

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PRN 2431601
ORDER NO. 17-01-31-01

IN THE MATTER OF THE

PETITION OF 500 BROADWAY,

LLC FOR DECLARATORY

RULING UNDER N.J.S.A.5:12-82

OPINION
AND
ORDER

NEW JERSEY CASINO CONTROL COMMISSION

Matthew B. Levinson, Chairman
Sharon Anne Harrington, Vice Chair
Alisa Cooper, Commissioner

Appearances of Counsel:

For Petitioner 500 Broadway, LLC:

Lloyd D. Levenson, Esq.
Lynne Levin Kaufman, Esq.
(Cooper Levenson Attorneys at Law)

For the Division of Gaming Enforcement:

David Rebuck, Director
Mary Jo Flaherty, AAG
Mary Carboni, DAG

For the Casino Control Commission:

Dianna W. Fauntleroy, General Counsel
Elizabeth Casey, Senior Counsel

I. INTRODUCTION

This matter is before the Casino Control Commission (“Commission”) pursuant to the petition of 500 Broadway, LLC (“500 Broadway”) seeking a determination by the Commission that 500 Broadway, as landlord for portions of the former casino hotel known as Revel, is not required to hold a casino license pursuant to N.J.S.A. 5:12-82c(1) and (2) or a casino service industry enterprise license pursuant to the N.J.S.A. 5:12-82c(5)

II. FACTUAL BACKGROUND

On April 7, 2015, Polo North Country Club, Inc. (“Polo North”) which is the holding company of petitioner, purchased the former Revel casino hotel from Revel Entertainment Group, LLC as part of Revel Entertainment Group’s Chapter 11 bankruptcy proceeding.

On March 9, 2016, 500 Broadway filed an application for casino licensure with the New Jersey Division of Gaming Enforcement (“Division”). In response, the Division initiated its investigation of 500 Broadway’s casino license application.

On or about May 26, 2016, Polo North entered into a Revised and Restated Lease Agreement with Revel North Beach, LLC (“Revel North Beach”) for certain portions of the former Revel property.

On August 30, 2016, 500 Broadway filed the instant Petition. On January 3, 2017, the Division filed its response to Polo North’s Petition.

On January 11, 2017, Petitioner submitted an Amendment to the May 26, 2016 Lease Agreement.

On January 11, 2017, the Commission made certain evidentiary rulings regarding the proposed exhibits to be introduced by the parties regarding this declaratory ruling.

III. LEASE AGREEMENT

Pursuant to the Lease Agreement of May 26, 2016, as amended on January 11, 2017 (D-8, P-1)(“Lease Agreement”), Revel North Beach will lease from Polo North¹ portions of the former Revel casino hotel. The leased premises includes approximately 100,000 square feet of gross interior casino space; the former “Relish” restaurant and adjacent unfinished space; Basement Casino Call Center; the former “Player’s Club”; two (2) gift shops; Nine-Hundred (900) hotel rooms; the hotel front desk; the former “Ovation Hall” and “The Social”; self-park garage and valet parking areas; the “Spa Area”; and “Pool Area”. See Lease of May 26, 2016, Section 1.0 as amended January 11, 2017.

In addition, the tenant and its employees and guests will have a license to use the common areas of the Casino Hotel (elevators, hallways, etc.). *Id.* The lease premises may be altered, expanded or reduced from time to time. *Id.*

Under the Lease Agreement, Polo North retains control of approximately of 500 hotel room; all utilities; all HVAC and fire suppression systems; restaurants, nightclubs, and recreational areas not specifically included in the leased premises. *Id.* Moreover, Polo North retains control of the common areas of the

¹ Petitioner 500 Broadway, LLC is not a party to the Lease Agreement nor does it own the property which is the subject of the Lease Agreement. 500 Broadway LLC is wholly owned by Polo North Country Club, Inc.

casino hotel including elevators, hallways, lobby areas, and other common amenities. Id at Section 2.2.

The initial term of the Lease Agreement is for a period of five (5) years. The lease is renewable for four (4) additional five (5) year terms. Id.

IV. LEGAL ANALYSIS

Pursuant to N.J.S.A. 52:14B-8 and N.J.A.C. 19:40A-3.7, the Commission may “in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced by that agency.” Petitioner is before the Commission seeking a ruling as to the applicability of Section 82 of the New Jersey Casino Control Act as to the Lease Agreement.

N.J.S.A. 5:12-82 sets forth the requirements for casino licensure. Specifically, Section 82b (2) requires, in pertinent part, that the following persons hold a casino license prior to the operation of a casino in the casino hotel:

Any person who, whether as lessor or lessee, either leases an approved casino hotel or leases or has an agreement to lease a casino hotel which in the judgment of the commission can become an approved casino hotel within 30 months or with such additional time period as the commission may, upon a showing of good cause therefore, establish;

Section 82c sets forth exceptions to Section 82b. Section 82c states that prior to operation of a casino, every agreement to lease an approved casino hotel or the land thereunder shall be in writing and filed with the Commission and the Division. N.J.S.A. 5:12-82c. Pertinent to this this matter are Sections 82c(1), 82c(2) and 82c(5). Section 82c(1) states that the Commission may determine

that any person who does not have the ability to exercise any “significant control” over the approved casino hotel shall not be required to hold a casino license. N.J.S.A. 5:12-82c(1). Section 82c(2) states that the Commission may determine that any lessor of an approved casino hotel who does not own a significant portion of an approved casino hotel or the land thereunder shall not be required to hold a casino license. N.J.S.A. 5:12-82c(2). The Division must concur with the determination of the Commission in both of these instances and its concurrence may not be unreasonably withheld. N.J.S.A. 5:12-82c(1) and (2).

Section 82c(5) states that parties to a lease for an approved casino hotel or the land thereunder shall be required to hold either a casino license or a casino service industry enterprise license unless the Commission, expressly and for good cause, determines otherwise. N.J.S.A. 5:12-82c(5).

Presently, the facility that is the subject of the Lease Agreement is not an approved casino hotel. However, it is likely that the facility may become an approved casino hotel within 30 months. Accordingly, Section 82b(2) is applicable to the lessor under the Lease Agreement unless one of the exceptions in Section 82c applies.

In support of its Petition, 500 Broadway argues that, as lessor, it does not have the ability to exercise any significant control over either the approved casino hotel or the operation of the casino contained therein. Therefore, Petitioner asserts that the Commission may determine that no license is required.

Ultimately, the question before the Commission is whether, under the terms of the May 26, 2016 Lease Agreement as amended, Petitioner retains “significant control” over the casino hotel or the casino operations to require licensure. The Polo North/Revel North Beach Lease Agreement is a matter of first impression for the Commission. This is the first time the Commission has been asked to determine if a casino hotel may exist entirely within a separate hotel.

When construing language in a statute, the overriding goal is to determine the intent of the Legislature and to give effect to the Legislature’s intent. See State v. Shelley, 205 N.J. 320, 323 (2011); DiProspero v. Penn, 183 N.J. 477, 492 (2005). The best indicator of legislative intent is the plain language chosen by the Legislature. DiProspero, supra, 183 N.J. at 492. “When the Legislature’s chosen words lead to one clear and unambiguous result, the interpretive process comes to a close, without the need to consider extrinsic aids.” State v. D.A., 191 N.J. 158, 164 (2007).

The term “significant control” is not defined in the Act. “Significant” is defined to mean: 1. having meaning; 2. (a) having or likely to have influence or effect, and (b) probably caused by something other than mere chance. “significant.” Merriam-Webster Online Dictionary 2017. <http://www.merriam-webster.com> (31 Jan. 2017). “Control” is defined to mean: the power to influence or direct people’s behavior or the course of events. “control.” Merriam-Webster Online Dictionary 2017. <http://www.merriam-webster.com> (31 Jan. 2017) Thus, the plain and ordinary

meaning of “significant control” suggests that if Petitioner is likely to have influence or effect over the lessee; then the Petitioner’s control is significant.

In addition to the plain meaning of the statute, the Commission may refer to its previous decisions regarding this issue. In 2012, the issue of “significant control” was raised as part of MGA Gaming’s management agreement with Resorts Casino (PRN 2301202). In that matter, the Commission determined that the management agreement between the parties did not require a casino license, but required a casino service industry enterprise license (“CISE”) instead. Under the agreement MGA would own 10% of the reorganized DGMB Casino Holdings; moreover, MGA would have control over casino operations. However, the Commission held that MGA only needed a CSIE as the 90% ownership interest of DGMB outweighed MGA’s 10% interest and MGA’s complete management of Resorts was not unlimited in a number of sensitive areas. Pursuant to the agreement, MGA was required to consult with or obtain the prior approval of DGMB Casino before making decisions regarding personnel and financial controls, and casino operations.

Prior to the revision of the Act in 2011, the Commission had required casino licensure under circumstances evidencing far less control than that evidenced in the Polo North/ Revel North Beach Lease Agreement—and even absent either an ownership interest or a management agreement. In 2008, the Commission found that Margaritaville of Atlantic City was required to hold a casino license where the terms of a brand licensing agreement with a casino licensee evidenced extensive influence over casino operations. (PRN 2470802).

In 1996, Trump Casino Services was required to obtain a casino license by virtue of providing support services, including purchasing, management information systems, human resources, accounts payable, records retention, litigation and risk management, regulatory affairs, internal audit and collections to the three Trump casino licensees pursuant to a Service Agreement.

In the present matter, Petitioner maintains significant control over the casino hotel. Petitioner's ability to control the utilities and the common elements renders Petitioner a vital component in the day to day operations of the casino hotel facility and empowers Petitioner with influence over the lessee. Moreover, Petitioner will have control over the unfinished floors in the building and any portions of the facility not specifically included in the lease premises. Petitioner will continue to own the land underneath the casino hotel. Therefore, Petitioner is not exempted from licensure under N.J.S.A. 5:2-82c(1).

Additionally, Petitioner continues to own or lease a significant portion of a facility that could become an approved casino hotel. Accordingly, Petitioner is not exempted from licensure under N.J.S.A. 5:12-82c(2). Finally, there has been no showing to support a finding of good cause to relieve Petitioner from obtaining a casino license or a casino service industry enterprise license pursuant to N.J.S.A. 5:12-82c(5).

V. FINDING AND RULINGS

Based upon consideration of the entire record of these proceedings, the Commission finds and rules as follows:

1. The Lease Agreement between Polo North and Revel North Beach, LLC is for portions of the former hotel casino known as Revel located at 500 Boardwalk, Atlantic City;
2. The former casino hotel which is the subject of the Lease Agreement is not currently an approved casino hotel;
3. The former casino hotel which is the subject of the Lease Agreement can become an approved casino hotel within 30 months;
4. Under the Lease Agreement, Polo North retains control of approximately 500 hotel room; all utilities; all HVAC and fire suppression systems; restaurants, nightclubs, and recreational areas not specifically included in the leased premises as defined in the Lease Agreement;
5. Under the Lease Agreement, Polo North retains control of the common areas of the casino hotel including elevators, hallways, lobby areas, and other common amenities;
6. Under the Lease Agreement, Polo North continues to own the land underneath the casino hotel;
7. Under the Lease Agreement 500 Broadway and its holding company Polo North have the ability to exercise significant control over the approved casino hotel;
8. Under the Lease Agreement 500 Broadway and its holding company Polo North own or lease a significant portion of the approved casino hotel;
9. Good cause does not exist to relieve petitioner from the licensing requirements of N.J.S.A. 5:12-82b;

10. Petitioner, 500 Broadway, LLC's requested relief is DENIED.

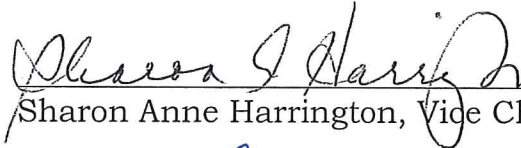
IT IS SO ORDERED on this 31st day of January 2017,

NEW JERSEY CASINO CONTROL COMMISSION

By:



Matthew B. Levinson, Chairman



Sharon Anne Harrington, Vice Chair



Alisa Cooper, Commissioner