



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: FROSTY EXPRESS
No. 0904108464

This is an appeal by the Louisiana State Police, Video Gaming Division, of the decision of the Hearing Officer finding that Frosty Express is not in violation of the requirement to currently inform the Division, in writing, of any changes which could affect the status of any records, reports, or gaming devices.

Based on the facts and for the reasons assigned by the Hearing Officer which we attach to this decision and hereby adopt as our own, we conclude that the decision of the Hearing Officer should be affirmed.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of February 20, 2001:

IT IS ORDERED that the decision of the Hearing Officer be **AFFIRMED**.

THUS DONE AND SIGNED on this the 21st day of February, 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 23rd DAY
OF February, 2001

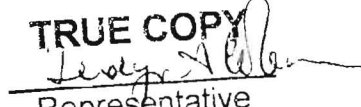
APPEAL DOCKET CLERK


**STATE OF LOUISIANA
GAMING CONTROL BOARD**

**ADMINISTRATIVE HEARING
OCTOBER 31, 2000**

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

**IN RE: FROSTY EXPRESS
NO: 0904108464A**

TRUE COPY

Representative
Louisiana Gaming Control Board

**IN RE: FROSTY EXPRESS
NO: 0904108464A**

APPEARANCES:

For the State of Louisiana:
Young Bonner
Assistant Attorney General
339 Florida Street, Ste. 500
Baton Rouge, Louisiana 70801

For: Frosty Express
Randy Clark, Owner
3135 N. Market Street
Shreveport, LA 71107
In Proper Person

STATEMENT OF THE CASE:

The Louisiana State Police Video Gaming Division alleges that the licensee herein be fined the sum of \$500.00, for failure to “currently” notify the Division of the departure of an employee who had previously applied, but had not yet been named a “Designated Representative.”

STATE’S EVIDENCE AND CONTENTIONS:

The State contends all licensees shall maintain records and keep the Division currently informed, in writing, of any changes that could affect the status of any records, reports or gaming devices. It further contends that this requirement encompasses notifying the Division of the departure of an employee who had applied, but was not yet named a “Designated Representative.”

The State has offered, filed, and introduced into evidence an exhibit file properly marked S-1, containing the following, to wit:

1. Notice of Violation;
2. Request for Hearing dated, August 28, 2000;
3. Notice of Hearing Date dated September 6, 2000;
4. Violation/Inspection Report No. 011356 dated July 26, 2000;

5. LSP-Video Gaming Division Run 16 dated July 26, 2000; and
6. Webster's 10th Edition Dictionary definition of the word "current."

Master Trooper James Ryder testified as follows:

1. He conducted, on July 26, 2000, a regulatory compliance inspection of Frosty Express. He asked Ms. Theresa Brumley, a designated representative of Frosty Express, to review the Division "Run 16" compilation of designated representatives and identify any person or persons no longer employed at the establishment;
2. Ms. Brumley, a designated representative, testified that Mary L. Emmels, listed in the "Run 16" as pending, was, as of February 5, 2000, no longer employed; and
3. He reasoned that the licensee had failed to "currently" notify the Division of Ms. Emmels' change in status and issued citation #011356.

LICENSEE'S EVIDENCE AND CONTENTIONS:

The licensee has offered, filed, and introduced into evidence an exhibit file properly marked Clark No. 1 through Clark No. 7, and containing the following:

- | | |
|---------|---|
| Clark 1 | Louisiana State Police Video Gaming Division Supplemental Investigative Report dated August 18, 2000, regarding Inspection Report No. 011356; |
| Clark 2 | Louisiana State Police Video Gaming Division suggested status form for designated representatives; |
| Clark 3 | List of Frosty Express' designated representatives together with four (4) applications for additional designative representatives dated May 24, 2000, and |

sent to Louisiana State Police for processing:

- Clark 4 Correspondence sent from Louisiana State Police Video Gaming Division dated July 10, 2000, containing the approval of Erin Ray as a designated representative;
- Clark 5 Correspondence sent from Louisiana State Police Video Gaming Division dated July 10, 2000, containing the approval of Shadie Brumley as a designated representative;
- Clark 6 Correspondence sent from Louisiana State Police Video Gaming Division dated July 10, 2000, denying the appointment of Cynthia Broussard as a designated representative; and
- Clark 7 Correspondence sent from Louisiana State Police Video Gaming Division dated July 10, 2000, containing the approval of Kristina Flint as a designated representative.

The Court has ordered the parties to produce, file, and introduce into evidence exhibits marked Court 1, 2, and 3, containing the following:

- Court 1 Advisory Notice dated July 24, 1998; Application/License Withdrawal; Video Gaming Revised Enforcement Districts; and Multiple Use Reporting Form.
- Court 2 Representatives/Manager Applications submitted on behalf of Kristina Flint, Shadie Brumley, Tammy Jones, Shelley Church, Alma Brown, and Bonnita Casper; Notices sent by Lieutenant Jules Pinero to Randy Clark, owner of Frosty Express, indicating the approval of Kristina Flint, Shadie Brumley, Tammy Jones, Alma Brown, and

Bonnita Casper to be designated representatives; and two cover letters dated October 12, 1999, and December 23, 1998, respectively, sent to the Division by Frosty Express listing its current designated representatives.

Court 3 Advisory Notice dated July 24, 1998, sent to all licensed video gaming licensees from Lieutenant Stanley Griffin containing significant changes for video gaming procedures and forms.

Randy G. Clark, owner of Frosty Express testified that:

1. A complete list of designated representatives was mailed to the Division on May 24, 2000, together with a cover letter and four Designated Representative/Manager Applications for Shadie Brumley, Kristina Flint, Erin Ryan, and Cynthia Broussard, which the Division has since processed;
2. Mary Emmels, a yet unnamed designated representative, was not listed;
3. The Division 16 run of designated representatives contains the name of persons who are no longer employed at Frosty Express for a period of more than 1 year or longer;
4. The Division is not timely in its approval or disapproval of designated representative applications filed;
5. Mary Emmel's application, filed in January, 2000, was never approved by the Division; and
6. His wife attended a public meeting conducted by Sgt. Archie Griffin, wherein Division compliance requirements were explained.

Lanita Clark, wife of Randy Clark, testified:

1. She sent, but was unable to produce a copy of correspondence sent to the Division on April 1,

2000, reflecting a change in status of the designated representatives identical to the correspondence dated May 24, 2000, a copy of which has been introduced as Clark 3;

2. She sends, to the Division, an updated list each time a new designated representative is hired; and
3. Frosty Express is subject to numerous inspections and prior to this violation, the procedure currently in place has been appropriate.

At the rehearing held on October 31, 2000, Randy Clark moved for dismissal of the violation due to the fact that he was unable to procure from the Division the paperwork submitted regarding the application of Mary Emmels' pending status as a designated representative. This motion was denied.

He further testified that:

1. The Division was unable to locate any record of application submitted by Mary Emmels, nor the list of designated representatives submitted by Frosty Express in December, 1998, October, 1999, April 1, 2000, and again on May 24, 2000;
2. He paid a personal visit to the Video Gaming Division in Baton Rouge and spoke to Lieutenant Stanley Griffin regarding Frosty Express' method of reporting the status of its designated representatives, and to obtain a copy of the May 24th correspondence that he sent to the Division;
3. Lieutenant Griffin explained that Frosty Express' reporting method of enclosing a cover letter listing only the current designated representatives, while not the preferred method of reporting, is perfectly acceptable;
4. The Division "16" run dated July 26, 2000, lists Shelley Church's status as "R" indicating she was no longer employed;
5. The Division has no paperwork in their records that would reflect why a change was made in the

- status of Shelley Church as a designated representative of Frosty Express; and
6. Frosty Express has sent the same type of designated representative cover letter to the Division "any time they have had to send anything in." This method was acceptable by the Division in October of 1999, when a different cover letter listing the designated representatives was accepted and acted upon.

FINDINGS OF FACT:

This court is convinced that Frosty Express, did, on April 1, 2000, and again on May 24, 2000, send to the Division a notification that listed the approved designated representatives. These letters, however, did not list the names of persons whose applications for approval as designated representatives were pending nor departures of previously approved designated representatives. The "Run 16" dated July 26, 2000, indicates, without question, that Ms. Shelly Church, as of April 18, was no longer in the employ of the licensee. For that entry to be made, correspondence prior to that date is a necessity. This fact convinces this court of the existence of the April 1, 2000, letter.

Although an application on behalf of Mary Emmels to be named a designated representative has been suggested, there is no physical evidence that such exists. This court, however, is convinced that such application did exist.

Identical letters regarding designated representatives were mailed to the Division in December, 1998; October, 1999; April, 2000; and May, 2000, and were accepted without question.

The **VIDEO GAMING DIVISION ADVISORY NOTICE (Clark 8)** dated November 25, 2000, contains, in part, the following language:

.....As stated in previous industry Advisory Notices, information submitted to the Division should encompass those individuals that the licensees utilize in managerial and/or authoritarian positions that require suitability verification.....

.....Licensees that provide information on employees that do not meet the criteria of the foregoing regulations produce processing back logs for Division personnel.

APPLICABLE LAW:

LAC 42:XI.2411(A)(9) provides as follows, to wit:

A. General provisions.

9. All licensees shall maintain all required records, submit all required reports, and keep the division currently informed in writing, of any changes which could effect the status of any records, reports, or gaming devices.

REASONS FOR JUDGMENT:

LAC 42:XI.2411(A)(9) demands that all licensees shall maintain all required records, submit all required reports, and keep the division currently informed, in writing, of any changes that could affect the status of any records, reports or gaming devices.

The Divison accepted the correspondences, which listed the named designated representatives, but not employees who had applied but had not yet been approved, dated December, 1998; October, 1999; April, 2000; and May, 2000, regarding reporting designated representatives, without complaint.

Mary Emmels was not a named designated representative. Her status could only be described as an employee; a fact the **VIDEO GAMING DIVISION ADVISORY NOTICE** prohibits from disclosure.

The law is silent as regards the information demanded in any correspondence relative to designated representatives, nor is this court aware of a decision by a higher authority. In the absence of such this court must accept the **ADVISORY NOTICE** sent to the licensee as authority for form.

For the above reasons, I find that Frosty Express is not in violation of LAC 42:XI:2411(A)(9).

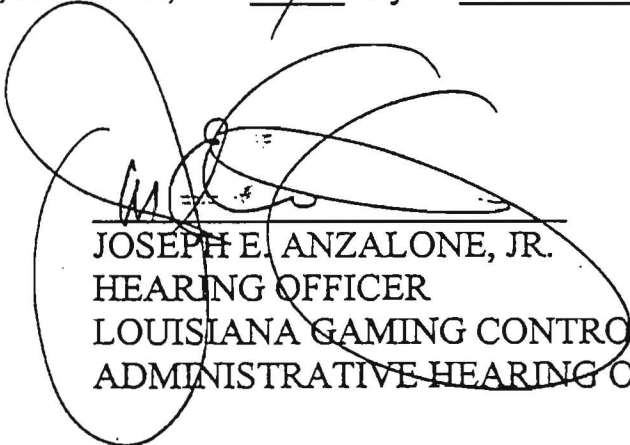
IN RE: FROSTY EXPRESS
NO. 0904108464A

DECISION

When, after a review of the pleadings, the evidence; the arguments of the parties herein, for the reasons aforesaid,

IT IS ORDERED, ADJUDGED AND DECREED that Frosty Express is not in violation of the requirement to currently inform the Division, in writing, of any changes which could affect the status of any records, reports, or gaming devices.

Baton Rouge, Louisiana, this 7 day of Dec, 2000.


JOSEPH E. ANZALONE, JR.
HEARING OFFICER
LOUISIANA GAMING CONTROL BOARD
ADMINISTRATIVE HEARING OFFICE

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 7th DAY
OF December 2000
[Signature]
DOCKET CLERK, ADMINISTRATIVE HEARING OFFICE

cc: Rowdy Clark
Young Bonner, Esq.
Sgt. Jules Pinerod

A TRUE COPY ATTEST
LOUISIANA GAMING CONTROL BOARD
HEARING OFFICE
BATON ROUGE, LA 12-7-00

[Signature]
BY: CLERK