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PA GAMING CONTROL BOARD
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BEFORE THE
THE PENNSYLVANIA GAMING CONTROL BOARD

FILED
DEC 15 2009
1170-2009
Board Clerk PGCB

PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P., D/B/A FOXWOODS CASINO PHILADELPHIA	: PGCB DOCKET NO. 1170-2009
Movant	:
	:
	:
COMMONWEALTH OF PENNSYLVANIA GAMING CONTROL BOARD BUREAU OF INVESTIGATIONS AND ENFORCEMENT,	: ADMINISTRATIVE HEARING
Respondent	:
	: ANSWER, OBJECTION
	: AND REQUEST FOR
	: SANCTIONS

ANSWER, OBJECTION, AND REQUEST FOR SANCTIONS TO MOTION BY PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS L.P. D/B/A FOXWOODS CASINO PHILADELPHIA TO EXTEND TIME

By and through the Office of Enforcement Counsel, Respondent, Commonwealth of Pennsylvania, Gaming Control Board, Bureau of Investigations and Enforcement, does hereby file this Answer, Objection, and Request for Sanctions to the Motion by Philadelphia Entertainment and Development Partners, L.P. D/B/A Foxwoods Casino Philadelphia to Extend Time, and states the following:

GENERAL RESPONSE

Philadelphia Entertainment and Development Partners, L.P. D/B/A Foxwoods Casino Philadelphia (hereinafter Foxwoods) filed a Motion to Extend the time within which to comply with Conditions 5 and 6 of the Pennsylvania Gaming Control Board Order of September 1, 2009. For the reasons set forth below, Respondent Objects to an extension of time and requests that the Board issue sanctions against Foxwoods for failure to comply with the conditions of the Board Order.

ANSWER

1. Denied. The averments of this paragraph constitute a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

2. Denied. It is denied that good cause exists to grant an extension. It is further denied that Foxwoods has diligently moved forward in its efforts to develop a licensed facility or that Foxwoods has satisfied all of the conditions of the Board's Order to date. To the contrary, Foxwoods has begun no construction of a facility, provided no plan for a facility, provided no plan for financing a facility, and has provided a minimal

amount of information in order to satisfy the conditions of the Board's order with an emerging pattern of vague promises and references to unnamed possible financial backers. Strict proof is thereof demanded.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

11. Admitted.

12. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

13. Admitted in part and denied in part. It is admitted that funding of the facility is the most critical hurdle in ensuring that Foxwoods has at least 1500 slot machines operational and available for play by May 29, 2011 for without funding, construction cannot begin. It is denied that the funding will dictate the development issues and decisions of the facility. To the contrary, Condition 5 of the Board's Order of September 1, 2009 requires Foxwoods to submit architectural renderings, artist renderings, conceptual proposals, engineering opinions, any and all other documents relating to construction of a facility, **substantially similar to that approved by the Board on December 20, 2006.** (emphasis added). Foxwoods knows and understands the type of facility that the Board has licensed them to provide to the Commonwealth. To be specific, Foxwoods should seek funding based on the type of facility that Foxwoods committed to provide the Commonwealth during the competitive licensing process of 2006 and which was subsequently approved and licensed by the Board. To state that the source and amount of funding will dictate the development of the facility is backwards and flies in the face of the Board's Order. Strict proof is thereof demanded.

14. Admitted.

15. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

16. Denied. To the contrary, it is the Board who determines the type of facility which is acceptable. Banks, investors, and other types of financiers should not dictate to Foxwoods or the Board what type of facility will be constructed. Strict proof is thereof demanded.

17. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

18. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

19. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

20. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

21. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. By way of further explanation, Respondent notes that Foxwoods claims to be negotiating funding for a "full scale project", but also claims that it has yet to develop the plans for a facility. Strict proof is thereof demanded.

22. Denied. It is denied that the legislation regarding table games will or should have an impact on the attempt to obtain funding. To the contrary, Foxwoods original plan approved by the board was in three phases, with phase 1 contemplating 3000 slot machines, phase 2 contemplating 2000 additional machines and/or table games, and phase 3 adding a 500 room hotel and a second 500 room hotel or 200 resident condominiums. Based on that three phased plan, and without legislation authorizing table games, Foxwoods was able to obtain funding through phase 1 which was satisfactory to the Board. There is no reason to believe Foxwoods could not do the same now. Strict proof is thereof demanded.

23. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

24. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

25. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

26. Denied. It is denied that Foxwoods has shown good cause to extend the time to respond to Conditions 5 and 6. To the contrary, Foxwoods has offered no facts or details upon which relief could be granted. Foxwoods has instead offered only vague

references to unnamed parties who may or may not be interested in its project, and who may or may not provide funding. Strict proof is thereof demanded.

27. Denied. These averments are part of a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

28. Admitted.

29. Admitted.

30. Denied. It is denied that Foxwoods has shown good cause for an extension of time. To the contrary, Foxwoods has offered only excuses which do not, in any way, constitute good cause for an extension of time.

31. Admitted in part and denied in part. It is admitted that Foxwoods has timely submitted monthly status report updates, and has submitted responses required by Condition 1. It is for the Board to determine if those submissions are satisfactory. Foxwoods has failed to satisfy Conditions 5, and 6, and admits this failure in their request for an extension of time. Strict proof is thereof demanded.

32. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

33. Admitted. By way of further explanation, this is exactly what the Board envisioned when it imposed the conditions on Foxwoods.

34. Denied. It is denied that Foxwoods, in any way, can reorder the priority in which it pursues its development goals without first seeking permission from the Board to change the priority. The Board issued an order with a set of conditions, and those conditions require Foxwoods to submit information in a particular order. If Foxwoods now wants to change those conditions, they should have sought Board reconsideration within a reasonable time period and quite some time before December 1, 2009. Instead, Foxwoods attempts to tell the board that it wants an extension of time because it doesn't agree with the Board's conditions. This is improper, and should not be permitted. Strict proof is thereof demanded.

35. Denied. Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

36. Denied. It is denied that the requested extension is relatively minimal. To the contrary, a three month extension of time places the May 29, 2011 deadline for building and opening a facility with 1500 slot machines ready for play less than 15 months away thereby further jeopardizing this project. Foxwoods' proposal would necessitate the Board's review and approval of the financing package and construction plans for the licensed facility under very tight time constraints, thereby placing the construction of the facility in a very narrow and limited time frame. As to the remaining

averments, Respondent is without knowledge or information sufficient to admit or deny the facts contained in this paragraph. Strict proof is thereof demanded.

37. Denied. It is denied that the requested extension does not impact the ultimate deadline of May 29, 2011. To the contrary, a three month extension of time places the May 29, 2011 deadline for building and opening a facility with 1500 slot machines ready for play less than 15 months away. Foxwoods' extension request would require: (1) the Board to approve the financing and the plans for a facility; (2) completion of the construction of the facility; and (3) opening the facility to the public. All to miraculously occur within 15 months, when presently there have only been vague promises and uncertainty from Foxwoods. Strict proof is thereof demanded.

38. Admitted. By way of further explanation, it is the duty of BIE to investigate and monitor Foxwoods' progress. Furthermore, it is the duty of Foxwoods to continue to abide by the Board's Order and submit monthly updates concerning its progress.

WHEREFORE, Respondent Bureau of Investigations and Enforcement, through the Office of Enforcement Counsel respectfully requests that this Board deny the motion for extension of time.

OBJECTION

39. Pursuant to 58 Pa. Code § 497a.5(a)(1), the Board may extend the period of time for an act to be done, for good cause.

40. "Good Cause" is not defined by the Gaming Act or by Board Regulations, but is understood in the law as "substantial reason amounting to a legal excuse for failing to perform an act required by law as determined on a case-by-case basis". BLACKS LAW DICTIONARY, 6th Edition (1990).

41. Foxwoods has offered no facts upon which an extension could or should be granted, but only vague references to changing money markets and unnamed possible investors who may or may not have some interest in a gaming project which is undefined.

42. In addition to their failure to offer facts to support their position, Foxwoods claims that these unnamed possible investors will dictate to the Board what type of facility will be built, when the Board has previously made that determination.

43. This request for an extension appears to be a delay tactic since it is not based upon any factual or logical foundation made for reasons known only to Foxwoods, and should not be permitted.

44. The Board, and the citizens of the Commonwealth of Pennsylvania, are entitled to a concrete plan for a facility "substantially similar" to that approved by the

Board on December 20, 2006 as per Condition 5 of the Board's Order of September 1, 2009, and a timeline for building such a facility as per Condition 6.

45. On October 16, 2009, Respondent submitted a letter to the Board in which it stated that it "must consult with and select the design and construction professionals whom it will retain to plan, design, and construct the facility", and at that time was still "analyzing whether to commence development with an 'interim' phase...", and had no clear idea how to proceed.

46. As of the letter of October 16, 2009, Foxwoods was working with a construction advisor "to conduct an analysis of the feasibility of a 'temporary' facility."

47. As of the letter of October 16, 2009, Foxwoods was seeking financing and investors and, as stated in the letter, "(e)ach of the potential debt and equity investors has its own slightly different perspectives as to the finer points of how the finished gaming facility should look and wants to craft that final vision".

48. The only logical conclusions that can be drawn is that nothing has changed since September 1, 2009, nothing has changed since October 16, 2009, and Foxwoods has shown no serious effort to comply with the conditions set forth by the Board.

49. No facts or other evidence have been offered which would lead the Board to conclude that Foxwoods has shown the good cause required for the Board to grant an extension to comply with Conditions 5 and 6.

WHEREFORE, Respondent Bureau of Investigations and Enforcement, through the Office of Enforcement Counsel respectfully requests that this Board deny the motion for extension of time.

REQUEST FOR SANCTIONS

50. Pursuant to Section 1202 (19) of the act, the Board has the power and authority to levy fines or other sanctions, and pursuant to section 1202 (12) of the act the Board has the power to issue, approve, renew, revoke, suspend, condition or deny issuance or renewal of slot machine licenses.

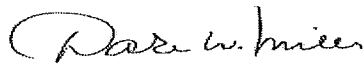
51. The failure of Foxwoods to comply with Conditions 5 and 6 of the Board's Order of September 1, 2009, authorizes the Board to fine, and/or sanction Foxwoods, or if it deems it appropriate revoke the slot machine license.

52. Based upon the failure to comply with the Board's Conditions, the lack of any type of plan or financing to open a facility with a minimum of 1500 slot machines by May 29, 2011, the Bureau of Investigations and Enforcement through the Office of Enforcement Counsel recommends that the Board deny Foxwoods' Motion to Extend Time or, in the alternative, if the Board deems an extension of time to be appropriate, levy a daily fine, in an amount that the Board determines to be appropriate, for every day

that Foxwoods has failed and continues to fail to make the required submissions in response to Conditions 5 and 6 of the Board's September 1, 2009 Order.

WHEREFORE, Respondent Bureau of Investigations and Enforcement, through the Office of Enforcement Counsel respectfully requests that the Board deny the Motion by Philadelphia Entertainment and Development Partners, L.P., doing business as Foxwoods Casino Philadelphia to Extend Time, or in the alternative levy a daily fine in an amount appropriate for the failure to comply with the Board's September 1, 2009 Order until such time of acceptable compliance with the aforementioned Order.

Respectfully submitted,
Office of Enforcement Counsel
Cyrus R. Pitre, Chief Enforcement Counsel



BY: Dale W. Miller, Esquire
Pennsylvania Supreme Court I.D. # 33520
Deputy Chief Enforcement Counsel, Eastern Region
Pennsylvania Gaming Control Board
Office of Enforcement Counsel
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(610) 943-7426

**BEFORE THE
THE PENNSYLVANIA GAMING CONTROL BOARD**

PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P., D/B/A FOXWOODS CASINO PHILADELPHIA Movant	: PGCB DOCKET NO. 1170-2009 : : : : :
COMMONWEALTH OF PENNSYLVANIA GAMING CONTROL BOARD BUREAU OF INVESTIGATIONS AND ENFORCEMENT, Respondent	: ADMINISTRATIVE HEARING : : ANSWER, OBJECTION : AND REQUEST FOR : SANCTIONS

PROPOSED ORDER

AND NOW, this day of , 2009, upon consideration of the Motion to Extend time of Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia, it is hereby ORDERED that:
The Motion is Denied.

By the Board

Gregory C. Fajt, Chairman

**BEFORE THE
THE PENNSYLVANIA GAMING CONTROL BOARD**

PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P., D/B/A FOXWOODS CASINO PHILADELPHIA	: PGCB DOCKET NO. 1170-2009
Movant	:
	:
	:
	:
COMMONWEALTH OF PENNSYLVANIA GAMING CONTROL BOARD BUREAU OF INVESTIGATIONS AND ENFORCEMENT,	: ADMINISTRATIVE HEARING
	:
	: ANSWER, OBJECTION
	: AND REQUEST FOR
Respondent	: SANCTIONS

PROPOSED ALTERNATIVE ORDER

And now, this day of , 2009, upon consideration of the Motion to Extend time of Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia, it is hereby ORDERED that:

The Motion is granted, the time to respond to Conditions 5, and 6 of the Board's Order of September 1, 2009 is extended to the day of , and Movant is fined the amount of \$ for each day after December 1, 2009, until it submits an acceptable response to Conditions 5, and 6 of the Board Order of September 1, 2009.

By the Board

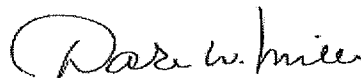
Gregory C. Fajt, Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of December , 2009 a copy of the Answer, Objection and Request for Sanctions was served upon attorneys for the Petitioner LeRoy S. Zimmerman, Esquire, Robert A. Graci, Esquire, F. Warren Jacoby, Esquire, and Stephen A. Cozen, Esquire, who are authorized to accept such service by first class mail to:

LeRoy S. Zimmerman, Esquire
Robert A. Graci, Esquire
Eckert Seamans Cherin & Mellot, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

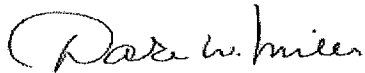
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VERIFICATION

I, Dale W. Miller, Esquire, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



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Date: December 15, 2009