 2020 delivery date is within this window. However, the POS does not indicate what document the USPS delivered to Gold Rush on June 25, 2020.

On May 5, 2021, Top Notch filed this Petition asking the Board to find that Lucky Dog properly terminated the Gold Rush Agreement on June 25, 2020 and, therefore, the Top Notch Agreement controls the placement and operation of VGTs in Lucky Dog. On May 11, 2020, the Board served Gold Rush and Lucky Dog with copies of the Top Notch Petition. Gold Rush filed a timely Response on June 1, 2021. Lucky Dog did not file a Response.

### III. DISCUSSION

In its Petition, Top Notch asserts that Gold Rush received a timely and properly served termination notice from Lucky Dog on June 25, 2020 for Lucky Dog’s Berwyn location. (Petition ¶¶ 8-9, Ex. E.) Top Notch seeks assignment to Top Notch of any NTI “earned at Lucky

Dog III by Gold Rush” after the Gold Rush Agreement ended. Gold Rush responds that it did not receive Lucky Dog’s Termination Notice (Response ¶¶ 8-9.) and, therefore, the Gold Rush Agreement automatically renewed for another five-year term, ending in August 2025.

As a threshold matter, under Rule 320(b) the Board does not have authority to grant Top Notch’s request for an assignment of NTI to Top Notch. In the context of a 320 Petition, the Board is limited to deciding whether an agreement, or portion of an agreement, is valid and enforceable for the placement and operation of VGTs in a licensed establishment. 11 Ill. Adm. Code 1800.320(b)(10). The Board also has the express authority to order a licensed terminal operator to remove its VGTs from a licensed establishment if an agreement (or portion of the agreement) is invalid or unenforceable. *Id.* Accordingly, the only relief available to Top Notch through this Petition is an order invalidating the Gold Rush Agreement and requiring Gold Rush to remove its VGTs from Lucky Dog. The merits of whether those remedies are appropriate here is considered below.

**A. Whether Lucky Dog’s Termination Notice to Gold Rush Complied with the Requirements for Terminating the Gold Rush Agreement.**

In its Petition, Top Notch claims Lucky Dog’s Termination Notice properly terminated the Gold Rush Agreement as of August 27, 2020. Top Notch supports its claims by submitting a copy of Lucky Dog’s Termination Notice for Lucky Dog’s Berwyn location and a POS numbered 7011-0470-0003-4194, showing that Gold Rush received a document on June 25, 2020. Top Notch maintains that this POS relates to Lucky Dog’s Termination Notice for the Berwyn location. Under Rule 320(b)(2), Petitioners carry the burden of proving assertions in their petitions by clear and convincing evidence. 11 Ill. Admin. Code 1800.320(b)(2). Petitioners may carry this burden by submitting with their Petitions documentary evidence and affidavits. 11 Ill. Admin. Code 1800.320(b)(2)(B).

As noted above, the POS submitted by Top Notch does not identify the document received by Gold Rush on June 25, 2020 as the Termination Notice for Lucky Dog's Berwyn location. This is a critical shortcoming since Gold Rush maintains the termination notice Gold Rush received on June 25, 2020 relates to Lucky Dog's Cicero location and not to Lucky Dog's Berwyn location; and that the POS submitted by Top Notch relates to the Cicero termination notice. Top Notch's statement that Lucky Dog sent two letters dated June 22, 2020 to Gold Rush, "one relating to Berwyn Lucky Dog and one relating to Lucky Dog II in Cicero" and that the POS "is for Berwyn" does nothing to clarify this issue in Top Notch's favor. Accordingly, the entry into the record of these two documents is insufficient to establish by clear and convincing evidence that Lucky Dog provided Gold Rush with a timely notice of termination for Lucky Dog's Berwyn location.

**B. The Validity and Enforceability of the Gold Rush Agreement.**

Notwithstanding the insufficiency of Top Notch's proffered evidence, the Top Notch agreement prevails over the Gold Rush Agreement on an independent basis. The Gold Rush Agreement expressly provides that Gold Rush and Lucky Dog agreed to modify the Gold Rush Agreement such that it remains current with any subsequent changes in the Video Gaming Act and Board Rules. Specifically, the Gold Rush Agreement states that Gold Rush and Lucky Dog agree to amend the Gold Rush Agreement "to comply with the requirements of the IGB or any change in the Video Gaming Law." Rule 320(a), as amended on February 2, 2018, provides that a "[u]se Agreement must...[n]ot provide for automatic renewal in the absence of cancellation." 11 Ill. Adm. Code 1800.320, amended at 42 Ill. Reg. 3126, effective February 2, 2018. The 2018 amendment to Rule 320(a) is both a requirement of the IGB and a change in Board Rules applicable to use agreements. As such, the Gold Rush Agreement's modification and amendment clause requires adoption and incorporation of the amended Rule 320(a) provision as of the



amendment's 2018 effective date. This necessarily means the automatic renewal clause in the Gold Rush Agreement ceased to have any effect as of February 2, 2018.

Accordingly, I recommend the Board find that the Gold Rush Agreement expired at the end of its initial term on August 27, 2020. Furthermore, because the Top Notch agreement meets all requirements for use agreements under Rule 320, I recommend the Board find the Top Notch Agreement to be valid and enforceable for the placement and operation of VGTs in Lucky Dog.

#### IV. CONCLUSION

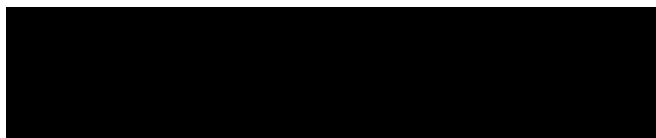
For the foregoing reasons, I recommend that the Board enter an Order:

1. Adopting this Recommended Decision;
2. Granting Top Notch's Petition in part by finding that the Gold Rush Agreement terminated upon the expiration of its initial term on August 27, 2020;
3. Granting Top Notch's Petition in part by finding the Top Notch Agreement to be valid and enforceable for the placement and operation of VGTs in Lucky Dog;
4. Denying Top Notch's request for the assignment of NTI to Top Notch;
5. Directing Gold Rush to remove its VGTs from Lucky Dog within 30 days of entry of a Final Board Order;
6. Declaring all further proceedings cancelled, and this matter concluded.

**Pursuant to Rule 320(b)(7), any party to this Petition wishing to file exceptions must do so by 5:00 p.m. central standard time on the 14<sup>th</sup> day after receipt of this Recommend Decision.**

**DATED: March 12, 2024**

**RESPECTFULLY SUBMITTED,**



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

## SERVICE LIST

Pursuant to Board Rules 1800.320(b)(12), and 1800.140, this Final Order is being served via e-mail upon all parties of record to *Top Notch Entertainment, LLC, Petitioner v. Gold Rush Amusements, Inc. d/b/a Gold Rush Gaming, Respondent, In Re Lucky Dog III, Inc. d/b/a Lucky Dog*, Docket No. 21-UP-008 at the following addresses:

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## CERTIFICATE OF SERVICE

I, Agostino Lorenzini, certify that on March 28, 2024, I served a copy of the attached Final Order to all parties of record in *Top Notch Entertainment, LLC, Petitioner v. Gold Rush Amusements, Inc. d/b/a Gold Rush Gaming, Respondent, In Re Lucky Dog III, Inc. d/b/a Lucky Dog*, Docket No. 21-UP-008 at the following e-mail addresses:

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