



State of Louisiana

Gaming Control Board

M. J. "MIKE" FOSTER, JR.
GOVERNOR

HILLARY J. CRAIN
CHAIRMAN

DECISION OF THE LOUISIANA GAMING CONTROL BOARD

IN RE: BOYD GAMING D/B/A TREASURE CHEST CASINO VIOLATION # RGS010133

This is an appeal by the Louisiana State Police Gaming Division (Division) from the decision of the Hearing Officer ordering that the Notice of Violation (RGS010133) and SAR(01-1-09-075-1441) issued to Boyd Gaming d/b/a Treasure Chest Casino (Treasure Chest) are to be considered only a warning and no suspension, revocation or fine is applicable.

FACTS

A review of the record reveals that at 1:00 a.m. on March 20, 2001, the on-line real-time communication between the EGD (electronic gaming device or slot machines) and the EGD computerized monitoring system at Treasure Chest went down. At 1:40 a.m., Treasure Chest implemented manual procedures and at 1:58 a.m., an employee of Treasure Chest's surveillance department notified the Division that the EGD computer monitoring system was down and that manual procedures had been implemented.

An investigation was conducted which resulted in the issuance of SAR #01-1-09-075-1441 (a significant action/violation report) in connection with the incident, citing Treasure Chest with violation of L.A.C. 42:XIII.4205(A)(1), failure to immediately report the interruption of communication of the EGDs and the EGD computer monitoring system, and L.A.C. 42:XIII.4205(A)(2), failure to obtain prior written

approval from the Division of changes to the EGD computerized monitoring system.¹ On November 14, 2001, Treasure Chest was issued a "Notice of Violation and Hearing." An administrative hearing was conducted before the Hearing Officer of the Louisiana Gaming Control Board. From this hearing, the Division has appealed.

Each EGD is connected to a central data bank or data computer system (EGD computer monitoring system) which automatically performs certain functions and acquires and records data from each EGD. The EGD computer monitoring system monitors in real-time on-line everything that occurs on the EGD such as coin in, coin out, coin to the drop, door openings, whether the activities are normal or abnormal, etc. The surveillance department has a monitor which allows viewing of the activity recorded on the EGD monitoring system. In the event of an abnormal occurrence, surveillance can pan a camera to observe a particular EGD. Sgt. Al Majeau, shift supervisor at the time of the incident, stated that the EGD computer monitoring system is an important tool in alerting the Division to possible illegal activity, cheating, theft or attempts to tamper with the EGDs.

Sgt. Majeau testified that at 1:58 a.m. of March 20, 2001, he received a telephone call from a Treasure Chest surveillance employee who told him that the EGD computer monitoring system was down. Sgt. Majeau questioned him regarding how long the system would be down and the reasons for the system failure which the employee was unable to answer. He then instructed the employee to locate someone at the facility who did know those answers and have that person contact him at the Division office. Sgt. Majeau stated that he wanted to find out exactly what was going on and if Treasure Chest didn't have

¹ We note that the SAR lists the date of the occurrence as March 19, 2001 rather than March 20. The discrepancy was explained at the hearing by Sgt. Majeau. Apparently he mistakenly put the date on which his night shift began which was the night of the 19th.

satisfactory answers to his questions, he and another trooper were preparing to go over to the boat to find out for themselves. He was concerned that "someone or something was going wrong. Someone from the inside or outside of the casino may be tampering with the computer system or the machines themselves."

Approximately 10 to 15 minutes later, Ms. Taylor, who identified herself as the supervisor, telephoned Sgt. Majeau and told him that the EGD computer monitoring system was down and she had initiated manual procedures. Sgt. Majeau expressed surprise and concern that Treasure Chest had implemented manual procedures prior to having notified the Division that the EGD computer monitoring system was down. Ms. Taylor intimated that she was following standard procedure and didn't understand why he was questioning her about it. She said Sgt. Reggio, the former Riverboat Gaming Enforcement Supervisor for the New Orleans district, had previously given Treasure Chest permission to go directly to manual procedures before notifying the Division in the event that the system went down because this was a frequent occurrence. Sgt. Majeau asked Ms. Taylor "Do they have something in writing to that effect or anything like that?" He also discussed whether Treasure Chest had written authorization to make changes to the computer system but Ms. Taylor said that she knew of no authorizations to do anything. He stated that he asked her to "find out how long the system would be down, because it was still undetermined how long it had been down and it had been down for some time. And I told her if I couldn't find out what they were doing to get it back up, we would come out there. Basically, she knew I was coming out there with another trooper." Ms. Taylor telephoned him again approximately 20 to 30 minutes later to let him know that the system was back up and was doing fine. After learning that the system was back on-line he decided that he need not go to Treasure Chest that night. On April 17, 2001, he issued the above referenced SAR/Violation Report to Treasure Chest in connection with that incident.

Mr. Jack Bernsmeier, Vice-President and General Manager of Treasure Chest responded in writing to the SAR. (See State Exhibit 5). Therein Mr. Bernsmeier explained that approximately 2 years prior to the March 20, 2001 occurrence, Treasure Chest had been experiencing frequent EGD computer monitoring down time and had to frequently contact the Division for approval to go to manual procedures.

He wrote:

Once we corrected the problems our former Assistant General Manager requested permission from then - Sgt. Reggio to notify the Division that our system was down and go manual while waiting for a response. Lt. Reggio granted his request and this is the procedure that the property has been following since that time.

On March 20-21, 2001, we had Corporate IS personnel and an outside vendor in to upgrade our network hardware (from 3COM to CISCO gear). IS personnel believed that the upgrade would not affect CDS. However, when the network gear was changed out, it created a loop in the network and caused the CDS communication failure.

According to our slot log, the slot monitoring system went down due to a technician's error on March 20, 2001 at approximately 1:00 a.m. The system failure time coincided with the time that our Assistant Slot Shift Manager, Crystal Taylor, came on shift and the problem was brought to her attention by dispatch. She immediately began our in-house procedures to ascertain the nature of the problem, the length of time before it could be fixed, and physical verification that manual documents were available in the event we needed to go to manual jackpots/fills. At approximately 1:40 a.m., these procedures were completed but our IS personnel had not yet been able to determine the nature of the problem or to give her an estimated recovery time so she made the decision to go manual and notified surveillance of this. In accordance with previously agreed procedures, she asked surveillance to notify the Division and the surveillance log shows they made such notification at 1:58 a.m. At this point in time, neither slots nor surveillance knew what had caused the problem and thus were unable to give the Division a reason for the failure or an estimated time when the system would be back up. The problem was unanticipated because again, the change in the box was not expected to affect CDS and once it was removed and the failure caused, the delay

was in getting all of the CDS clients reconfigured to the new Ethernet segment. The system was fully functional by 3:15 a.m.

Thomas Michael Sheehan, Slots Manager at Treasure Chest, testified that in 1998 or 1999, Sgt. Reggio gave Treasure Chest verbal permission to follow the procedure outlined in Treasure Chest Exhibit #1, a letter from Frank J. Casullo, Assistant General Manager, dated December 30, 1998, addressed to Sgt. Reggio: when the EGD computer monitoring system goes down go to manual procedure then contact the Division and apprise the trooper on duty of the situation.

Sgt. Majeau testified that he spoke with Lt. Reggio who emphatically stated to him: "if they [Treasure Chest] didn't have it in writing, it never existed." Sgt. Majeau further testified that Lt. Reggio did not recall ever having given Treasure Chest permission to go to manual procedures without prior notification to the Division.

APPLICABLE LAW

L.A.C. 42:XIII.4205² was adopted on March 21, 2000, with an effective date of April 20, 2000.

² L.A.C.42:XIII.4205 provides as follows:

A. The Licensee shall have a computer connected to all EGD's on the riverboat to record and monitor the activities of such devices. No EGD's shall be operated unless it is on-line and communicating to a computer monitoring system approved by a designated gaming laboratory specified by the Division/Board. Such computer monitoring system shall provide on-line, real-time monitoring and data acquisition capability in the format and media approved by the Division.

1. Any occurrence of malfunction or interruption of communication between the EGD's and the EGD monitoring system shall immediately be reported to the Division for determination of further action to be taken. These malfunctions include, but are not limited to, system down for maintenance or malfunctions, zeroed meters, invalid meters and any variance between EGD drop meters and the actual count of the EGD drop.

2. Prior written approval from the Division is required before implementing any changes to the computerized EGD monitoring system or adopting manual procedures for when the computerized EGD monitoring system is down.

3. Each and every modification of the software shall be approved by a designated gaming laboratory specified by the Division/Board.

B. The computer permitted by subparagraph of this Subsection shall be designated and operated to automatically perform and report functions relating to EGD meters, and other exceptional functions and reports in the riverboat as follows:

Former Rule 4333 (L.A.C. 42:XIII.4333) was adopted by the State Police Riverboat Gaming Division in July 1995 and was in effect from then to the date of its repeal, April 20, 2000. The subject matter of former Rule 4333 is contained in Rule 4205 which became effective on April 20, 2000. The requirements of Rule 4205 are almost identical to those of former Rule 4333 with the following important exceptions. Rule 4205 provides that "any occurrence of malfunction or interruption of communication between the EGD's and the EGD monitoring system shall be immediately reported to the Division for determination of further action to be taken." Rule 4205 (A)(1). It also requires a licensee to obtain prior written approval from the Division before implementing any changes to the computerized EGD monitoring

-
1. record the number and total value of tokens placed in the EGD for the purpose of activating play;
 2. record the total value of credits received from the currency acceptor for the purpose of activating play;
 3. record the number and total value of tokens deposited in the drop bucket of the EGD.
 4. record the number and total value of tokens automatically paid by the EGD as the result of a jackpot;
 5. record the number and total value of tokens to be paid manually as the result of a jackpot. The system shall be capable of logging in this data if such data is not directly provided by EGD;
 6. have an on-line computer alert, alarm monitoring capability to insure direct scrutiny of conditions detected and reported by the EGD, including any device malfunction, any type of tampering, and any open door to the drop area. In addition, any person opening the EGD or the drop area shall complete the machine entry authorization log including time, date, machine identity and reason for entry; with exclusion of the drop team,
 7. be capable of logging in and reporting any revenue transactions not directly monitored by token meter, such as tokens placed in the EGD as a result of a fill, and any tokens removed from the EGD in the form of a credit;
 8. identify any EGD taken off-line or placed on-line of the computer monitor system, including date, time, and EGD identification number; and
 9. report the time, date and location of open doors or error conditions, as specified in §4201.D.2, by each EGD.

C. The Licensee shall store, in machine-readable format, all information required by paragraph b for the period of five years. The Licensee shall store all information in a secure area and certify that this information is complete and unaltered. This information shall be available upon request by a Division agent in the format and media approved by the Division.

system or adopting manual procedures for when the computerized EGD monitoring system is down. Rule 4205(A)(2). Former Rule 4333 contained no such provisions.

We need not determine whether Treasure Chest had obtained either prior written or verbal approval from the Division or Sgt. (now Lt.) Reggio to go to manual procedures prior to notifying the Division that the EGD computerized monitoring system is down. Even if the Division did give prior approval to the procedures followed on the March 20, 2001 incident (which we specifically do not find), according to the testimony of Mr. Sheehan and from Mr. Bernsmeier's written response, the procedure was established on December 31, 1998 or immediately thereafter while former Rule 4333 was still in effect and before the adoption and promulgation of Rule 4205 in April 2000. Treasure Chest was not entitled to rely on a procedure which it implemented under a rule which was repealed on April 20, 2000, 11 months before the incident of March 20, 2001.

The language of Rule 4205 (A) (1) is plain. The Division requested that the Board adopt Rule 4205 as written. It requires *immediate reporting* to the Division for a determination of further action to be taken (which would include going to manual procedures). The rule provides no exception to this requirement. Thus the Division is not authorized to dispense with Treasure Chest's duty of immediate notification of EGD computer monitoring system failure or interruption. Nor is the Division authorized to give Treasure Chest prior approval, written or verbal, to go to manual procedures before the Division has been notified of the interruption.

Rule 4205 was adopted and promulgated pursuant to the Administrative Procedure Act and pursuant to that Act was published in Volume 26, No. 04, April 20, 2000 of the Louisiana Register thus providing notice to Treasure Chest and other riverboat gaming licensees of a change in the applicable

regulations. Treasure Chest is a sophisticated business entity licensed to operate riverboat gaming in this state. It employs regulatory compliance personnel to update its employees on any changes in the applicable statutes or regulations.

Treasure Chest's internal controls approved by the Division do not constitute prior approval of the procedures followed on March 20, 2001. L.A.C. 42:XIII.2715 provides the general requirements for internal controls. Subsection Q provides that the licensee has a continuing duty to review its internal controls to ensure they remain in compliance with the Act and the Division's rules. Treasure Chest's internal controls (Treasure Chest Exhibit # 2) which were revised on March 26, 2001 and approved by the Division on April 24, 2001, do not address the issues of when the Division is to be notified of an EGD system monitoring failure or whether manual procedures should be implemented before the Division is notified of the failure. The internal controls provide that in the event the computer monitoring system becomes unavailable, manual procedures will be implemented and prescribe what those manual procedures will be. Thus the internal controls cannot be interpreted as prior approval of the Division by the procedures followed on March 20, 2001.

Treasure Chest was not entitled to rely on a procedure which it claims to have followed since 1998 or 1999 when that procedure conflicts with a rule which became effective 11 months before the occurrence of the incident before us today.

Accordingly, we find Treasure Chest is in violation of L.A.C. 42:XIII.4205(A)(1). We agree with the Hearing Officer's finding that the Division failed to prove a violation of Rule 4205(A)(2).

The riverboat gaming fine schedule does not contain a penalty amount for this violation. The landbased casino and racetrack slot machine gaming fine schedules contain a penalty of \$10,000 for

violation of identical provisions. We are currently in the process of promulgating an amendment to the riverboat fine schedule which includes a fine of \$10,000 for violation of Rule 4205(A)(1). The fine of \$10,000 is appropriate in this instance.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of April 15, 2002:

IT IS ORDERED THAT the decision of the Hearing Officer is **AMENDED** to reflect the imposition of a fine in the amount of \$10,000 against the licensee, Boyd Gaming, Inc. d/b/a Treasure Chest Casino, License No. RO12600098, in the matter of RGS010133 for violation of L.A.C. 42:XIII.4205(A)(1).

THUS DONE AND SIGNED this 17th day of April, 2002.

LOUISIANA GAMING CONTROL BOARD

BY:



HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 18th DAY
OF April 2002

APPEAL DOCKET CLERK
