IN THE MATTER OF THE PETITIONS OF MURRELL WATKINS AND ABRAHAM MCDANIEL TO INTERVENE IN THE CASINO LICENSE RENEWAL PROCEEDINGS FOR BALLY'S PARK PLACE, INC. AND RESORTS INTERNATIONAL HOTEL, INC.

Decided: April 27, 1989
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SYNOPSIS

Petitioners sought revocation of the casino licenses of Resorts and Bally's because of alleged racial discrimination against their bus companies. Petitioners claimed that sections 134 and 135 of the Casino Control Act gave them standing as private individuals to initiate revocation proceedings.

The Casino Control Commission ruled that petitioners did not have standing to initiate and prosecute license revocation proceedings. Section 76 of the Casino Control Act makes it the responsibility of the Division of Gaming Enforcement to investigate all alleged violations of the Act and to initiate violation proceedings. The filing of a complaint against a licensee or a request for revocation is within the exclusive province of the Division. Permitting private parties to initiate actions would affect the ability of the Division and the Commission to allocate their resources so as to discharge their statutory responsibilities. The Commission also noted that it has the authority without formal request from the Division to reopen a hearing and compel a licensee to demonstrate its continuing fitness; however, that does not create a right for third parties to compel the Commission to do so.

The Commission further concluded that sections 134 and 135, which define the affirmative action and equal opportunity obligations of casino licensees, could not be interpreted to grant standing to individuals. Those sections must be considered in the context of the entire Casino Control Act, which grants exclusive enforcement authority in section 76 to the Division.

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BY THE CASINO CONTROL COMMISSION:

I. INTRODUCTION

During the "public comment" portion of the January 20, 1988, public meeting of the Casino Control Commission (Commission), Murrell Watkins and Abraham McDaniel (petitioners) alleged that two casino licensees, Bally's Park Place, Inc. (Bally's) and Resorts International Hotel, Inc. (Resorts), had engaged in racial discrimination against their respective bus companies, Ocean Breeze Transit Company, Inc. and Cobra Coach Lines, Inc. As a result, the Commission directed the Division of Gaming Enforcement (Division) to investigate the allegations and to file a report with the Commission. The Division's report, dated September 19, 1988, found that there was no conclusive evidence that racially discriminatory conduct had occurred.

On October 6, 1988, Watkins and McDaniel filed petitions to intervene in the casino license renewal proceedings for Resorts and Bally's. By letter dated November 4, 1988, the Commission staff advised petitioners' counsel that the renewal proceedings in which intervention had been requested were no longer pending since two year license renewals had already been granted to Resorts (in February 1988) and Bally's (in September 1988). Accordingly, petitioners were asked whether they wished to withdraw their petitions.

When no response to the staff's inquiry was forthcoming, petitioners were further advised by letter dated December 1, 1988, that their intervention petitions would be administratively dismissed as moot unless a response was received by December 15, 1988. Petitioners' counsel responded by letter dated December 13, 1988, and asserted that the petitions were not moot because the petitioners would shortly file a rebuttal to the Division's report which would justify the revocation of the casino licenses in question.

On December 29, 1988, petitioners filed their rebuttal to the
Division's report and requested a private meeting with the Chairman of the Commission to discuss the rebuttal and submit additional documentary evidence in support of their claims. By letter dated January 4, 1989, petitioners' request for a private meeting with the Chairman was rejected because of the ongoing contested case before the Commission. In light of petitioners' continuing claim that the petitions were not moot, the Commission staff requested petitioners' counsel to brief the mootness issue. The staff also noted that an issue existed as to petitioners' standing to request the revocation of a casino license.

By letter dated January 23, 1989, petitioners' counsel responded to the request for a brief on the issue of mootness by indicating that the documentation submitted with their rebuttal was significant enough to require the casino licenses of Resorts and Bally's to be revoked. The rebuttal, as amended on January 26, 1989, disputed the Division's findings and alleged that the Division overlooked or misconstrued certain evidence which purportedly proved the petitioners' claims of racial discrimination.

By letter-report dated February 8, 1989, the Division recommended that the petitions be dismissed for mootness and lack of standing. A hearing was held on the petitions at the Commission's February 22, 1989, public meeting. At the inception of the hearing, counsel for petitioners voluntarily withdrew their requests to intervene, conceding that such requests were moot because the license proceedings in question had been concluded before the petitions to intervene were filed. During the course of the February 22 hearing, petitioners raised for the first time the claim that sections 134 and 135 of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., confer standing on private individuals to bring license revocation proceedings against casino licensees when such proceedings are based upon allegations of racial discrimination.

II. PETITIONERS' STANDING TO SEEK THE REVOCATION OF A CASINO LICENSE

In considering the petitioners' alternative request for the revocation of the casino licenses of Resorts and Bally's, the Commission must first determine whether the petitioners have standing under the Act to initiate and prosecute a proceeding to revoke a casino license. For the reasons set forth below, petitioners do not have standing.

Section 76 of the Act, which delineates the duties and powers of the Division, provides in pertinent part that the Division "shall
enforce the provisions of this act and all regulations promulgated hereunder, and prosecute before the commission all proceedings for violations of this act or any regulations promulgated hereunder." N.J.S.A. 5:12-76a.; emphasis supplied. Moreover, it is the Division's responsibility to "provide the commission with all information necessary for all action under [the licensing provisions] of this act and for all proceedings involving enforcement of the provisions of this act or any regulations promulgated hereunder." Id. Finally, subsection b. of section 76 declares that the Division shall "investigate violations of this act" and "initiate, prosecute and defend such proceedings before the commission, or appeals therefrom, as the division may deem appropriate." N.J.S.A. 5:12-76b. (3) and (4); emphasis supplied.

The inescapable conclusion to be drawn from these statutory provisions is that the Division is responsible for investigating all alleged violations of the Act and, if it believes such action is appropriate, initiating a violation proceeding against a licensee by the filing of a written complaint with the Commission.1 Nowhere in the Act is there any express grant of authority to any person other than the Division to initiate or prosecute alleged violations of the Act or regulations. Indeed, given the scope and magnitude of the Division's authority, the Commission would be loathe to impute such authority to any other person in the absence of a clear statutory directive. None appears.

The Commission has consistently held that the filing of a complaint against a casino licensee or a request for the revocation of a casino license is within the exclusive province of the Division. See In the Matter of the Public Advocate's Motion to Intervene in Boardwalk Regency Corporation's Application For Investment Credit Pursuant to N.J.S.A. 5:12-144 (PRN 243405; October 1984) (holding that the Public Advocate may not initiate a proceeding to enforce a casino license condition concerning housing obligations in Atlantic City); Hotel Employees and Restaurant Employees Local 54, et al. v. Read, et al. (Superior Court, Law Division, Docket No. L-86-3965, December 1986) (granting Commission motion to dismiss complaint by Local 54 seeking an order to compel the Commission to seize a casino license and appoint a conservator based on the financial status of a casino licensee); Petition of Brotherhood of Painters and Allied Trades, Local

1. Subsection 108a. provides that "[a]ny proceeding against a licensee or registrant shall be brought on by written complaint." N.J.S.A. 5:12-108a.
Union No. 277 (PRN 275706; October 1987) (holding that a union local does not have standing to petition for the revocation of a casino license based upon the licensee's alleged violation of the casino hotel facility requirements of the Act and regulations); and Petitions of Boardwalk Properties, Inc. and Pratt Hotel Corporation for a Declaratory Ruling Regarding the Columbus Plaza Site (PRN 245803 and 258803; October 1988) (Boardwalk Properties) (holding that a casino licensee and its co-developer of a proposed casino hotel do not have standing to seek a declaratory ruling that another casino licensee's acquisition of property allegedly needed for the proposed facility violates the pro-competition policies of the Act).

There are two primary reasons why the Legislature gave this exclusive authority to the Division. First, as noted in the Boardwalk Properties matter, the Attorney General and the Director of the Division are charged with allocating the resources of the Division so as to best achieve its responsibilities under the Act. See N.J.S.A. 5:12-55 and 56. Individual private interests should not be permitted to redirect or dilute the efforts of the Division, or divert its attention, by initiating essentially private enforcement proceedings against casino licensees. If such actions could be initiated by private interests, the Division would be statutorily obligated to participate in the proceedings. See N.J.S.A. 5:12-76. The inevitable result of such a system would be the disruption of ongoing investigations and interference with the prosecutorial discretion of the Division. Clearly, the public policy goal of strict regulation would suffer were the Division required to pursue every private complaint lodged against a casino licensee.

For similar reasons, the Commission should not be required to entertain complaints filed against licensees by private parties. As noted by our Supreme Court,

[1]he statutory and administrative controls over casino operations established by the [Casino Control] Act are extraordinarily pervasive and intensive... The regulatory scheme is both comprehensive and minutely elaborate. [Knight v. Margate, 86 N.J. 374, 380-81 (1981).]

If the Commission were required to hear and decide every private complaint which might be filed against a casino licensee by a disgruntled competitor, employee, business associate or patron, the Commission would have virtually no opportunity to allocate its resources so as to best discharge its massive regulatory responsibilities under the Act.
The Commission is not suggesting that members of the public in general and interested persons in particular do not have a role to play in assuring that applicants and licensees under the Casino Control Act meet the rigorous standards of conduct embodied therein. This is precisely why all private grievances brought to the Commission are referred to the Division—so that the Division may exercise its investigative and prosecutorial discretion and determine whether the information warrants further action. Indeed, because of its commitment to the policies of equal opportunity, the Commission here took the highly unusual step of directing the Division to conduct a thorough investigation and to report formally to the Commission. The Division did so. Petitioners' disagreement with the conclusion reached by the Division does not, however, give petitioners the right to file their own complaint for license revocation.

Petitioners' attempt to rely on the provisions of sections 134 and 135 of the Act, N.J.S.A. 5:12-134 and -135, is equally unavailing. The petitioners have failed to offer any persuasive reason why these provisions, which define the affirmative action and equal employment opportunity obligations of casino licensees, should be read to grant standing to private parties to impose regulatory sanctions on casino licensees. Subsection 135e., by giving the Commission the discretionary power "[t]o enforce in a court of law the provisions of section 134 or to join in or assist any enforcement proceeding initiated by any aggrieved person," clearly does not purport to empower an aggrieved person to commence a disciplinary proceeding before the Commission. Obviously, the Commission could not serve as judge and prosecutor. Thus, subsection 135e. refers to actions otherwise properly commenced before courts or other agencies, e.g., the Division on Civil Rights. See N.J.S.A. 10:5-1, et seq. Further, the Commission will not strain to reach an interpretation which would override the explicit delegation of enforcement responsibility granted by the remainder of the Act to the Division.

It is an elementary rule of statutory construction that a single provision of a statute should not be considered in a vacuum; rather, it is to be construed as a whole with reference to the system of which it is a part. Maritime Petroleum Corp. v. Jersey City, 1 N.J. 287-298 (1949). Absent some reason to conclude otherwise, sections 134 and 135 must be read in pari materia with those provisions of the Act, and in particular, section 76, which grant exclusive enforcement authority to the Division. The language of N.J.S.A. 5:12-135e. cited
by the petitioners does nothing more than give the Commission the discretionary authority to join in independent enforcement proceedings initiated by an aggrieved party in a court of law or another agency.

Finally, petitioners cannot defeat the evident statutory purpose by invoking the authority of the Commission to reopen a license hearing at any time. See N.J.S.A. 5:12-88, as amended by L. 1987, c.354, §11, eff. January 4, 1988. The fact that the Commission can, without a formal request from the Division, compel a casino licensee to demonstrate its continuing fitness to hold the license in no way creates a right in a third party to compel the Commission to exercise that authority. Rather, as was done here, the Commission would ordinarily refer any derogatory allegations to the Division for investigation and the Commission would rely on the Division's report in deciding if grounds for reopening a license hearing existed. While petitioners may disagree with the Division's findings, they cannot insist that the Commission reopen the license hearing nor can they interject themselves into the decisional process. A casino license is a matter of public concern and these petitioners have no individual right to object that a particular licensee is, in their view, unfit. Rather, if they have been aggrieved by the actions of a casino licensee, they may seek redress in a legally appropriate forum. That they have tried unsuccessfully to do so is no basis for converting the casino regulatory system into a common law court.

III. CONCLUSION

Petitioners cannot, and do not, dispute that the purpose of their amended petitions is the initiation of proceedings against Resorts and Bally's for the revocation of their casino licenses based upon alleged violations of section 134 of the Act. The Casino Control Act clearly establishes, as a matter of law, that no one other than the Division of Gaming Enforcement may initiate or prosecute a violation or revocation proceeding against a licensee before the Commission. Accordingly, petitioners do not have standing to file or prosecute an action for the revocation of a casino license, and the instant petitions are hereby dismissed.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.