



State of Louisiana

Gaming Control Board

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

HILLARY J. CRAIN
CHAIRMAN

DECISION LOUISIANA GAMING CONTROL BOARD

RDS, INC. D/B/A MR. GATTI'S
NO. V1001212129

CONSOLIDATED WITH

EIGHT THREE ONE, INC. D/B/A MR. GATTI'S
NO. V1002203463

This is an appeal from the decision of the Hearing Officer in the above consolidated matters denying the original video gaming application of RDS, Inc. (RDS), and the renewal application of Eight Three One, Inc. (Eight Three One)

By decision dated August 16, 2000, this Board denied the renewal application of RDS, Inc. d/b/a Mr. Gatti's (No. VP1001203096) due to the continued close business ties between William E. Keeley and Richard Shetler, Mr. Shetler's ability to exercise influence and control over the licensee, Mr. Keeley's continued close business association with Mr. Shetler and Mr. Keeley's admitted structuring of the business transactions with Mr. Shetler in an attempt to help Mr. Shetler avoid potential forfeiture. At page 6 of the decision we stated:

Mr. Shetler is a convicted felon in a gaming related case. The sale [of RDS to Keeley] was timed to take place the day before the administrative

hearing in which the renewal of the RDS license was to be determined. Mr. Keeley's admission that he entered into an owner financing agreement with Mr. Shetler rather than make a bank loan and pay Mr. Shetler in one lump sum was done in an attempt to assist Mr. Shetler in avoiding potential forfeiture and fines arising from his guilty plea appears to be a violation of L.A.C. 42:XI.2417(B)(1). Such conduct also reflects on the general suitability of Mr. Keeley under La. R.S. 27:310 (B).

On October 6, 2000, RDS filed an original video gaming application which is before us today. According to the information furnished in this application, RDS had a new ownership structure, 50% of its stock was owned by William Keeley, Jr. and 50% by Sam M. Winston. Mr. Shetler remains the owner/lessor of the building and land which houses the business owned and operated by RDS. Winston also owned 25% of the stock of Eight Three One. At the time of the administrative hearing, Winston was no longer a shareholder of either corporation.

Although counsel for applicants contends that Mr. Shetler is now totally divested of ownership, influence and control of both RDS and Eight Three One, a review of the record reveals otherwise. One glaring instance is Sam M. Winston's purchase of 50% of the RDS stock, the subsequent redemption of that stock by RDS, and Mr. Winston's release as personal guarantor on the Eight Three One lease and the RDS lease.

Mr. Keeley stated that he realized that the Board had objections to the \$250,000 debt owed to Mr. Shetler from the October 26, 1999 purchase of RDS. Keeley said:

At that time, I decided since Sam -- we had been -- I talked with Sam and said why don't we -- what are some of the objections, you know, that were brought up in the original hearing and one of them was the \$250,000 note and we couldn't do anything about the landlord issue because we couldn't afford to buy that out, but he said why don't I become a partner in RDS, also, and we proceeded to work on that. And I went to Rick Shetler and negotiated, you know, that aspect of it.

Q. Negotiated what aspect of what?

A. Of buying--of paying off the loan, you know, Sam Winston coming in, having to do a new lease with Sam Winston on the lease as a guarantor, that sort of thing, him coming in as my partner.

Q. Why did you have to negotiate Sam Winston coming in as your partner with Richard Shetler?

A. Well, I guess negotiating is not the right word. It was more of informal, informational type situation where I informed him that I was going to do, you know, and as a lessor/lessee, you have certain financial obligations to your lease or meaning that, you know, if I have an increase or decrease in my ability to pay him, I should inform him. So anyway, we worked this out...

Exhibit 21, the minutes of a special meeting of the RDS Board of Directors dated August 1, 2000, indicates that Keeley and Winston jointly presented to the RDS Board a written agreement outlining the payment of \$325,000 to Shetler to pay off all outstanding debt to Shetler and a proposed lease to replace the existing lease between RDS and Shetler, subject to Shetler's agreement.

Exhibit 22, the minutes of the RDS Board of Directors dated August 3, 2000, shows RDS Board approval of a differently structured financial transaction than that approved on August 1st. Winston was to purchase the RDS stock for \$200,000 cash and he agreed to make a \$150,000 loan to RDS. Exhibit 23, titled "Agreement," was signed solely by Richard Shetler on August 31, 2000. Under the terms of the agreement Shetler acknowledges receipt of \$325,000.00 as payment in full of the \$250,000 loan from the October 26, 1999 stock purchase by Keeley in addition to payment of all loans owed to Shetler by RDS (approximately \$42,967.70), and amending the terms of the October 26, 1999 stock sale to Keeley from \$250,000.00 to \$313,482.69. Exhibit 25 is a promissory note in the sum of \$150,000 signed by Keeley individually and as president of RDS payable to Winston.

Mr. Keeley stated that the amendment of the October 26, 1999 stock sale by the August 31st, 2000, "Agreement" signed only by Shetler, was done strictly for tax purposes. Keeley explained:

Right, his CPA took advantage of – because what he was doing was trying, this transaction, he kept getting taxed each time he did this.

Q. Who is who?

A. Mr. Shetler. Whereas the note, you see he had a note he was able to, when you paying him a note, he is able to I guess get taxed as you get – paid the note as opposed to a lump sum and this was – so this kind of offset some of the taxes for him.

Q. Who requested this be done?

A. His CPA.

Q. Whose CPA?"

A. Ken Dugas at Poche somebody and somebody in Crowley, Louisiana.

Q. Is that Mr. Shetler's CPA?

A. Yes.

Mr. Keeley testified that upon having been notified of the recommended denial of the RDS video gaming application (No. V1001212129) which is before us today and the notice of denial of the Eight Three One application, Mr. Shetler negotiated Samuel Winston's buyout from both RDS and Eight Three One, including Winston's release as personal guarantor on a lease between Eight Three One and the Keeley Family Trust and the cancellation of the \$150,000 promissory note payable to Winston. According to Mr. Keeley, Winston filed suit for collection on the note and for redemption of the Eight Three One stock and Keeley was preparing to countersue. Keeley stated that he notified Winston of the notices of denial of the

video gaming applications and Winston responded:

[H]e said I will withdraw my suits, you know, just give me 10 days or so before you file anything, you know, so I can get out. So at that point in time, he went to – now, he was a guarantor on Rick Shetler's lease for RDS and at this point in time, we weren't speaking, if at all, and he went to Rick Shetler and his primary concern was to get off of his lease as a personal guarantor.

Q. Why did Mr. Winston go to Mr. Shetler?

A. Only he could answer that. I just know he went there to – he wanted – he is from, what I understand, one of his primary concerns was to get off of the Shetler lease because he was personal guarantor.

....

A. Negotiations went on for seems like two or three weeks. Once in a while, Shetler would call me and say, you know, if this, then that, basically he almost became an intermediary or a mediator.

The promissory note was canceled specifically releasing Keeley from the terms of the promissory note. The cancellation agreement was silent regarding RDS's release. The terms of the stock redemption agreement (Exhibits 39) provide that Winston returned his stock in both Eight Three One and RDS to the respective corporations in consideration of Shetler's purchase from Winston of the Nelson Road Store (a new proposed business location) pursuant to the terms of a letter agreement attached as Exhibit A to the document. Exhibit 40 is the letter agreement referred to in Exhibit 39. It provides that Richard Shetler holds harmless and agrees to indemnify Mr. Winston from any and all liabilities associated with RDS, Eight Three One, the Shetler lease and the Sulphur Lease (the lease in which the Keeley Family Trust is lessor and Eight Three One is lessee) in addition to holding Winston harmless and indemnifying him from any and all claims or causes of action by Keeley, Eight Three One, RDS, the Keeley Family Trust, Jeff Davis Bank for \$27,000 line of credit, Mr. Gatti's, and any vendees of RDS and Eight Three One. The agreement was

signed by Shetler and Winston, not by Keeley.

Mr. Keeley testified that either Shetler's or Winston's attorney prepared the stock redemption agreement. He (Mr. Keeley) stated that he never saw the agreement (Exhibit 40) until it was submitted to counsel for the Division approximately one week before the hearing.) He stated he was unable to explain the terms of the agreement, why they were included because he was not the author and he never saw it before, nor did he know why Mr. Shetler would agree to indemnify Winston against RDS, etc. He testified:

I have no idea. Now, I did – that was part of the negotiations where Shetler would call me and say will you let him off of your lease if this, that, and the other happens, and so we were in sort of a negotiations situation with him exiting and not wanting to talk to either one of us except through attorneys.

Appellant correctly argues that the Hearing Officer erred in finding that Richard Shetler is the lessor of the Sulphur (Ruth Street) location which is leased and operated by Eight Three One, Inc. The building and land on which the Sulphur location is located is owned by the Keeley Family Irrevocable Trust which leases the property to Eight Three One.

Appellants also allege as error the Hearing Officer's determination that several of the sales transactions between Mr. Shetler and Mr. Winston are shams because "this was never an allegation contained in any notice correspondence disseminated to the applicants in this matter and as such should not be a basis for denial." This assignment is without merit.

Applicants were notified that one of the proposed bases for denial is the close business relationship maintained between Keeley and Shetler whereby Shetler is able to exercise and indeed does exercise influence over the applicants. The fact that legal transactions directly affecting RDS, Eight Three One, Keeley, Winston and Shetler are found to be a sham is merely proof of Mr. Shetler's ability to exercise

influence over the applicants. Mr. Keeley's testimony and the legal documents entered into evidence make that abundantly clear. This assignment is without merit.

A review of the record overwhelmingly reveals that Mr. Keeley continues to maintain a close business relationship with Richard Shetler which goes way beyond that of lessor-lessee. Shetler obviously negotiated and made third party contracts with Winston which involved RDS, Eight Three One and Keeley, which Mr. Keeley attempts to explain away but is unable to do. Accordingly, 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 September 17, 2002:

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

THUS DONE AND SIGNED this the 17th day of September, 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 September 2002
APPEAL DOCKET CLERK
