National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-06-03

To: Marc E. Dunn
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President
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Marc E. Dunn
President
Native American Enterprises & Resource Management, Inc.
1006 W. Adams Street
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WAS, Inc.
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Corporation Service Company
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Marc E. Dunn
President
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Right Source Marketing, LLC
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Marc E. Dunn
Stratus Properties, LLC
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1. The Chairman of the National Indian Gaming Commission ("NIGC") hereby gives notice that Marc Dunn, Oklahoma Management Enterprises, Inc. and Native American Enterprises & Resource Management, Inc. (hereafter referred to as "Dunn," "OME,"

"Native American Enterprises," and "Respondents[1]"), manager of the Quapaw Casino & R.V. Resort (hereafter referred to as the "Quapaw Casino"), are in violation of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 *et seq.*, and NIGC regulations, 25 C.F.R. § 501 *et seq.*.

2. The circumstances of the violation are:

The Quapaw Tribe (the "Tribe") is a federally recognized Indian Tribe with tribal headquarters in Quapaw, Oklahoma. The Tribe owns a gaming operation known as the Quapaw Casino & R.V. Park located in Miami, Oklahoma. The Tribe has operated this gaming operation since approximately July 2000.

On February 19, 2000, the Tribe entered into a gaming management contract with Wolf Tree Development Company, Inc. Pursuant to this contract, Wolf Tree Development was retained to "manage, operate, and maintain the tribal gaming facility currently known as the Quapaw Casino and adjacent RV Park." The contract explicitly stated that "[e]xcept as otherwise provided in this Agreement, Wolf Tree shall have complete responsibility for operation and maintenance of the gaming facility." This gaming management contract was never submitted to the NIGC for its review nor did the Chairman of the NIGC approve this contract.

Oklahoma Management Enterprises, Inc. ("OME") is an Arizona corporation that incorporated on December 20, 2000. It is in the business of "Property and Business Management;" specifically, as represented in its workers compensation insurance policy[2], the "management / operation of [a] Class 2 gaming facility." Marc Dunn is the President and the Secretary of OME.

On January 20, 2001, OME entered into a Stock Purchase Agreement with all persons who owned the outstanding shares of Wolf Tree Development Company, Inc. to purchase all of these shares. This agreement states that "Wolf Tree, since its inception, has been in the business of managing a Class II gaming enterprise owned by the Quapaw Tribe of Oklahoma pursuant to that certain Gaming Management Contract dated February 19, 2000." Further, the agreement set forth that "Jake Prince hereby represents and warrants that he will use his best efforts to help the Purchaser obtain all necessary consents from the Quapaw Tribe's Business Committee for the purpose of consummating the transactions contemplated herein, and for the purposes of fulfilling the requirements under the Gaming Management Contract and the Financing Agreement."

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[1] Respondents also include the following companies, that are wholly owned by Marc E. Dunn and were involved with the Quapaw casino: 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.

[2] Policy # 01691256, CompSource Oklahoma, Policy Period 2/28/02 to 3/1/03.

Confirming the existence of the stock purchase agreement, the Accountant's Audit Report of the Quapaw Casino for the period ended on September 30, 2001, states "Oklahoma Management Company took over the management of the operations of the Quapaw Casino and R.V. Park. Oklahoma Management Company purchased the right to manage the casino from Wolf Tree Development Company."

Native American Enterprises & Resource Management, Inc. is also a Arizona corporation engaged in business of managing gaming operations on Indian lands. Native American Enterprises & Resource Management, Inc. owns one hundred percent (100%) of the shares of OME. Marc Dunn is the President and the Director of Native American Enterprises.

On January 20, 2001, Dunn, OME, and/or Native American Enterprises took over operations at the Quapaw Casino from Wolf Tree Development and managed and directed the gaming operation continuously until April 4, 2005.

On August 29, 2001, the Tribe and OME entered into a Gaming Management Agreement. Under this agreement, OME[3] exercises broad managerial authority over all aspects of the Quapaw Casino.

On December 21, 2002, the Quapaw Tribal Business Committee passed Resolution No. 122102 C, authorizing "the Tribal Chairman to establish or direct to be established a corporation under the color of Quapaw law to interact with and manage Oklahoma Management's management of the Quapaw Casino and RV Park." On June 21, 2003, the Quapaw Gaming Corporation ("QGC") was established and chartered as a tribal corporation solely owned by the Quapaw Tribe of Oklahoma.

On June 26, 2003, the QGC and OME modified the Gaming Management Agreement. Such agreement also provided OME with broad managerial authority. The June 26 Gaming Management Agreement states that "the QGC is a corporation wholly owned by the Tribe and formed under the business and corporate laws of the Tribe on January 18, 2003 whereby the Tribe delegated to the QGC the authority to interface on the Tribe's behalf with any gaming management contractor who seeks to operate the Quapaw Casino and RV Park."

Since at least August 29, 2001, the Tribe, QGC, and Dunn, OME, and/or Native American Enterprises have been operating with the understanding that they were following the initial and subsequent gaming management agreements until April 4, 2005. Nonetheless, even if the parties did not follow these agreements to the letter, from approximately January 20, 2001 through April 4, 2005, Dunn, OME, and/or Native American Enterprises managed and operated the Quapaw Casino.

[3] OME includes the actions of its President and Secretary, Marc Dunn, and the actions of its shareholder, Native American Enterprises.

On April 10, 2002, the initial Gaming Management Agreement between the Tribe and OME, dated August 29, 2001, was submitted to the NIGC for review. The Tribe, Dunn, and OME were advised in writing of the deficiencies in their submission on April 26, 2002, August 21, 2002, and January 24, 2003. Further, they were advised that management contracts that have not been approved by the Chairman of the NIGC are void and no action should be taken under the agreement until it is approved. On July 15, 2003, the NIGC received a revised Gaming Management Agreement between the QGC and OME for its review. By letter dated July 31, 2003, the Tribe, QGC, Dunn, and OME were advised of the deficiencies in their second submission. In such correspondence, they were once again informed that a gaming management contract that has not been approved by the Chairman is void and no action shall be taken under it. On August 27, 2003, additional information and documentation was submitted to the NIGC in support of the management contract submission.

On or about May of 2003, the Enforcement Division of the NIGC initiated a managing without an approved contract investigation as to the Quapaw Casino. On September 5, 2003, the Chairman of the Quapaw Tribe was informed that the Contracts Division of the NIGC would not proceed with its review of the management contract submission until the Enforcement Division of the NIGC completed its investigation.[4]

The Gaming Management Contract between the QGC and OME has never been approved by the Chairman of the NIGC. Nor was the initial Gaming Management Contract, dated August 29, 2001, between the Tribe and OME approved by the Chairman. Despite this fact, Dunn, OME, and/or Native American Enterprises operated gaming at the Quapaw Casino without obtaining approvals necessary to fulfill the provisions of the IGRA and the requirements set forth in NIGC regulations. Accordingly, Dunn, OME, and/or Native American Enterprises unlawfully managed a gaming facility on Indian lands.

3. Authority: Under IGRA and NIGC regulations, the Chairman may issue a Notice of Violation (hereinafter "NOV") to any person for violation of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713; 25 C.F.R. § 573.3.

4. Applicable Federal laws and regulations:

   A. 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.

   B. 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

[4] The Contracts Division would not proceed with its review of the management contract until the Enforcement Division concluded its investigation because managing without an approved contract impacts a manager's suitability determination by the Chairman. *See* 25 U.S.C. § 2711(e)(1)(D); 25 C.F.R. § 533.6(b)(v) and (c).

C.F.R. § 533.1. Management contracts become effective upon approval by the Chairman. 25 C.F.R. § 533.1(a). All management contracts not approved by the Secretary of the U.S. Department of the Interior, must be submitted to the NIGC for review upon their execution. 25 C.F.R. § 533.2.

C. Management contracts and changes in persons with a financial interest in or management responsibility for a management contract that have not been approved by the Secretary of the Interior or the Chairman are void. 25 C.F.R. § 533.7.

D. Subject to the approval of the Chairman, a management contractor may assign its rights under a management contract to the extent permitted by the contract. 25 C.F.R. § 535.2. A tribe or management contractor shall submit such assignment to the Chairman upon execution. *Id.*

E. NIGC regulations provide that it is a substantial violation of IGRA for a management contractor to operate a gaming operation without an approved contract. *See* 25 C.F.R. § 573.6(a)(7).

F. The Chairman has the authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of IGRA and NIGC regulations. 25 U.S.C. § 2713(a)(1).

G. NIGC regulations reiterate the authority of the Chairman to levy and collect civil fines. Specifically, the regulation states "[t]he Chairman may assess a civil fine, not to exceed $25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation issued." 25 C.F.R. § 575.4. Moreover, "[i]f noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation." *Id.* at (a)(2).

5. Role of Approval of Management Contracts: Operation of the Quapaw Casino & R.V. Park by Dunn, OME, and/or Native American Enterprises without a management contract approved by the Chairman threatens 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).

6. Respondents violated IGRA and NIGC regulations in the following manner:

Operation of the Quapaw Casino & R.V. Park by Dunn, OME, and/or Native American Enterprises from January 20, 2001 through April 4, 2005 failed to satisfy the requirements of IGRA and NIGC regulations.

IGRA and NIGC regulations mandate that a tribe or the management contractor obtain the approval of the Chairman of the NIGC to enter into a management contract for the operation and management of its gaming operation. 25 U.S.C. § 2711; 25 C.F.R. §§ 533.1 and 533.2. Management contracts become effective upon approval by the Chairman. 25 C.F.R. § 533.1(a). And, management contracts that have not been approved by the Chairman are void. 25 C.F.R. § 533.7. Further, management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Secretary of the Interior or the Chairman are void. 25 C.F.R. § 533.7.

On February 19, 2000, the Tribe entered into a gaming management contract with Wolf Tree Development Company, Inc. This gaming management contract was never submitted to the NIGC for its review nor did the Chairman of the NIGC approve this contract.

On January 20, 2001, Oklahoma Management Enterprises, Inc. ("OME") purchased all the outstanding shares of Wolf Tree Development Company, Inc. This purchase resulted in Native American Enterprises, the one hundred percent (100%) shareholder of OME, also in effect owning all the shares of Wolf Tree Development Company, Inc. Thus, OME, and, in effect, Native American Enterprises[5], took over the management of the operations of the Quapaw Casino and R.V. Park, having purchased the right to manage the casino from Wolf Tree Development Company. In so doing, the Tribe and OME violated NIGC regulations by failing to obtain the Chairman's approval of the management contract and approval of the change in the persons with a financial interest in the contract and management responsibility for the contract. *See* 25 C.F.R. § 533.7.

NIGC regulations further direct that all management contracts must be submitted to the NIGC for review upon their execution. 25 C.F.R. § 533.2. On August 29, 2001, the Tribe and OME entered into a Gaming Management Agreement. Under this agreement, OME[6] exercised broad managerial authority over all aspects of the Quapaw Casino. OME violated this regulation by failing to submit the contract on or near August 29, 2001. In fact, the agreement was not submitted for review to the NIGC until April 10, 2002.

Subsequently, the Quapaw Gaming Corporation ("QGC") and OME modified the Gaming Management Agreement on June 26, 2003. This agreement also provided OME

[5] Marc Dunn is the President of both OME and Native American Enterprises.

[6] OME includes the actions of its President and Secretary, Marc Dunn, in his official and individual capacity; the actions of its shareholder, Native American Enterprises; and the actions of Native American Enterprises' President and Director, Marc Dunn, in his official and individual capacity. In essence, Marc Dunn was doing business as OME and/or Native American Enterprises.

broad management authority. From August 29, 2001, the Tribe, QGC, and Dunn, OME, and/or Native American Enterprises operated with the understanding that they were following the initial and subsequent gaming management agreements until April 4, 2005. Both of these agreements were never approved by the Chairman of the NIGC. Consequently, by acting pursuant to these unapproved management agreements, QGC, Dunn, OME, and/or Native American Enterprises violated IGRA, 25 U.S.C. § 2711, and NIGC regulations, 25 C.F.R. § 533.

It is a substantial violation of IGRA for a management contractor to operate a gaming operation without an approved contract. *See* 25 C.F.R. § 573.6(a)(7). On or about January 20, 2001, Dunn, OME, and/or Native American Enterprises took over operations of the Quapaw Casino from Wolf Tree Development Company. In fact, OME was "doing business as" the Quapaw Casino. Thus, even if the parties were not following the terms of the unapproved management contracts, Dunn, OME, and Native American Enterprises managed and operated the Quapaw Casino from January 20, 2001 through April 4, 2005 in the absence of a management contract approved by the Chairman of the NIGC.[7] Accordingly, Dunn, OME, and/or Native American Enterprises unlawfully managed a gaming facility on Indian lands. The Respondents are therefore in violation of IGRA, 25 U.S.C. § 2711, and NIGC regulations, 25 C.F.R. § 533.

7. To correct this violation:

There is no cure for this violation, as the Quapaw Tribe on or about April 5, 2005 directed Dunn, OME, and/or Native American Enterprises to cease managing and operating the Quapaw Casino. Moreover, the Tribe committed that from April 11, 2005 forward the Tribe, QGC, and/or any tribal entity shall not have any type of relationship involving Indian gaming with Dunn, OME, Native American Enterprises, any entity owned in whole or part by Dunn, and any entity in any way associated with Dunn.

8. Appeal.

Within thirty (30) days after service of this Notice of Violation, Respondents may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, request for hearing to the National Indian Gaming Commission, 1441 L Street, NW, Ninth Floor, Washington, DC 20005. Respondents have the right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of Violation.

[7] The Quapaw Tribe admitted that Marc E. Dunn, OME, and Native American Enterprises assumed management of the Quapaw Casino on January 20, 2001. *See* Stipulated Notice of Violation and Agreed Civil Fine Assessment, dated April 11, 2005, ¶¶ 2 and 6. The Tribe further admitted that the parties acted pursuant to the August 29, 2001 and June 26, 2003 management agreements, which formalized the arrangement whereby Dunn, OME and/or Native American Enterprises managed the casino, and that such agreements were not approved by the Chairman of the NIGC. The Tribe severed all business ties with Dunn, OME, and Native American Enterprises before April 8, 2005. *Id.* ¶ 9(A).

Within ten (10) days after filing a notice of appeal, Respondents must file with the Commission supplemental statements that state with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If Respondents wish to present oral testimony or witnesses at the hearing, Respondents must include a request to do so with each 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, whether a closed hearing is requested and why. Respondents may waive their right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

9. Fine--Submission of Information.

The violation cited above may result in the assessment of a civil fine against Respondents in an amount not to exceed $25,000 per violation per day. Under 25 C.F.R. § 575.5(a), Respondents may submit written information about the violation to the Chairman within fifteen (15) days after service of this notice of violation (or such longer period as the Chairman of the Commission may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

Dated this 18th day of January, 2006

Philip N. Hogen
Chairman
National Indian Gaming Commission

Jo-Ann M. Shyloski
Senior Attorney

Certificate of Service

I certify that this **Notice of Violation** was sent by FedEx this 19th day of January 2006 to:

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