National Indian Gaming Commission

PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-06-08

BY CERTIFIED MAIL / RETURN RECEIPT REQUESTED

To: Marc E. Dunn
555 West Southern Hills Rd.
Phoenix, Arizona 85023

Marc E. Dunn
President
Oklahoma Management Enterprises, Inc.
1006 W. Adams Street
Phoenix, Arizona 85007

Marc E. Dunn
President
Native American Enterprises & Resource Management, Inc.
1006 W. Adams Street
Phoenix, Arizona 85007

WAS, Inc.
Arizona Statutory Agent for Oklahoma Management Enterprises, Inc.; Native American Enterprises & Resource Management, Inc.; Hybrid Enterprises, L.L.P.; S.S.E. & L., Inc.; & Stratus Properties, L.L.C.
4201 N. 21st Street
Suite 100
Phoenix, Arizona 85016

Corporation Service Company
Oklahoma Registered Agent for Right Source Marketing, L.L.C.
115 SW 89th Street
Oklahoma City, Oklahoma 73139

Marc E. Dunn
President
S.S.E. & L, Inc.
1006 W. Adams Street

Phoenix, Arizona 85007

Marc E. Dunn
President
Dunn Plastering & Stucco, Inc.
1006 W. Adams Street
Phoenix, Arizona 85007

Marc E. Dunn
President
Wolf Tree Development Company, Inc.
1006 W. Adams Street
Phoenix, Arizona 85007

1. Under the authority of 25 U.S.C. § 2713(a) of the Indian Gaming Regulatory Act ("IGRA") and National Indian Gaming Commission ("NIGC") Regulations, 25 C.F.R. Part 575, the Chairman of the NIGC hereby provides notice of his intent to assess a civil fine against Marc Dunn, Oklahoma Management Enterprises, Inc., and Native American Enterprises & Resource Management, Inc. (hereafter referred to as "Dunn," "OME," "Native American Enterprises," and "Respondents1"), manager of the Quapaw Casino & R.V. Resort (hereafter referred to as the "Quapaw Casino"), for violation of IGRA, 25 U.S.C. § 2711, and NIGC regulations, 25 C.F.R. § 533 and § 573.6(a)(7), as set forth in detail in Notice of Violation, Reference NOV-06-08, dated March 8, 2006, a copy of which is attached.

2. Under 25 U.S.C. § 2713(a) and 25 C.F.R. § 575.4, the Chairman may assess a civil fine, not to exceed $25,000 per violation per day, against a tribe, management contractor, or individual operating Indian gaming for each violation cited in a notice of violation issued under 25 C.F.R. § 573.3. The Quapaw Casino is owned by the Quapaw Tribe of Oklahoma (hereafter referred to as "the Tribe") and is located on tribal lands in Miami, Oklahoma. The Respondents include management contractors that have managed and operated the Quapaw Casino since January 20, 2001 until April 4, 2005 and companies wholly owned by Dunn that substantially benefited from his non-compliance with the law.

In arriving at the proposed civil fine, the Chairman considered the factors prescribed in 25 C.F.R. § 575.4, as follows:

I. <u>Economic benefit of noncompliance</u>

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1 Respondents also include the following companies, that are wholly owned by Marc E. Dunn, were involved with the Quapaw casino, and substantially benefited from Dunn, OME, and/or Native American Enterprises' failure to comply with IGRA: S.S.E. & L. Inc.; Dunn Plastering & Stucco, Inc.; Wolf Tree Development Company, Inc.; Hybrid Enterprises, LLP; Right Source Marketing, LLC; and Stratus Properties, LLC.

The economic benefit to the Respondents is partially reflected in the financial reports of the Quapaw Casino prepared by an accountant for the Tribe. These documents reflect that the Respondents received approximately $3,825,980 in management fees during the period of January 20, 2001 to April 4, 2005.

Financial reports of the Quapaw Casino prepared by an accountant for the Tribe also reveal that Right Source Marketing received commissions of $2,470,474 in FY 2003 and $286,058 in FY 2004, for a total benefit to the Respondent of $2,756,532. The audit reports do not specify the economic benefit to Right Source Marketing from the placement of gaming machines in the Quapaw Casino during FY 2001 and 2002, as the audits for such years do not provide details of commissions paid to game vendors.

Thus, the economic benefit to Dunn, OME and/or Native American Enterprises reflected in the audit reports, is at least $6,582,512.

An independent accounting firm's report also addresses the economic benefit derived by Dunn, OME, and Dunn's other companies. Specifically, the report indicates the OME and Wolftree Development Company, Inc. received $5,086,330.48 from March 8, 2001 through April 4, 2005. In addition, Right Source Marketing was paid approximately $5,399,429.66 in gaming machine commissions from October 6, 2001 through March 24, 2005. The report also concludes that other companies owned by Dunn, including S.S.E.&L. Inc., Stratus Properties, L.L.C., and Dunn Plastering & Stucco, Inc. received payments totaling $305,183.94.

Consequently, the total economic benefit to the Respondents exceeds ten million dollars.

II. Seriousness of the violation

This is a serious and substantial violation of IGRA and NIGC regulations. IGRA requires that tribes obtain the approval of the Chairman of the NIGC to enter into a management contract for the operation and management of a gaming operation. 25 U.S.C. § 2711. NIGC regulations reiterate this requirement, mandating that "Subject to the Chairman's approval, an Indian tribe may enter into a management contract for the operation of a class II or class III gaming activity." 25 C.F.R. § 533.1. Moreover, NIGC regulations explicitly provide that it is a substantial violation for a management contractor to operate a gaming operation without a contract that the Chairman has approved. 25 C.F.R. § 573.6 (a)(7).

From January 20, 2001 through April 4, 2005, the Respondents have managed the Quapaw Casino without an approved contract. Such actions threaten the integrity of Indian gaming by circumventing the management contract review process set forth in IGRA, 25 U.S.C. § 2711, and NIGC regulations, 25 C.F.R. Part 533, to ensure the suitability of individuals and entities involved in Indian gaming. As a consequence, operation of the Quapaw Casino by Dunn, OME, and/or Native American Enterprises without an approved management contract threatened the NIGC's ability to achieve its Congressionally mandated goals of shielding the Tribe from organized crime and other corrupting influences; ensuring that the Tribe is the primary beneficiary of the gaming operation; and ensuring that gaming is conducted fairly and honestly by both the operator and players. *See* 25 U.S.C. § 2702(2).

III. History of violations

Dunn, OME, and Native American Enterprises do not have a history of prior violations.

IV. Negligence or willfulness

Dunn and OME have submitted various agreements to the NIGC for review as management contracts, including several agreements between OME and the Tribe and/or the Quapaw Gaming Corporation ("QGC").2 Such actions indicate that Dunn, OME, and/or Native American Enterprises understood it was managing the Quapaw Casino and recognized the need to obtain governmental approval before such activities would be lawful. The fact that the Respondents knowingly disregarded this mandate of IGRA, by choosing to operate the Quapaw Casino without an approved management contract and profit thereby demonstrates that this was a willful violation of federal law.

V. Good faith.

The Chairman may adjust a fine based on the degree of good faith of the Respondents in attempting to achieve rapid voluntary compliance after a Notice of Violation has been issued. This factor is inapplicable in this instance, because Quapaw Tribe severed all business ties with Dunn, OME, and Native American Enterprises before April 8, 2005; admitted that Dunn, OME, and Native American Enterprises assumed management of the Quapaw Casino on January 20, 2001; admitted that the parties acted pursuant to the August 29, 2001 and June 26, 2003 management agreements, which formalized the arrangement whereby Dunn, OME

2 Marc E. Dunn, as CEO of Grand Lake Management, Inc. ("Grand Lake"), also submitted to the NIGC an agreement between Grand Lake and the Seneca-Cayuga Tribe of Oklahoma for management contract review.

and/or Native American Enterprises managed the casino, and that such agreements were not approved by the Chairman of the NIGC. *See* Stipulated Notice of Violation and Agreed Civil Fine Assessment, dated April 11, 2005, ¶ 9(A).

PURSUANT to 25 U.S.C. § 2713(a) and 25 C.F.R. § 575.4, fines for continuing violations may be assessed in an amount up to $25,000 (twenty five thousand) per day of noncompliance. Thus, the Chairman has the authority to assess a fine in the amount of $25,000 per day upon the Respondents and has determined that a violation occurred each day that the Respondents managed the Quapaw Casino without an approved contract, beginning on the day that unauthorized management began, January 20, 2001, and continuing for each day that the noncompliance cited in the Notice of Violation continued, that being through April 4, 2005. Therefore, the Chairman could potentially assess the Respondents a fine of $35,000,000 (thirty-five million dollars).

However, the Chairman, having carefully reviewed the above factors, has determined that a fine in the amount of $ 11,000,000 (eleven million) is assessed on the Respondents for managing the Quapaw Casino without an approved management contract from January 20, 2001 through April 4, 2005. This fine represents the known economic benefit of noncompliance realized by the Respondents as well as an appropriate balancing of the other factors cited above, including the fact the matter at hand constitutes a substantial violation of IGRA.

Under 25 C.F.R. § 577.3, the Respondents may appeal the proposed fine to the full Commission within thirty (30) days after service of this Notice of Proposed Civil Fine Assessment, by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L St., N.W., Suite 9100, Washington, D.C. 20005. The Respondents have the right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of Proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, the Respondents must file with the Commission a supplemental statement that states, with particularity, the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If the Respondents wish to present oral testimony or witnesses at the hearing, they must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. The Respondents may waive their rights to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

Dated: April 12, 2006.

Philip N. Hogen
Chairman
National Indian Gaming Commission

Certificate of Service

I certify that this **Civil Fine Assessment** was sent by certified mail, return receipt requested, this 12th day of April 2006 to:

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Phoenix, Arizona 85023

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Shakira Ferguson

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