

SUFFOLK, ss.

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

In the Matter of:

Raynham Park LLC

PHASE I SUITABILITY DECISION

Raynham Park LLC (hereinafter “Applicant”) submitted a Phase 1 application for a gaming license to the Massachusetts Gaming Commission (hereinafter “Commission”). This decision results from the adjudicatory proceeding conducted by the Commission on July 26, 2013 at the Boston Convention and Exhibition Center, 415 Summer Street, Boston, MA. At the direction of the Chair, the entire Commission presided over the matter. At the hearing, the applicant was represented by Alan Kohler, Esq. and Grace Lee, Esq., Eckert Seamans; Terrence Everett, Esq., Carlsmith Ball; Stephen Schrier, Esq., Blank Rome; Michael Morizio, Esq., Joel Kozol, Esq. and David Kozol, Esq., Friedman Atherton. The Investigations and Enforcement Bureau (“IEB”) was represented by David Mackey Esq. and Stephen Anderson, Esq., Anderson & Kreiger. For the reasons set forth below, the Commission finds by a unanimous vote that Applicant, Raynham Park LLC has met its burden of proof and accordingly is issued a **POSITIVE** determination of suitability in accordance with 205 CMR 115. For the reasons set forth below, the Commission finds by a unanimous vote that qualifier Watche Manoukian has met his burden of proof and accordingly is issued a **POSITIVE** determination of suitability in accordance with 205 CMR 115. For the reasons set forth below, the Commission finds by a majority vote that qualifier Robert W. Green has met his burden of proof and accordingly is issued a **POSITIVE** determination of suitability subject to the conditions described below, in accordance with 205 CMR 115.

Background

The application for a gaming license consists of two parts. See 205 CMR 110.01. The first, called the Phase 1 application, essentially focuses on the qualifications and suitability of the Applicant and its qualifiers to hold a gaming license. See G.L. c. 23K, §12(a) and 205 CMR 115.00 through 117.00. The Phase 2 application focuses on the site, design, operation and other attributes of the gaming facility itself. See generally 205 CMR 118.00 and 119.00. “The commission shall not entertain a Phase 2 application for any applicant unless and until the commission has issued a positive suitability determination on that applicant.” 205 CMR 110.01; see also 205 CMR 115.05(4) and 118.01(1) (a). This hearing involved the Phase 1 segment of the process.

The Applicant submitted a Phase 1 application on January 15, 2013. Upon receipt of the application, the Commission instructed the IEB to commence an investigation into the suitability of the Applicant. See G.L. c.23K, 12(a). The investigation was to include all qualifiers

associated with the Applicant. See G.L. c. 23K, §14 and 205 CMR 116.00. The IEB conducted such an investigation and reported its findings and recommendations to the Commission by way of an Investigative Report (hereinafter the “Report”) See 205 CMR 115.03(2). The Report contains information relative to the following areas:

- (1) the integrity, honesty, good character and reputation of the applicant;
- (2) the financial stability, integrity and background of the applicant;
- (3) the business practices and the business ability of the applicant to establish and maintain a successful gaming establishment;
- (4) whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions;
- (5) whether the applicant, at the time of application, is a defendant in litigation involving its business practices;
- (6) the suitability of all parties in interest to the gaming license, including affiliates and close associates and the financial resources of the applicant; and
- (7) whether the applicant is disqualified from receiving a license under section 16; provided, however, that in considering the rehabilitation of an applicant for a gaming license, the commission shall not automatically disqualify an applicant if the applicant affirmatively demonstrates, by clear and convincing evidence, that the applicant has financial responsibility, character, reputation, integrity and general fitness as such to warrant belief by the commission that the applicant will act honestly, fairly, soundly and efficiently as a gaming licensee.

“All applicants for a Phase 1 suitability determination must establish their qualifications by clear and convincing evidence.” 205 CMR 115.01(2); see also G.L. c.23K, §13(a). “Clear and convincing proof involves a degree of belief greater than the usually imposed burden of proof by a fair preponderance of the evidence, but less than the burden of proof beyond a reasonable doubt imposed in criminal cases. It has been said that the proof must be ‘strong, positive and free from doubt’, and ‘full, clear and decisive.’” Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 871 (1975) (internal citations omitted).

A copy of the Report was provided to the applicant along with a notice of this adjudicatory proceeding. See 205 CMR 115.04(1). The adjudicatory hearing was noticed for and convened on the Commission’s own initiative on July 26, 2013. See 205 CMR 115.04(3). Karen Wells, the Director of the Bureau, appeared and testified at the hearing on behalf of the Bureau. Anthony Ricci, Thomas Bonner, Watche Manoukian, Robert Green and George Carney appeared and testified on behalf of Applicant. The exhibits identified in the *Exhibits* section below were taken into evidence at the proceeding without objection.

The Commission closed the adjudicatory hearing on July 31, 2013.

EXHIBITS

IEB Exhibits

EXHIBIT 1: 3 page Notice of Adjudicatory Hearing

- EXHIBIT 2: 11 page cover letter dated July 3, 2013 from IEB Director Wells to the Commission
- EXHIBIT 3: 7 page executive summary relative to Raynham Park LLC
- EXHIBIT 4: The *Investigative Report for the Massachusetts Gaming Commission, Applicant: Raynham Park LLC* dated June 3, 2013, in both unredacted and redacted form
- EXHIBIT 5: Exhibit 17 Decision of the New Jersey Casino Control Commission dated April 26, 2000

Applicant Exhibits

- EXHIBIT 1: Photographs of Parx Casino
- EXHIBIT 2: Pennsylvania Gaming Control Board's Monthly Slot & Table Games Revenue Chart for 7/12-6/13 and Summary of Taxes Paid by Greenwood from 2008 – 2012
- EXHIBIT 3: Description of Raynham Park LLC capital structure
- EXHIBIT 4: Parx Casino Regulatory Penalty History
- EXHIBIT 5: Parx Casino Efforts to Avoid Underage Gaming Incidents
- EXHIBIT 6: October 29, 2001 Letter to New Jersey Casino Control Commission regarding R. Green and the Bankruptcy of the Estate of Robert E. Brennan
- EXHIBIT 7: June 21, 2001 Letter to New Jersey Casino Control Commission providing an update regarding R. Green and the Bankruptcy of the Estate of Robert E. Brennan
- EXHIBIT 8: Order Approving Settlement Agreement *In the Matter of: Robert E. Brennan; D. Conway v Pirates Associates, et al;* Chp. 11; Case No. 95-35503 (KCF)
- EXHIBIT 9: Order Granting Summary Judgment in Favor of Counterclaim for Rescission of R.W. Green *In the Matter of Robert E. Brennan; D. Conway v. Pirates Associates, et al;* Chp 11; Case No. 95-35502 (KCF)
- EXHIBIT 10: George Carney Tax Payment Receipt
- EXHIBIT 11: Affidavit of James Lane
- EXHIBIT 12: Affidavit of William E. Hogwood
- EXHIBIT 13: Affidavit of George L. Carney, Jr.
- EXHIBIT 14: Affidavit of Robert W. Green
- EXHIBIT 15: Affidavit of Anthony D. Ricci, Jr.
- EXHIBIT 16: Affidavit of Joseph W. Wilson

The Report contains a description of the investigation conducted by the IEB and detailed findings of fact. The IEB recommended that the Applicant be found suitable subject to the following conditions:

1. That Robert W. Green be prohibited from transacting any further business with Robert E. Brennan;
2. That Robert W. Green present evidence to the Commission regarding the nature and content of Mr. Green's dealings with Robert E. Brennan to satisfy the Commission that Mr. Green meets the statutory criteria of suitability on this issue;
3. That Watche Manoukian present evidence to the Commission showing how Mr. Manoukian's business and financial practices are consistent with the statutory mandates of good character, honesty and integrity; and

4. that George Carney provide evidence that any outstanding tax obligations in any jurisdiction where Mr. Carney owns property are satisfied.

The Commission will address each condition below.

Findings and Discussion

1. Prohibition against Robert W. Green transacting any further business with Robert E. Brennan.
2. Presentation of evidence to the Commission regarding the nature and content of Mr. Green's dealings with Mr. Brennan to satisfy the Commission that Mr. Green meets the criteria of suitability on this issue.

Since conditions 1 and 2 arise out of the same set of facts, the Commission will address both conditions together. During the period between November 1995 through November 1996, as more fully detailed in IEB Exhibit 4 and IEB Exhibit 5, Mr. Green engaged in a number of transactions with Mr. Brennan whereby Mr. Brennan loaned money to a company owned by Mr. Green for the purpose of making investments on behalf of Mr. Brennan or a trust controlled by Mr. Brennan, or whereby Mr. Green purchased stock owned by Mr. Brennan in various entities while giving Mr. Brennan a non-recourse note as payment for the stock. The note would be repaid only out of the proceeds of the sale of the stock. All of these transactions occurred while Mr. Brennan was either on trial for securities fraud or during Mr. Brennan's ultimately unsuccessful appeal of his conviction on that charge. Mr. Brennan's case was a highly publicized matter. Mr. Green does not dispute the IEB's findings that Mr. Green entered into these transactions. Mr. Green has admitted that he was aware of Mr. Brennan's case and had in fact discussed the case from time to time with Mr. Brennan and his attorney, as well as read Brennan's brief filed in the appeal. The transactions between Mr. Green and Mr. Brennan were challenged by the bankruptcy trustee in *In the Matter of: Robert E. Brennan; D. Conway v Pirates Associates, et al*; Chp. 11; Case No. 95-35503 (KCF). The issues raised in the bankruptcy proceeding were ultimately settled by Mr. Green. There was no finding that Mr. Green aided Mr. Brennan in hiding assets or that any of the transactions were undertaken for inappropriate purposes.

The Commission required Mr. Green to testify regarding his relationship with Mr. Brennan, the transactions that occurred between the two and the settlement with the bankruptcy court. Mr. Green explained his relationship with Mr. Brennan. Their relationship began as a business matter when Mr. Green purchased the Philadelphia Park racetrack from International Thoroughbred Breeders Inc. ("ITB") where Mr. Brennan was the CEO and majority shareholder. Mr. Brennan negotiated the sale with Mr. Green. Their business relationship turned into a social relationship over time and Mr. Green regarded Mr. Brennan as a friend. Mr. Green explained the transactions between himself and Mr. Brennan. Mr. Green characterized the investment and stock transactions with Mr. Brennan as an accommodation to a friend. He testified that the transactions were not done for any inappropriate purposes, although he did say that he engaged in the transactions with Mr. Brennan partially in the hope of doing additional business with him in the future.

Mr. Green testified candidly. He answered all questions posed to him by counsel for the IEB and by the Commissioners. Mr. Green agreed that the transactions as described in IEB Exhibit 4 were factually correct. He stated that he had not engaged in similar transactions with anyone else in the past and would not do so in the future. Mr. Green stated that once Mr. Brennan's appeals were finally denied, Mr. Green had no further business dealings with Mr. Brennan. In fact, Mr. Green has had no business dealings with Mr. Brennan in the last seventeen years, although Mr. Green does admit to visiting Mr. Brennan in prison and to seeing Mr. Brennan once or twice socially since Mr. Brennan's release from prison. Mr. Green stated that as a condition of licensure in New Jersey, he is prohibited from doing business with Mr. Brennan. Mr. Green accepted that condition and has abided by it. Mr. Green stated that he is willing to accept the same condition as part of a finding of suitability in the Commonwealth of Massachusetts and as a condition of licensure should the Applicant receive the category 2 license.

The Commission finds Mr. Green's behavior described above and his testimony in this proceeding extremely troubling. Mr. Green does not show any understanding of why the relationship with Mr. Brennan and the transactions they entered into show a serious lack of judgment on his part. Before engaging in the transactions with Mr. Brennan, which were designed in part to help conceal assets, Mr. Green was well aware of Mr. Brennan's prior suspension by the Securities and Exchange Commission ("SEC"). In fact the transactions between Mr. Green and Mr. Brennan occurred during the period prior to Mr. Brennan's trial on securities fraud and continued during the trial and appeal periods. The transactions stopped only when Mr. Brennan's final appeal was denied. Mr. Green characterized Mr. Brennan's SEC suspension as a "slap on the wrist". He also minimized the egregious nature of the factual findings made by the trial judge in Mr. Brennan's securities fraud trial. Mr. Green had access to Mr. Brennan's attorneys and to the brief filed in Mr. Brennan's appeal. Mr. Green expressed no remorse regarding his behavior. While he did express "regret" it is difficult for the Commission to determine whether the regret is for his failure in judgment or merely for the inconvenience his relationship with Brennan created as part of the gaming licensing process. Mr. Green's attitude as expressed in his testimony seems to be that the transactions between him and Mr. Brennan are unfortunate, but not in any way wrong or problematic. The Commission finds this to be a disappointing response from someone who has been involved in the gaming industry for most of his career and who should appreciate the rigor of honesty, integrity and good character standards required for licensing—and the need for appearance of those characteristics as well

The issue before the Commission is well described by language in IEB Exhibit 5, wherein the New Jersey Casino Control Commission considered Mr. Green's relationship with Mr. Brennan and the transactions between them. The New Jersey Casino Control Commission stated:

"Applicant must demonstrate his good character, honesty and integrity as required by N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.3c. In this regard I am guided by the Commission's pronouncements in *In re Bally's Casino Application*, 10 N.J.A.R 356 (1981):

The law requires us to judge each applicant's character. We find this a most difficult task for several reasons. First "character" is an elusive concept which defies precise definition. Next we can know the character of another only indirectly, but most clearly

through his words and deeds. Finally, the character of a person is neither uniform nor immutable.

Nevertheless, we conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime. We must judge a [person's] character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record before us. We must focus particularly on those attributes of trustworthiness, honesty, integrity and candor which are relevant to our inquiry. [10 N.J.A.R. at 393]"

Past behavior is often predictive of future behavior and it is Mr. Green's future behavior that is under consideration by the Commission. Based upon the exhibits and the testimony of Mr. Green, it is unclear as to whether based "upon the sum total of an individual's attributes" Mr. Green has exhibited the appropriate good character, honesty and integrity. The Commission struggled with whether it should find Mr. Green suitable. Nevertheless, Mr. Green provided clear and convincing evidence of seventeen (17) years of good conduct and a majority of the Commissioner's accepts this as a compelling mitigating factor. After review of the evidence, and by a majority vote, the Commission finds Mr. Green suitable, but with reservations and subject to certain conditions. As a condition of suitability under M.G.L c 23K §12 and as a condition of licensure, in the event that Applicant is awarded the category 2 gaming license, Mr. Green will be required to report to the Commission, at such times as required by the Commission, any contact Mr. Green has with Mr. Brennan. The Commission further reserves the right, based upon receipt of any future information regarding Mr. Green's relationship with Mr. Brennan, or any information that Mr. Green has entered into transactions with any person similar to those entered into with Mr. Brennan, to require Mr. Green to come before the Commission to testify.

3. Presentation of evidence that Watche Manoukian's business and financial practices are consistent with the statutory mandates of good character, honesty and integrity.

Mr. Manoukian is a majority equity holder in Greenwood Racing Inc. and through his holdings in Greenwood Racing Inc. Mr. Manoukian will hold a significant interest in Applicant. In addition, Mr. Manoukian possesses significant assets which may be used in ultimately financing the construction of Applicant's gaming establishment should Applicant be awarded the category 2 gaming license. Of particular concern to the Commission is Mr. Manoukian's use of a corporate structure wherein Mr. Manoukian loaned money to Greenwood Racing Inc. and receives revenues from Greenwood Racing in the form of interest payments on the loan. The interest payments to Mr. Manoukian are deducted by Greenwood Racing Inc. as a business expense. The revenues are paid to Mr. Manoukian through a series of holding companies based outside of the United States. These holding companies were designed to use various tax treaties and related accounting practices to help Mr. Manoukian to avoid paying income taxes on those revenues to the maximum extent possible. The Commission required Mr. Manoukian to present evidence on this tax avoidance structure and whether Mr. Manoukian plans to use a similar structure in the Commonwealth of Massachusetts if the Applicant is awarded the category 2 gaming license.

Mr. Manoukian appeared before the Commission and also provided his outside counsel, Mr. Terrance Everett of the California firm of Carlsmith Ball LLP, to answer questions from the Commission. It is noted that Mr. Everett is also an Applicant qualifier, was investigated by the IEB and was recommended to be suitable to the Commission. Mr. Manoukian testified in a candid and credible manner. Mr. Manoukian answered all questions posed to him by IEB counsel and the Commissioners. Mr. Manoukian provided Applicant Exhibit 3 which is a description of the capital structure proposed for Applicant. This structure does not include any loans from shareholders including Mr. Manoukian. All equity contributions will be held in capital accounts established in companies domiciled in the United States. The capital accounts will accrue a fixed rate of return; however unlike interest on a loan, this rate of return will not be tax deductible by Applicant and will not reduce the tax obligations of Applicant.

Mr. Manoukian further testified that he established the capital structure for Greenwood Racing Inc. based upon tax advice provided to him by his counsel and accountants. Mr. Everett confirmed that to be the case. Mr. Manoukian also testified that while the revenues earned from the loans to Greenwood Racing Inc. were paid to the offshore holding companies, those revenues were subject to withholding for United States federal tax purposes. Mr. Manoukian acknowledged that the structure was complicated. The various tax treaties used by the offshore companies are no longer in effect and apparently it would be difficult for him to unwind this structure at this point. Mr. Manoukian affirmed that he would not use the same structure for Applicant.

The Commission finds Mr. Manoukian credible. It accepts Mr. Manoukian's testimony that Applicant will have the capital structure outlined in Applicant Exhibit 3. The Commission finds that based upon the testimony provided by Mr. Manoukian, the information provided by Mr. Everett and Applicant's Exhibit 3 that Mr. Manoukian has met the burden of proving by clear and convincing evidence that he meets the standards for suitability under M.G.L c 23K §12. As a condition of suitability, the Commission requires that the Applicant provide a detailed explanation of its capital structure for review as part of its RFA 2 license application and in the event that Applicant is awarded the category 2 gaming license, that Applicant provide any proposed changes to its capital structure to the Commission for review prior to making any changes in the capital structure approved by the Commission in any license award.

4. Presentation of evidence showing that George Carney has satisfied any outstanding tax obligation in any jurisdiction where Mr. Carney owns property.

As part of the investigation described in IEB Exhibit 4, the IEB found that Mr. Carney was delinquent on taxes owed on real property owned by Mr. Carney in New Hampshire. The Commission required that Mr. Carney establish that he is current on all taxes outstanding on any property owned by him in any jurisdiction. As provided in Applicant Exhibit 10, prior to the adjudicatory proceeding, Mr. Carney paid all outstanding taxes and supplied proof of payment to the Commission.

Mr. Carney answered all questions posed to him by the Commissioners in a candid manner. The Commission finds Mr. Carney to be credible. The Commission finds that based upon the testimony provided by Mr. Carney and Applicant's Exhibit 10 that Mr. Carney has met the

burden of proving by clear and convincing evidence that he meets the standards for suitability under M.G.L c 23K §12. In the event that Applicant is awarded the category 2 gaming license, Mr. Carney will be required to remain current on any taxes owed on property owned by Mr. Carney.

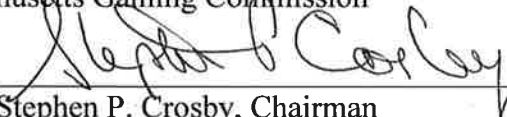
Conclusion

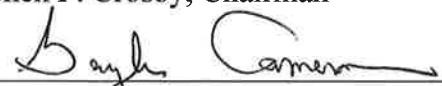
Based upon the testimony provided to the Commission as well as the exhibits provided by the IEB and the Applicant, the Commission finds that the Applicant has met the burden of proving by clear and convincing evidence that it meets that standards for suitability under M.G.L. 23K §12. In the event that Applicant is awarded the category 2 gaming license, such license shall include, along with any other conditions deemed appropriate by the Commission, the following conditions:

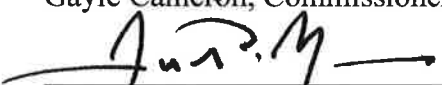
1. That Mr. Green have no business dealings with Mr. Brennan;
2. That the Applicant employ the capital structure outlined in Applicant Exhibit 3 and that any changes to such capital structure must be approved by the Commission prior to any changes implemented by Applicant; and
3. That Mr. Carney remain current on all taxes owed by Mr. Carney in any jurisdiction where Mr. Carney owns property.

SO ORDERED

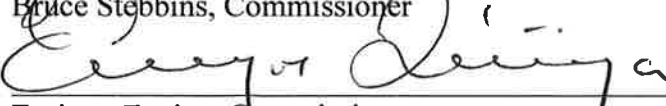
Massachusetts Gaming Commission

By: 
Stephen P. Crosby, Chairman

By: 
Gayle Cameron, Commissioner

By: 
James F. McHugh, Commissioner

By: 
Bruce Stebbins, Commissioner

By: 
Enrique Zuniga, Commissioner

DATED: August 5, 2013