



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: LLOYD JOHNSON D/B/A TEDDY'S NO. VP1700606984 INSPECTION REPORT NO. 012826

This is an appeal by video gaming licensee, Lloyd Johnson d/b/a Teddy's from the decision of the Hearing Officer ordering revocation of Mr. Johnson's device owner (Type 6) license.

The facts are undisputed. Mr. Johnson did not maintain the required minimum balance in his video gaming sweep account for the electronic transfer (sweep) of franchise payments to the designated bank of the State Treasurer for 30 of the 31 days of August 2000, in violation of 42 L.A.C. XI.2409(C).¹ The device owner must at all times either maintain the required minimum

¹ 42 L.A.C. XI.2409 provides in pertinent part:

1. All device owners shall remit to the division a franchise payment as provided for by the act. Franchise payments shall be calculated based upon the net device revenue, as verified by the electronic (soft) meters of the device. Revenues received from franchise payments shall be electronically transferred to the designated bank of the state treasurer.

2. All device owners shall establish and maintain a single bank account exclusively for the electronic funds transfer (sweep) of franchise payments to the designated bank of the state treasurer.

a. All device owners shall maintain a minimum balance at all times in the video gaming sweep account, or the account shall at all times be secured by a line of credit or bond issued by a bank or security company acceptable to the state treasurer. For purposes of this rule the term "bond" shall include cash, cash equivalent instruments or such other instruments as the division determines provide immediate liquidity.

b. The minimum balance and the security shall be equivalent to at least 15 percent of the previous month's net device revenues of all video gaming devices of the device owner

c. No withdrawals at any time from the device owner's video gaming account, including electronic

balance or the account must at all times be secured by a line of credit or bond acceptable to the State Treasurer. The minimum balance is equivalent to 15% of the previous month's device revenues of all devices of the device owner.

Mr. Johnson was cited in 1995 for insufficient funds available for electronic transfer and paid a \$500.00 fine. In 1998 he was again cited for violation of Rule 2409(C) and paid a \$1000.00 fine. According to the fine schedule, upon a third violation of Rule 2409(C), administrative action is mandated. This may result in revocation or suspension of the license.

After a hearing on the merits, the Hearing Officer found that, in view of his history, Mr. Johnson "has not and will not adhere to the demands regarding the sweep account" and concluded that Mr. Johnson's device owner license should be revoked.

After review of the record, we find that the decision of the Hearing Officer should be affirmed.

funds transfers, shall cause the account balance to be less than the minimum balance requirement prescribed above.

d. The payments shall be transferred electronically into the designated bank of the state treasurer semi-monthly or as otherwise prescribed by the division. Licensees shall authorize the division to initiate these transfers.

e. The funds shall be electronically transferred (swept) no later than the tenth day after the fifteenth and last day of every month. Any account found with insufficient funds shall constitute a violation of this Section.

f. Electronic funds transfers shall be calculated based upon device polling from the first through the fifteenth, and the sixteenth through the last day of every month.

g. Any delinquent monies not forwarded to the bank designated by the state treasurer by electronic funds transfers at the time of the transfer shall be subject to an interest penalty of 0.000575 per day (21 percent per annum). The interest penalty shall be in addition to any other penalties imposed by the division.

3. All licensed device owners shall be liable for that portion of net device revenues from such times as the funds are received into the device until said funds are deposited into the designated bank of the state treasurer.

...

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of April 17, 2001:

IT IS ORDERED THAT the Hearing Officer's decision is **AFFIRMED**.

THUS DONE AND SIGNED on this the 18th day of April, 2001.

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 19th DAY
OF April 2001

APPEAL DOCKET CLERK



**STATE OF LOUISIANA
GAMING CONTROL BOARD**

**ADMINISTRATIVE HEARING
JANUARY 11, 2001**

**HEARING OFFICER
JOSEPH E. ANZALONE, JR.**

**IN RE: LLOYD JOHNSON
D/B/A TEDDY'S
#1700606984A**

TRUE COPY

Representative
Louisiana Gaming Control Board

IN RE: LLOYD JOHNSON
D/B/A TEDDY'S
#1700606984A

APPEARANCES:

For the State of Louisiana:
Ms. Karen Day White
Assistant Attorney General
339 Florida Street
Suite 500
Baton Rouge, LA 70801

For Teddy's:
Mr. Lloyd Johnson, Jr.
17001 Scenic Highway
Zachary, LA 70791
In Proper Person

STATEMENT OF THE CASE:

The Louisiana State Police Video Gaming Division seeks to revoke or, in the alternative, suspend the Type 6 video gaming license of Lloyd Johnson d/b/a Teddy's alleging that the establishment has three violation citations for insufficient funds in the sweep account.

STATE'S EVIDENCE AND CONTENTIONS:

The State has offered, filed, and introduced into evidence an exhibit file marked S-1 (in globo) and containing the following documents:

1. Notice of Hearing Date advising of an administrative hearing scheduled for January 11, 2001;
2. Request for administrative hearing received November 21, 2001;
3. Notice of Recommendation of Revocation or Suspension dated October 23, 2000;
4. ACH Return/Notification of Change Acknowledgement Report dated August 14, 2000;
5. Violation Inspection Report dated August 18, 2000;
6. Advisory Notice with copy of certified return receipt August 22, 2000;
7. Sweep Account Confirmation Form;
8. Louisiana State Police Electronic Video Poker Sweep Billing Record;
9. Violation/Inspection Report with copy of certified return receipt;
10. Inquire Violation/Inspection Report with ending date July 17, 1995;

11. Inquire Violation/Inspection Report with ending date August 4, 1998;

Division agent, Donna Stevens, explained that all video poker machines are connected to a central system and that every night the Division polls the machines and receives meter readings. Twice a month the Division checks the data by location of device owners and invoices the device owners electronically. The information is downloaded to a tape, and the tape is then sent to the bank. The bank transfers money electronically from the device owner's account to the Division's account. If a device owner is delinquent in payment, the bank sends a notice to the Division.

Ms. Stevens further testified that on August 14, 2000, she received correspondence from the bank informing the Division that Teddy's had insufficient funds in their account. A violation report dated August 18, 2000, was issued to the device owner. This was the third such offense for insufficient funds pursuant to L.A.C. 42:XI.2409 (C)(2)(e).

Prior to issuing the violation report, Ms. Stevens sent Teddy's a slip account confirmation form to insure that the device owner was in compliance with the minimum balance requirement, with an advisory notice regarding the sweep account. The account confirmation form and advisory notice were received on August 28, 2000, as evidenced by the certified return receipt.

Teddy's sent correspondence to the Division including a bank statement dated August 1, 2000, through August 31, 2000, confirming the minimum required balance was in the account.

Ms. Stevens testified that she did calculations based upon the bank statement using Teddy's previous net device revenue to determine the amount of the minimum balance. In this instance the minimum balance would have been fifteen percent of the July device revenue. The correct amount for the minimum balance should have been \$466.80. Ms. Stevens confirmed that between August 1, 2000, and August 31, 2000, Teddy's maintained this minimum balance for only one day.

Ms. Stevens also testified that during her employment with the Division she has cited Teddy's on three (3) separate occasions for failure to maintain the amount necessary in the sweep account. These violations were once in July, 1995, and the establishment was fined and paid five hundred dollars (\$500.00), again in July 1998, and the establishment was fined and paid \$1009.13, and the present violation.

Upon additional examination Ms. Stevens testified that before conducting the inspection of the sweep account, the Division mails an invoice to each device owner. Further, the Division allows a ten-day grace period wherein the device owner may call the Division to determine the correct amount for the minimum balance and that Teddy's did not avail itself of this privilege.

LICENSEE'S EVIDENCE AND CONTENTIONS:

Mr. Johnson alleges that since 1994 he has been cooperative with the Division in their regulatory efforts, and that he has called Ms. Stevens on more than one occasion to determine his minimum balance.

Mr. Johnson further testified that he did not have the minimum balance in his account for the August 2000 sweep, and that other financial obligations prevented him from depositing additional funds to the account.

FINDINGS OF FACT:

This court finds as a matter of fact that on two separate occasions prior to this request for revocation Mr. Lloyd Johnson d/b/a Teddy's had been cited and fined for failure to maintain the necessary minimum balance in the sweep account.

This writer finds that the licensee, in the instant proceedings, maintained the mandated minimum balance in his sweep account for only one day in August, 2000.

APPLICABLE LAW:

La. R.S. 27:308(B) provides:

The division may deny, condition, suspend, or revoke any license applied for or pursuant to the provisions of this Chapter for any violation of the provision of this Chapter or any rule or regulation of the division. In lieu of suspending, or revoking a license issued pursuant to this Chapter, the division may levy a fine not to exceed one thousand dollars per violation against any licensee. The division shall not levy a fine, condition the license of, or reinstate the license of any person or the approval of any device unless and until the person or device meets all criteria and requirements to be license or approved for play.

La. R.S. 27:311(D)(1) and (2) provides:

- (1) Each device owner shall remit to the division a franchise payment, in an amount equal to a percentage of the net device revenue derived from the operation of each video draw poker device owned by him. The amount of the percentage shall be based on the type off licensed establishment authorized by the division for the placement of video draw poker devices, as follows:

- (a) A restaurant, bar, tavern, cocktail lounge, club, motel or hotel 26%
 - (b) A qualified truck stop facility 32.5%
- (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, when the distribution of net device revenues is governed by R.S. 27:318, the franchise payment shall be twenty-two and one-half percent of the net device revenues.

La.R.S. 27:318(A) provides in pertinent part:

- (1) When the owner of the licensed establishment is not the licensed device owner of the devices placed in or on his premises, one-half of the monthly net device revenues received by the establishment owner, after deduction of one-twelfth the estimated total of the annual establishment fees plus one hundred dollar per device per month and any fee or tax levied by the local governing authority, shall be used to supplement purses for horseman as provided in Subsection B of this Section and shall be added to those presently available under R.S. 4:183. Such monies shall be made available for use as purses monthly, prior to the twentieth day of the month following the month in which they are earned.
- (2) When the owner of the licensed establishment is the licensed device owner of the devices place in or on his premises, one half of the monthly net device revenues received by the establishment owner in excess of five hundred dollars shall be used to supplement purses of horsemen as provided in Subsection B of this Section and shall be added to those presently available under R.S. 4:183. Such monies shall be made available for use as purses monthly, prior to the twentieth day of the month following the month in which they are earned.

L.A.C. 42:XI.2409(C)(1)(2) provide in pertinent part:

- (1) All device owners shall remit to the division a franchise payment as provided for by the act. Franchise payments shall be calculated based upon net device revenue, as verified by the electronic (soft) meters of the device. Revenues received from franchise payments shall be electronically transferred to the designated bank of the state treasurer.

- (2) All device owners shall establish and maintain a single bank account exclusively for the electronic funds transfer (sweep) of franchise payments to the designated bank of the state treasurer.
- (a) All device owners shall maintain a minimum balance at all times in the video gaming sweep account, or the account shall at all times be secured by a line of credit or bond issued by a bank or security company acceptable to the state treasurer. For purposes of this rule the term "bond" shall include cash, cash equivalent instruments or such other instruments as the division determines provide immediate liquidity.
- (b) The minimum balance and the security shall be equivalent to at least 15 percent of the previous month's net device revenues of all video gaming devices of the device owner.
- (c) No withdrawals at any time from the device owner's video gaming account, including electronic funds transfers, shall cause the account, including electronic funds transfers, shall cause the account balance to be less than the minimum balance requirement prescribed above.
- (d) The payments shall be transferred electronically into the designated bank of the state treasurer semi-monthly or as otherwise prescribed by the division. Licensees shall authorize the division to initiate these transfers.
- (e) The funds shall be electronically transferred (swept) no later than the tenth day after fifteenth and last day of every month. Any account found with insufficient funds shall constitute a violation of this Section.
- (f) Electronic funds transfers shall be calculated based upon device polling from the first through the fifteenth, and the sixteenth through the last day of every month.
- (g) Any delinquent monies not forwarded to the bank designated by the state treasurer by electronic funds transfers at the time of the transfer shall be subject to an interest penalty of 0.000575 per day (21 percent annum). The interest penalty shall be in addition to any other penalties imposed by the division.

REASONS FOR DECISION:

Mr. Lloyd Johnson, d/b/a Teddy's, failed to maintain the mandated minimum balance in his sweep account for thirty of thirty one days in August, 2000. This violation is the third within a space of six years and the fine schedule provides for administrative action.

Mr. Johnson is held to have become apprised of the demands placed upon a device owner at the time his original permit was issued. Mr. Johnson should have again become apprised of his responsibilities when he was cited in 1995 and again in 1998.

This court can surmise only that Mr. Johnson, in view of his history, has not and will not adhere to the demands regarding the sweep account

It is the opinion of this writer that the video poker permit presently held by Lloyd Johnson d/b/a should be revoked.