National Indian Gaming Commission

PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-07-02

VIA FACSIMILE AND U.S. MAIL

To: Ivy Ong
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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 (Chairman) hereby provides notice of his intent to assess a civil fine against Ivy Ong (Ong) and Carlo World Wide Operations, LLC, former manager of the blackjack and gaming machine operations at the Seminole Nation of Oklahoma's (Tribe) Travel Plaza and Rivermist casinos, for violations of IGRA, 25 U.S.C. § 2711 and 25 U.S.C. 2710(b)(2)(A); NIGC regulations, 25 C.F.R. § 533, § 573.6(a)(7), and 522.4(b)(1); and the Tribe's approved gaming ordinance at Title 15, Section 11, as set forth in detail in Notice of Violation (NOV), Reference NOV-07-02, dated May 16, 2007, a copy of which is attached. The Travel Plaza and Rivermist casinos are owned by the Tribe and are located on tribal lands in Oklahoma.

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. Violations cited in the NOV are: (1) the Respondents unlawfully managed blackjack and gaming machine operations at Travel

Plaza and Rivermist between August 16, 2000, and August 28, 2002; and (2) the Respondents had a proprietary interest in and responsibility for the conduct of the blackjack and gaming machine operations at Travel Plaza and Rivermist for the above-referenced time period.

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

I. Economic Benefit of Noncompliance

Sections 575.4(a)(1) and (2) of 25 C.F.R. provide that "[t]he Chairman shall consider the extent to which the respondent obtained an economic benefit from the noncompliance that gave rise to a notice of violation, as well as the likelihood of escaping detection. The Chairman may consider the documented benefits derived from the noncompliance or may rely on reasonable assumptions regarding such benefits. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation."

Carlo/Ong[1] maintained many of the accounting records, particularly with respect to blackjack, and did not provide those records to the Tribe or the Tribe's independent audit firms. The fiscal year 2001 audit was conducted by John M. Arledge and Associates and the fiscal year 2002 audit was conducted by Dennis & Company CPA's LLC (Dennis & Company). Both companies, in their audit reports, noted that Carlo had not provided the supporting documentation necessary to effectively evaluate the validity of the reported blackjack figures. AR 66, 68.[2] In addition, the MICS Requirements Findings for Year Ended September 30, 2002, AR 67, prepared by Dennis & Company, noted that blackjack was not audited by Seminole Nation Development Authority personnel prior to August 28, 2002, and that blackjack fill and credit slips were not available for examination by the audit firm. Finally, the agency record contains evidence that internal control procedures were not followed. AR 66-71, 74.

Nevertheless, some information is available in the financial statements and related documents of the Travel Plaza and Rivermist casinos, prepared by the Tribe's independent outside accountants, from which the economic benefit to Respondents of their noncompliance can be calculated.

[1] Throughout this document we refer to Ong/Carlo. While Carlo was the business entity that was a party to the operating agreements with the Tribe, and that provided employees for the blackjack operation, Ong is listed in Carlo's Articles of Organization as a manager, AR 30, 31, 33, and 34, and Ong made management decisions on behalf of and represented Carlo in its business dealings with the Tribe. In short, there was significant overlap between Carlo and Ong's duties and responsibilities at the Tribe's gaming operations.
[2] We use AR throughout this document to refer to the Agency Record in this case.

A September 5, 2002, letter from Dennis & Company sets forth the Tribe's gross gaming revenue, from machines and blackjack, for fiscal year 2001 (October 1, 2000, through September 30, 2001) for Rivermist and Travel Plaza. AR 68. The letter explains that the machine figures represent a 60% share of net win. Net win was defined in the various agreements between the parties as "cash from bill acceptor minus payouts from the Equipment." AR 8-10. At Rivermist, the reported gaming machine revenue to the Tribe was $949,793.19 and at Travel Plaza the machine revenue to the Tribe was $3,288,650.76. Carlo contracted with the Tribe for 40% of net win.[3] AR 8-10. Therefore, at Rivermist for fiscal year 2001, Carlo should have received $633,193.33 of net win (40% of $949,793.19) and at Travel Plaza Carlo should have received $2,192,433 (40% of $3,288,650.76), for total fiscal year 2001 machine net win to Carlo of $2,825,626.33.

Carlo contracted for 40% of blackjack commissions. AR 13. Carlo provided Dennis & Company with blackjack gross revenue figures for both locations for FY 2001, which totaled $2,218,477.80. Carlo should therefore have received $887,391, which is forty percent (40%) of $2,218,477.80. This number has not been independently verified. Carlo did not provide either Dennis & Company or the Tribe directly any supporting documentation.

The Tribe's Supplemental Income Statement Analysis by Site, an attachment to its General Purpose Financial Statements for fiscal year end (FYE) September 30, 2002, includes both machine and blackjack revenue. AR 71. It shows $4,260,891 in total net income from Rivermist. Carlo contracted to receive a 40% share of this revenue, which would total $1,704,356. However, the Supplemental Income Statement lists "Vendor Commissions" at 1,475,359 so it is unclear exactly how much Carlo received from Rivermist revenue because there were other vendors. However, Carlo had 70-80% of the floor space at Rivermist and about 60% of the floor space at Travel Plaza. Furthermore, most of the remaining floor space was devoted to gaming companies that were paid through Carlo, and from which Carlo took a percentage. AR 19.

At Travel Plaza, the Tribe reported $10,587,051 in net win[4] for fiscal year 2002. If Carlo received 40%, he would have received $4,234,820. The

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[3] The Supplemental Income Statement calls this figure "gross gaming revenue" and it is total gaming income minus payouts. Because this calculation is the same as for "net win" we use the term "net win" to avoid confusion and because this is the term the parties used in their agreements.

[4] As discussed below, management contracts approved by the Chairman of the NIGC have a fee cap set at thirty percent (30%) of net revenues. 25 U.S.C. § 2711(c)(1)-(2). The IGRA defines net revenues as "gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes <u>and total operating expenses</u>, excluding management fees. *See* 25 U.S.C. § 2703(9) (emphasis added). Here, however, Respondents received forty percent (40%) of "net win", from which operating expenses were not

Supplemental Income Statement lists "Vendor Commissions" at Travel Plaza of $4,016,295. As noted above, Carlo was the primary vendor.

Therefore, Carlo's share of the Tribe's net win as reflected in the Tribe's financial statements for FY 2001 was approximately $3,713,017 ($2,825,626 from machines and $887,391 from blackjack) and for FY 2002 was $5,939,176 ($1,704,356 plus $4,234,820) for a total of $9,652,193. An SNDA Vendor Check Register Report details checks written by the SNDA to Carlo World Wide between October 1, 2001 and September 5, 2002. AR 195. The total amount of check written to Carlo for this time period was $3,242,491.47. Id.

In addition, the Tribe made payments, on behalf of Carlo/Ong, directly to two other companies: Playa Otocho, S.A. and Servicios Internacionales. Payments to Playa Otocho, S.A. totaled $ 532,632.00 between October 4, 2001 and April 24, 2002. AR 197. Payments to Servicios Internacionales totaled $1,401.199.92 between October 1, 2001 and April 24, 2002. (AR 197).

Because Carlo maintained many of the accounting records and some records were not available to the Tribe, we cannot be sure that these figures represent all that Carlo and/or Ong received in net win payments from the Tribe. In fact, Ong admitted that he made about twice that amount. An article in the February 23, 2003, edition of the Daily Oklahoman quotes Ong as saying he "made $18 million in the past three years off the Seminole's casinos." AR 228.

II. Seriousness of the Violations

Section § 575.4(b) of 25 C.F.R. provides that "[t]he Chairman may adjust the amount of the civil fine to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming."

These are serious violations. The operation, management, and control of the tribal gaming operations by Ong and Carlo without a management contract approved by the Chairman and in violation of the sole proprietary interest requirement threaten 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

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first deducted. This amounts to an average for Travel Plaza and Rivermist for FY 2001 and FY 2002 of 53.8% of net revenue, a far higher amount of "net revenue" than that allowed under the IGRA for a management contractor

U.S.C. § 2702(2). In addition, 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, Carlo and Ong compromised the NIGC's ability to ensure the suitability of individuals and entities involved in Indian gaming and received more pay than would have been allowed under a management contract, thereby depriving the Tribe of revenue to fund tribal programs.

A. Management Contract Violation

This is a serious and substantial violation. To carry out the purposes set forth above, the IGRA requires, among other things, the approval of management contracts for the operation and management of Indian gaming operations. 25 U.S.C. 2705(a)(4); 25 U.S.C. 2710 (d)(9); and 25 U.S.C. 2711. NIGC regulations reiterate this requirement, mandating that "[s]ubject 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. The management contract must provide for, among other things, the establishment and maintenance of satisfactory accounting systems and procedures; monthly verifiable financial reports from the management contractor to the tribe; the right of the tribe to verify daily gross revenues and income from the gaming operation, and access to any other gaming-related information the tribe deems appropriate. *See* 25 U.S.C. § 2711(b); 25 C.F.R. Part 531.

These requirements protect the Tribe's financial and proprietary interest in the gaming operation. Here, because the contracts between the Tribe and Carlo did not go through the NIGC approval process there was not a satisfactory accounting system in place; Carlo did not provide the Tribe monthly financial reports; and the Tribe did not have access to daily revenue figures. Because these important safeguards were not in place or were not followed, the Tribe was at a distinct disadvantage vis-à-vis Carlo/Ong and was unable to determine for itself the amount of money flowing into and out of its casinos.

In addition, information regarding persons or entities with a financial interest in, or having management responsibility for, a management contract must be submitted to the NIGC along with a proposed management contract. *See* 25 C.F.R. § 533.3 and 25 C.F.R. Part 537. The NIGC then conducts a financial background investigation. The information collected allows the NIGC to ensure the suitability of individuals and entities involved in Indian gaming. This important procedure did not occur here because the management contract review process was circumvented. Consequently, the Tribe was not made aware of Ong's background.

Moreover, by avoiding the management contract review process, Carlo/Ong were able to realize a much greater share of gaming profits than would be allowed under an approved management contract. The IGRA sets a management contract fee cap of thirty percent (30%) of net revenues or forty percent (40%) of net revenues if the capital investment required and the gaming operation's income projections require a higher fee. 25 U.S.C. §§ 2711(c)(1)-(2). The IGRA defines net revenues as "gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees. *See* 25 U.S.C. § 2703(9) (emphasis added).

Here, however, by circumventing the management contract review process, Respondents were able to receive forty percent (40%) of "net win", from which operating expenses were not first deducted. A review of the Tribe's financial statements shows that in FY 2001, net win equated to 49.3% of net revenue at Rivermist and 58.4% of net revenue at Travel Plaza. In fiscal year 2002, 40% of "net win" was equal to 56.7% of net revenue at Rivermist and 50.8% of net revenue at Travel Plaza. The average over both years and both operations is 53.8% of net revenue. In short, Carlo/Ong profited more from gaming at Rivermist and Travel Plaza than did the Tribe. This violation threatens the integrity of Indian gaming.

The seriousness of this violation is underscored by NIGC regulations, which provide that it is a substantial violation for a management contractor to operate a gaming operation without a contract approved by the Chairman. 25 C.F.R. § 573.6 (a)(7). Substantial violations expose tribal gaming operations to closure orders. This is the severest penalty allowed under the IGRA and NIGC regulation.

B. Sole Proprietary Interest Violation

This is a serious violation. IGRA requires, as one of the necessary conditions for a tribe to open and operate a casino, a gaming ordinance approved by the NIGC Chairman. 25 U.S.C. §§ 2710(b)(B); 2710(d)(1)(A). For approval of a gaming ordinance, IGRA requires, among other things, that "the tribal gaming ordinance provide that the Tribe have the sole proprietary interest in and responsibility for the conduct of any gaming activity." 25 U.S.C. §2710(b)(2)(A); 25 C.F.R. §522.4(b)(1), 522.7. The formal declaration of the policy behind the statute underscores this point by stating that one of the purposes of IGRA is "to ensure that the Indian tribe is the primary beneficiary of the gaming operation. . ." *See* 25 U.S.C. § 2702(2).

As discussed above, Carlo/Ong had a proprietary interest in Rivermist and Travel Plaza, and in fact profited more from gaming at those operations

than did the Tribe itself. The average over both years and both operations, based on figures available, is 53.8% of net revenue to Carlo.[5] Moreover, Carlo had primary responsibility for the blackjack operation in violation of the IGRA and NIGC regulations. Carlo ran the blackjack operation as its own separate business and thereby controlled the money flowing into and out of the operation. These actions threaten the integrity of Indian gaming by violating the sole proprietary interest and responsibility provision. 25 U.S.C. §2710(b)(2)(A); 25 C.F.R. §522.4(b)(1), 522.7. As a consequence, Carlo/Ong threatened the NIGC's ability to achieve its Congressionally mandated goals of ensuring that the Indian tribe is the primary beneficiary of the gaming operation, shielding the tribe from organized crime and other corrupting influences, 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

25 C.F.R. § 575.4 (c) provides that "[t]he Chairman may adjust a civil fine by an amount that reflects the respondent's history of violations over the preceding five (5) years." Neither Ong nor Carlo has a history of prior NIGC violations.

IV. Negligence or Willfulness

25 C.F.R. § 575.4(d) provides that "[t]he Chairman may adjust the amount of a civil fine based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission."

There is no indication that, during Ong/Carlo's tenure at the Tribe, that either party made any attempt to correct the violations set for in the NOV.

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 Ong, Carlo and the Tribe severed their business relationships in August 2002.

Pursuant to 25 U.S.C. § 2713(a) and 25 C.F.R. §§ 575.3 and 575.4, fines for continuing violations may be assessed in an amount up to $25,000 (twenty five thousand) per day per violation. Here, each daily illegal act is deemed a separate violation. *See* 25 C.F.R. §§ 575.3 and 575.4(a)(2). The Chairman has determined that two separate

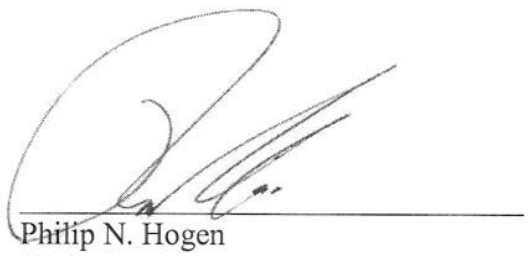
[5] Carlo did not provide complete accounting records for the blackjack operation, and therefore the Tribe's independent accounting firms were unable to successfully audit the blackjack operation. Consequently, we have been unable to identify exactly how much money Carlo made on the blackjack games.

violations occurred each day that the Respondents managed the Travel Plaza and Rivermist casinos without an approved contract and had a proprietary interest in and responsibility for the casinos. Consequently, the Chairman has the authority to assess a fine in the amount of $50,000 per day upon the Respondents.

The Chairman hereby assesses a fine in the amount of Five Million One Hundred and Fifty Thousand ($5,150,000) ($50,000 per day) for the 103 day period between May 16, 2002, and August 28, 2002, on the Respondents for managing and having a proprietary interest in and responsibility for gaming at the Travel Plaza and Rivermist casinos. This fine represents an appropriate balancing of the factors cited above; including that managing without a contract 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: June 15, 2007.



Philip N. Hogen
Chairman
National Indian Gaming Commission