

STATE OF INDIANA
INDIANA GAMING COMMISSION
EMERGENCY ORDER

IN RE EMERGENCY ORDER)	
CONCERNING)	ORDER NO.
)	2020-MS-03
RODERICK J. RATCLIFF)	
LICENSE NO. MS-17515-L1)	

EMERGENCY ORDER

The Indiana Gaming Commission (“Commission”) hereby issues an emergency order pursuant to Indiana Code 4-21.5-4 and 68 IAC 13-1-22, regarding action against the Respondent, Roderick J. Ratcliff (“Respondent”), and states as follows:

PARTIES

1. The Commission is the Indiana administrative agency with its principal offices located in Marion County, Indiana, that has been granted, in Title 4 of the Indiana Code, all power and duties to administer, regulate, and enforce the system of riverboat gaming in Indiana. IC 4-33-4-1.
2. Respondent is a Substantial Owner, as defined by 68 IAC 1-1-86, of Spectacle Gary, LLC (“Spectacle Gary”), the ultimate parent of the Majestic Star Casino, and holds a Level 1 occupational license. Spectacle Entertainment Group, LLC (“Spectacle Entertainment”) is an entity which has a majority position in Spectacle Gary (both entities, and any other affiliated entities, collectively referred to as “Spectacle”).
3. Respondent was previously Chief Executive Officer and Chairman of the Spectacle Gary Board of Managers. Respondent resigned from these two positions on June 19, 2020. Spectacle subsequently appointed Respondent to the position of Investor Relations and Financial Advisor.
4. On December 3, 2020, the Commission received termination paperwork whereby Spectacle Gary terminated Respondent from his position as Investor Relations and Financial Advisor.
5. At present, Respondent still remains a licensee of the Commission due to his ownership in Spectacle Gary.

LAW

6. This is an emergency order brought forth under IC 4-21.5-4, IC 4-33-4, IC 4-33-8, and 68 IAC 13.

7. The Commission is a state agency that was created under IC 4-33-4-1.
8. An agency may conduct proceedings under IC 4-21.5-4 if an emergency exists. IC 4-21.5-4-1.
9. An order issued under IC 4-21.5-4 may be issued without notice or evidentiary hearing by an authorized individual or panel of individuals. IC 4-21.5-4-2.
10. The agency issuing an order under IC 4-21.5-4 shall give such notice as soon as is practicable to persons who are required to comply with the order. IC 4-21.5-4-3.
11. An order issued under IC 4-21.5-4 order is effective when issued. IC 4-21.5-4-3.
12. The Commission has the power and duty to fully and effectively execute IC 4-33. Specifically, the Commission has the power and duty to: investigate and reinvestigate applicants and license holders; take appropriate administrative enforcement or disciplinary action against a licensee; investigate alleged violations of IC 4-33; and revoke, suspend, or renew licenses issued under 4-33. IC 4-33-4-1.
13. The Commission may suspend, revoke, or restrict an occupational licensee for the following, among other, reasons: a violation of IC 4-33; a cause that if known to the Commission would have disqualified the applicant from receiving the occupational license; or any other just cause. IC 4-33-8-8.
14. In order to be qualified to hold an occupational license, an individual must meet “standards adopted by the Commission for the holding of an occupational license.” IC 4-33-8-3.
15. All occupational licensees have a continuing duty to maintain suitability for licensure. 68 IAC 2-3-9; 68 IAC 13-1-1.
16. An occupational licensee bears the burden of demonstrating that he or she is suitable for licensure. 68 IAC 2-3-4.
17. An occupational license does not create a property right, but is a revocable privilege granted by the state contingent upon continuing suitability for licensure. 68 IAC 2-3-9; 68 IAC 13-1-1.
18. An occupational licensee shall “(n)otify the Commission of any changes in the information submitted in the application or any information that could render the licensee ineligible to hold an occupational license.” 68 IAC 2-3-9(c)(1). Such notification must occur “as soon as the occupational licensee becomes aware of the violation.” 68 IAC 2-3-9(d).
19. An occupational licensee must submit in writing to the Commission, among other things, the following: “That the occupational licensee has been arrested for, indicted of, charged

with, convicted of, or plead guilty to any felony or misdemeanor offense;” and “Any other information that would affect the occupational licensee’s suitability to maintain a license under the Act or this rule.” 68 IAC 2-3-9.1(a)(5) and (6). Such notification must be submitted within ten (10) calendar days of the change or occurrence of the event. 68 IAC 2-3-9.1(b)(2).

20. A casino licensee is likewise required to notify the Commission regarding an occupational licensee who is in violation of IC 4-33 or 68 IAC if the casino licensee is aware of the violation. 68 IAC 2-3-9.
21. Occupational licensees must cooperate with and provide truthful information to enforcement agents and staff during any investigation regarding criminal activity or regulatory violations, or both. 68 IAC 2-3-9.
22. 68 IAC 1-4-3 provides that casino licensees may not enter into a contract that is not commercially reasonable or does not reflect the fair market value of the goods or services rendered or received as determined at the time that the contract is executed.
23. An applicant is under a continuing duty to disclose any changes in the information submitted to the Commission with the applicant’s application. 68 IAC 2-3-4(b)(7).
24. The Commission may initiate an investigation or disciplinary action if the Commission has reason to believe a licensee is not acting in accordance with licensure conditions. 68 IAC 13-1-1.
25. Job descriptions, job titles and organization charts are conditions of licensure and information required by the Commission. IC 4-33-8-5; 68 IAC 13-1-1.
26. It is the intention of the Riverboat Gambling Act to maintain the public’s confidence and trust only through the strict regulation of persons and associations. IC 4-33-1-2.
27. If the Commission determines that an emergency exists, the Commission may suspend an occupational license without notice or an evidentiary proceeding, by an authorized individual or panel of individuals. 68 IAC 13-1-22.

FACTS

1. On or about December 10, 2018, Respondent submitted an application to the Commission for a Level 1 occupational license. On or about March 14, 2019, the Respondent was issued a Level 1 occupational license.
2. Respondent was previously Spectacle Gary’s Chief Executive Officer and Chairman of the Board of Managers, the parent of the Majestic Star Casino in Gary, Indiana.

3. Previously, Respondent was Chief Executive Officer of New Centaur Gaming, LLC (“Centaur”), operating Indiana Grand Racing & Casino and Hoosier Park Racing & Casino (collectively the “Racinos”).

Southern District of Indiana Indictment

4. On or about September 24, 2020, an Indictment was issued in the matter *United States of America v. Darryl Brent Waltz, and John S. Keeler* charging that John Keeler, former Vice President and General Counsel of Centaur, engaged in a conspiracy to make and receive corporate campaign contributions in violation of federal election laws, made false statements, and obstructed justice. A true and accurate copy of the Indictment is attached hereto as Exhibit A.
5. The Indictment alleges, from on or about January 2015 through on or about November 18, 2015, a knowing and willful conspiracy to make corporate contributions in violation of federal law occurred. At that time, Centaur owned and operated Indiana Grand Racing & Casino and Hoosier Park Racing & Casino and Respondent was Chief Executive Officer.
6. The Indictment alleges unlawful and unreported corporate contributions from Centaur in violation of federal law and a conduit scheme utilizing false invoices issued to Centaur resulting in false reports filed with the Federal Election Commission.
7. The Indictment alleges that on or about April 6, 2015, a Centaur assistant purchased roundtrip airfare for an individual named Kelley Rogers to travel to Indianapolis, Indiana to meet with a Centaur executive at the airport on April 10, 2015.
8. The Indictment further alleges that on April 10, 2015, Rogers did travel to Indianapolis, Indiana and did meet with the Centaur executive at the airport.
9. The Indictment alleges that this was an overt act committed in furtherance of a conspiracy to violate federal election law.
10. Upon information and belief obtained independently by the Commission, the Centaur executive identified in the Indictment is Respondent.

Failure to Cooperate

11. On or about June 9, 2020, the Commission requested Respondent’s participation in an interview with Commission investigators regarding alleged violations of the Riverboat Gambling Act. On June 16, 2020, Respondent, via legal counsel, informed the Commission he would not cooperate with the Commission interview scheduled to occur on June 17, 2020.
12. On June 17, 2020, counsel for Respondent sent a communication to Commission staff apologizing for Respondent’s failure to cooperate and indicated that should the

Commission wish to interview Respondent again, Respondent would be available “upon demand.”

13. On or about November 30, 2020, the Commission again requested Respondent’s participation in an interview with Commission investigators regarding alleged violations of the Riverboat Gambling Act. Respondent’s legal counsel initially agreed to an interview with Commission investigators scheduled for December 10, 2020. On December 9, 2020, Respondent’s legal counsel again informed Commission staff that Respondent would refuse to participate in an interview.

Associations

14. Associates of Respondent were asked to participate in interviews regarding issues of regulatory concern. Three (3) associates refused to participate in interviews, with two (2) citing their Fifth Amendment right against self-incrimination. While the constitutional right to avoid self-incrimination can be claimed, the Commission may draw an adverse inference from an individual’s refusal to testify before the Commission.

Failure to Update

15. Respondent’s equity units in Spectacle are held in the Roderick J. Ratcliff Revocable Trust.
16. In 2018, Respondent submitted, via Exhibit 13 of his personal disclosure reinvestigation application, a copy of the Roderick J. Ratcliff Revocable Trust Agreement (“Trust Agreement”).
17. On December 10, 2020, Commission staff requested a copy of the Trust Agreement. Respondent’s legal counsel assured Commission staff the Trust Agreement had not been updated and it was the same document as submitted to the Commission in 2018.
18. Commission staff reiterated its request for a copy of the Trust Agreement and on December 11, 2020, Respondent’s legal counsel provided a current copy of the Trust Agreement.
19. A comparison of the Trust Agreements submitted on December 11, 2020 and in 2018 revealed that Respondent, on August 30, 2020, executed a modification to the Trust Agreement. Specifically, Respondent named a new successor trustee.
20. The successor trustee also failed to advise the Commission of the change, as required.

Failure to Update of Equity Transfers

21. On November 17, 2020, Spectacle reported, after conducting an audit of corporate offices, that Respondent transferred Class A units in Spectacle to Rich Zeigler, Matt Whetstone and John Keeler.

22. Spectacle and Respondent failed to timely update and notify the Commission of the equity transfers and other relevant documentation and actions related to the equity transfers.
23. In addition, there was an equity transfer of 3,000 Class B units made on August 21, 2019 and Spectacle failed to update the Commission regarding this equity transfer as well.

Contracts

24. On February 25, 2020, and as a result of certain actions by Respondent, Spectacle entered into a Settlement and Release Agreement (“Agreement”). Spectacle did not report the existence of this Agreement to the Commission until October 20, 2020.
25. The Agreement contained not only a monetary settlement amount but also a grant of Class B units in Spectacle. The equity transfer was also not reported to the Commission.
26. The Agreement was subject to Commission reporting requirements and is required to meet the standard of commercial reasonableness. Failure to provide the document deprived the Commission of the ability to conduct a review pursuant to its statutory mandate and resulted in the company holding secret ownership information which was required to be disclosed.
27. The Agreement expressly notes the Commission’s jurisdiction as it referenced regulatory cancellation pursuant to 68 IAC 1-4-1 yet, despite this acknowledgment, the relevant parties failed to disclose this Agreement to Commission.

Acting Outside of Licensure Conditions

28. On or about June 23, 2020, upon Respondent’s resignation as Chairman and Chief Executive Officer, Executive Director Tait sent a directive that Respondent was no longer authorized to perform the duties associated with the Chairman and CEO job description approved by the Commission.
29. Subsequently, Spectacle submitted a job description for job title: Financial Advisor and Investor Relations position. The Commission approved Respondent to act in this capacity and pursuant to the approved job description.
30. The job description set forth that Respondent’s duties included development and fostering of “relationships with existing investors, lenders and warrant holders” and assisting “the Company in exploring and securing new financing arrangements.”
31. On December 3, 2020, Respondent was terminated from the Financial Advisor and Investor Relations position.

32. On December 12, 2020, the Commission received a copy of correspondence from Respondent wherein Respondent, during negotiations, rejected an offer and indicated he may review a revised offer but only if it considered “very important” issues relating to Spectacle Entertainment and its voting control and investors.
33. On December 20, 2020, the Commission was advised that Respondent, while in the course of negotiations regarding his divestiture, again demanded consideration of factors related to Spectacle Entertainment and its investors and even proposed revisions to the operating agreement.
34. Respondent’s actions, as reported to the Commission on December 12, 2020 and December 20, 2020, demonstrate Respondent is continuing to conduct work to foster relationships with investors and lenders of Spectacle. In addition, Respondent is attempting to secure new financing arrangements for the casino owner’s licensee. Respondent is not an employee or executive of Spectacle and therefore has no role or authority to negotiate or compel terms of financial arrangements on behalf of Spectacle or other investors. Despite his resignation, Commission directive, and his termination, Respondent continues to exert control over the casino owner’s licensee.

DISCUSSION

The forbearance afforded Respondent has produced no satisfactory results and is no longer justified. Additionally, new information has emerged in the preceding fourteen (14) days regarding Respondent’s suitability. An emergency is warranted as Respondent is continuing to function and exert control and influence on behalf of the casino owner’s licensee. These actions are contrary to the expectations, rules, and directives of the Commission. The actions further undermine the ability of the remaining parties in good standing to identify solutions related to the ongoing suitability review of Spectacle. It cannot continue. The strict regulation of gaming cannot occur without respect for and adherence to the Commission’s statutes and rules. Respondent has shown blatant disregard for the responsibilities associated with the privilege of maintaining a gaming license. Respondent’s actions have undermined the Commission’s ability to properly regulate Respondent. An emergency order suspending Respondent’s license is necessary based upon the actions of Respondent and in accordance the requirements of statute and rule.

FINDINGS AND ORDER

1. Per IC 4-21.5-4 and 68 IAC 13-1-22, it is the Commission’s determination that an emergency exists as the Commission cannot regulate in accordance with statute while allowing Respondent to flagrantly repudiate responsibilities required with licensure. The continued licensure of Respondent does not serve to uphold the public confidence or promote the integrity of gaming as required by statute.
2. **Any license held by Respondent is hereby immediately SUSPENDED per IC 4-21.5-4 and 68 IAC 13-1-22.**

EFFECTIVENESS

This order, Order No. 2020-MS-03, is effective immediately per IC 4-21.5-4-3 and 68 IAC 13-1-22, and is effective for 90 days unless renewed per IC 4-21.5-4-5.

APPEAL RIGHTS

IC 4-21.5-4-4 states that upon a request by a party for a hearing on an order rendered under section 2(a)(1) of this chapter, the agency shall, as quickly as is practicable, set the matter for an evidentiary hearing. An administrative law judge shall determine whether the order under this chapter should be voided, terminated, modified, stayed, or continued. Should you wish to request review of the agency action, you may do so through the State of Indiana Office of Administrative Law Proceedings in one of the following ways: 1) go online to www.in.gov/oalp and complete a Petition for Review; 2) mail your request; or 3) personally appear at the Office of Administrative Law Proceedings located at 402 W. Washington Street Rm. W161 / Indianapolis, IN 46204 to file a Petition for Review. You will need this document to complete your request.

IT IS SO ORDERED THIS THE 23rd DAY OF DECEMBER, 2020.

THE INDIANA GAMING COMMISSION:



Michael McMains, Chair

ATTEST:



Jason Dudich, Secretary