Reading file

NATIONAL
INDIAN
GAMING
COMMISSION

MAY 15 1996

Bruce S. Rogow, Esquire
2441 S.W. 28th Avenue
Fort Lauderdale, Florida 33312

Dear Mr. Rogow:

By letter dated April 15, 1996, and received by the National Indian Gaming Commission (NIGC) on April 16, 1996, you filed a notice of appeal and/or request for reconsideration of the March 18, 1996, decision of the Chairman disapproving the management contract between the Seminole Tribe of Florida and Seminole Management Associates, Ltd (SMA).

The appeal and/or request for reconsideration is filed on behalf of SMA. SMA's request for reconsideration is rejected; therefore, your April 15, 1996, letter will be treated as an appeal.

The Chairman's decision disapproving the management contract was based on the failure of the Tribe or SMA to submit certain information required to be submitted with a management contract pursuant to regulations of the NIGC. In a letter to the Tribe and SMA dated January 26, 1996, Mr. Fred Stuckwisch of the NIGC advised the parties to the contract of the submission deficiencies and stated that the required information must be submitted to the NIGC within thirty days. Enclosed with the January 26, 1996, letter was a list detailing the items that needed to be submitted to the NIGC. That list included: copies of documents evidencing the authority of the tribal chairman to execute the management contract on behalf of the tribe; a copy of the Tribe's constitution; an updated three-year business plan; an updated list of all persons and entities with a financial interest in, or having management responsibilities for, the management contract; and applications for each person or entity with management responsibility for, or a financial interest in, the management contract.

SMA argues that the failure to timely respond to the January 26, 1996, deficiency letter was the result of excusable oversight, with each party believing the other had responded to the letter. The deficiency letter was sent certified mail to each of the

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parties to the contract. The items to be submitted required both parties to respond since some of the required items would clearly be in the possession of the Tribe, such as the tribal constitution and documents evidencing the authority of the tribal chairman, while other items would be in the possession of SMA or more readily obtainable by SMA. The Commission does not find it credible that each party thought the other was responding to the deficiency letter. Therefore, the Commission does not find the oversight to be excusable.

SMA next appears to argue that all of the required items had been submitted in October of 1993 in connection with a management contract between the Tribe and SMA dated August 12, 1993. That information, however, was almost two years old when the parties submitted their latest management contract in May of 1995. As the January 26, 1996, deficiency letter makes clear, the information submitted in 1993 needed to be updated.

NIGC regulations state that required information must be current. For example, section 537.1(b) requires that for each person required to undergo a background investigation, the management contractor must provide the NIGC with a current photograph, current business and residence addresses, the names and current addresses of at least three personal references, current business and residence telephone numbers, and a complete financial statement showing all sources of income for the previous three years, and assets, liabilities, and net worth as of the date of the submission. Information that is two or three old is not current.

The parties were also asked to update the three-year business plan. In the appeal, SMA concedes that the financial projections have changed and now asks for additional time to submit such updated information. The parties were also asked to update Exhibit B, the list of persons and entities with a financial interest in the management contract, and to identify each person's or entity's percentage of ownership in the management contract. As explained in the January 26, 1996, deficiency letter, without this information the NIGC is unable to determine which persons and entities are required to undergo a background investigation. The parties failed to provide the NIGC with ownership percentages as required in the January 26, 1996, deficiency letter.

Moreover, the list was not updated. SMA argues that, except for the death of Alex Sailor, the list is up to date. The NIGC disagrees. SMA submitted background information for Jennifer Lynn Weisman Irrevocable Trust, Dawn Elizabeth Moriarty Irrevocable Trust, and Weisman Enterprises, Ltd. Neither the trusts nor the limited partnership are included on the list.

The issue on appeal is a narrow one. Did the Chairman err by

disapproving the management contract between the Tribe and SMA for failing to submit certain required information within the thirty-day time period? SMA has presented no arguments or evidence that the decision of the Chairman is erroneous. For all of these reasons, the NIGC affirms the decision of the Chairman disapproving the management contract.

Sincerely,

Harold A. Monteau
Chairman

Michael Cox for
Tom Foley
Associate Commissioner

Michael Cox for
Philip N. Hogen
Associate Commissioner