



State of Louisiana
Gaming Control Board

KATHLEEN BABINEAUX BLANCO
GOVERNOR

H. CHARLES GAUDIN
CHAIRMAN

ANNE LACOUR NEEB
EXECUTIVE DIRECTOR

DECISION

IN RE DIGITAL PRESS AND GRAPHICS, LLC P081701849

This is an appeal by Louisiana State Police, Casino Gaming Division, ("Division") of the decision of the Hearing Officer of the Louisiana Gaming Control Board ("LGCB") fining Digital Press and Graphics, L.L.C. ("Digital") \$1,000.00 for the failure of Kenneth J. Breitenbach, fifty percent (50%) owner of Digital, to disclose his 2001 arrests for Obstruction of Justice and Conspiracy to Distribute Schedule I and II Narcotics.

FINDINGS OF FACT

Digital was permitted as a non-gaming supplier in 2000. Kenneth J. Breitenbach owns fifty percent (50%) of Digital. Mr. Breitenbach was arrested in 2001 for Obstruction of Justice, La. R.S. 14:130.1, and Conspiracy to Distribute Schedule I (Ecstasy) and Schedule II (Cocaine) Narcotics, La. R.S. 14:26, 40:967(A) and 40:966(A). Digital submitted a renewal application in April 30, 2002. The renewal application asks if the applicant, any stockholder, partner, or management employee has ever been charged with a criminal violation related to gaming or convicted of any felony

in any jurisdiction. Mr. Breitenbach answered no to both questions. Accompanying the application was a sworn notarized statement signed by Mr. Breitenbach dated April 12, 2002, which states,

I, the undersigned, do here by submit this Non-Gaming Permit Renewal application and do swear and affirm that I have read each of the questions in this application, that the answers which I have given are true and correct to the best of my knowledge, **that the information contained in the initial application remains the same and that if there are any changes, those changes are hereby attached.** (Emphasis added.)¹

The renewal was for five years. Thereafter, the permittee was required to submit an annual permit update form, an annual fee affidavit and annual fee during the duration of the permit. The form asked if there were any changes to the answers given in the original and subsequent renewal applications and if, since the submission of the original application, had any shareholder, member, or partner been detained, issued a summons or citation, arrested, or charged for any criminal offense or violation for any reason whatsoever regardless of the disposition of such offense.

Division agents testified at the hearing on this matter that the 2003 form and payment were received. The date of receipt was May 9, 2003. The form did not contain information about Mr. Breitenbach's arrest which was only discovered by a criminal history check. The payment was deposited but the form was lost. Mr. Breitenbach does not recall the form. He testified that he was unaware of any requirement to report changes to the original application or to report subsequent arrests or convictions.

The charges against Mr. Breitenbach were dismissed on October 28, 2003.

¹ See Exhibit 3.

The Division recommended revocation of Digital's permit based on Mr. Breitenbach's failure to notify it of his arrest as required by statute and regulation and failure to submit forms that were truthful and complete.

LEGAL ANALYSIS

As fifty percent owner of Digital, Mr. Breitenbach was required to meet and maintain suitability. La. R.S. 27:28(H)(1) and (F)². A permittee is required to provide information and documentation to reveal any fact material to a suitability determination. La. R.S. 27:28(B)(4)³. A permittee has continuing duty to inform the board and division

² Louisiana Revised Statute 27:28(H)(1) provides:

Any person who has or controls directly or indirectly five percent or more ownership, income, or profit or economic interest in an entity which has or applies for a license or permit or enters into a casino operating contract with the state pursuant to the provisions of this Title, or who receives five percent or more revenue interest in the form of a commission, finder's fee, loan repayment, or any other business expense related to the gaming operation, or who has the ability, in the opinion of the board, to exercise a significant influence over a licensee, the casino gaming operator, a permittee, or other person required to be found suitable pursuant to the provisions of this Title, shall meet all suitability requirements and qualifications pursuant to the provisions of this Title.

Louisiana Revised Statute 27:28(F) provides:

All licensees, all permittees, the casino gaming operator, and any other persons who have been found suitable or approved by the board or division shall maintain suitability throughout the term of the license, permit, casino operating contract, or approval. In the event of a current prosecution of an offense as provided in R.S. 27:28(B)(2), the board, or division where applicable, shall have the discretion to defer a determination on a person's continuing suitability pending the outcome of the proceedings provided that if a decision is deferred pending such outcome the board, or division where applicable, may take such action as is necessary to protect the public trust, including the suspension of any license or permit.

³ Louisiana Revised Statute 27:28(B)(4) provides:

The board or division, where applicable, shall not grant a license or permit, enter into a casino operating contract, or issue any other approval pursuant to the provisions of this Title to any person who is disqualified on the basis of the following criteria:

* * *

(4)The failure to provide information and documentation to reveal any fact material to a suitability determination, or the supplying of information which is untrue or misleading as to a material fact pertaining to the suitability criteria.

of any possible violation of the Gaming Control Law and of any rules adopted by the Board. La. R.S. 27:28(G)⁴. Pending felony charges disqualify an individual and render the permittee unsuitable for participation in the gaming industry. La. R.S. 27:28(B)(2)⁵.

Digital had a duty to inform the Board and Division of the pending charges against its owner from the time of the arrest in 2001. At that time, Mr. Breitenbach was disqualified. Louisiana Revised Statute 27:28(F) requires permittees to maintain suitability. In the case of pending prosecution, the Board has discretion to defer determination of an individual's suitability pending outcome of the proceedings but if it does so, must take such action to protect the public trust. La. R.S. 27:28(F)

The Board was hindered from its duty by the permittee's failure to notify the Division or the Board of its owner's arrest. Mr. Breitenbach's claim of ignorance of the disclosure requirement does not diminish or forgive the permittee's actions.

Additionally, Mr. Breitenbach, on behalf of the permittee, signed an affidavit in 2002 swearing "that the information contained in the initial application remains the same and that if there are any changes, those changes are hereby attached." No mention was made of the arrests which was a material change from the initial application which asks if

⁴ Louisiana Revised Statute 27:28(G) provides:

All licensees, all permittees, the casino gaming operator, and any other persons required to be found suitable shall have a continuing duty to inform the board and division of any possible violation of this Title and of any rules adopted by the board. No person who so informs the board or division of a violation or possible violation shall be discriminated against by the applicant, licensee, permittee, or casino gaming operator because of supplying such information.

⁵ Louisiana Revised Statute 27:28(B)(2) provides:

The board or division, where applicable, shall not grant a license or permit, enter into a casino operating contract, or issue any other approval pursuant to the provisions of this Title to any person who is disqualified on the basis of the following criteria:

* * *

(2) There is a current prosecution or pending charge against the person in any jurisdiction for any offense listed in Paragraph (1) of this Subsection.

the applicant or any owner has been arrested for a crime which is punishable by law for more than one (1) year. The answer was no. At the time Mr. Breitenbach signed the 2002 affidavit, the information had changed. Mr. Breitenbach had been arrested and the charges were pending. For the reasons set forth, it is our opinion that the Hearing Officer's decision should be reversed and the permit revoked.

Order

This matter having been considered by the Louisiana Gaming Control Board in open meeting of July 20, 2004:

IT IS ORDERED THAT the Hearing Officer's decision is **REVERSED** and Digital Press & Graphics non-gaming supplier permit, No. P081701849, is **REVOKED**.

THUS DONE AND SIGNED on this the 20th day of July, 2004.

BY: **LOUISIANA GAMING CONTROL BOARD**

H. CHARLES GAUDIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 22nd DAY
OF July, 2004
APPEAL DOCKET CLERK