



State of Louisiana
Gaming Control Board

BOBBY JINDAL
GOVERNOR

RONNIE JONES
CHAIRMAN

**DECISION OF THE
LOUISIANA GAMING CONTROL BOARD**

**IN RE: VODOO, L. L. C.
D/B/A VODOO BAR
NO. 3601115312**

This matter is before the Louisiana Gaming Control Board on a “Show Cause Order” wherein the parties were ordered to show cause why the appeal of Voodoo, L.L.C. d/b/a Voodoo Bar should or should not be dismissed.

The procedural history of this matter as outlined in the State of Louisiana, Office of State Police, Gaming Enforcement Division’s (“Division’s”) brief is as follows:

1. A “Notice of Recommendation of Revocation” of Voodoo Bar’s video gaming license was signed on April 19, 2013.
2. Voodoo Bar timely requested an administrative hearing on the recommendation which was initially set for June 26, 2013.
3. After several continuances, the hearing was held on September 9, 2013.
4. A motion for reopening was filed on September 18, 2013, by the Division.
5. The motion for reopening was denied and the Hearing Officer rendered a decision on November 14, 2013, revoking Voodoo Bar’s license.
6. On November 22, 2013, the Division filed a motion for reopening which was set for

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hearing on January 6, 2013.

7. On December 9, 2013, Voodoo Bar filed an appeal with the Board of the November 14, 2013, decision of the Hearing Officer.
8. On December 16, 2013, the Division filed a “Motion to Dismiss Appeal with Right to Reinstate upon Final Decision of the Administration Hearing Office.”
9. The Board issued a Show Cause Order on December 17, 2013, which ordered the parties to show cause, by briefs or memoranda with legal argument and authority, on or before the 30th day of December, 2013, why the appeal should or should not be dismissed.

The Division filed its memorandum supporting its motion to dismiss the appeal and argues that Voodoo Bar’s appeal is premature because the Hearing Officer has not acted on its request to reopen the matter. Voodoo Bar has no objection to the dismissal if its appeal right is preserved.

ANALYSIS

A decision in a case of adjudication shall be subject to rehearing, reopening, or reconsideration within ten days from the date of its entry. La. R.S. 49:959.¹ If an application for

¹ Louisiana Revised Statute 49:959 provides:

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the agency, within ten days from the date of its entry. The grounds for such action shall be either that:

- (1) The decision or order is clearly contrary to the law and the evidence;
- (2) The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;
- (3) There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or
- (4) There is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration, or review, and the order of the agency granting it, shall set forth the grounds which justify such action. Nothing in this Section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured

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rehearing or reopening is timely filed, the period to seek judicial review runs from the final disposition of the application. La. R.S. 49:959(B).

A request for a rehearing or reopening in an administrative hearing is analogous to a request for a new trial in a civil proceeding. Common grounds for the grant of a rehearing or reopening under the Administrative Procedure Act (“APA”) and a new trial under the Code for Civil Procedure are 1) a decision which is clearly contrary to the law and the evidence and 2) a party discovering evidence important to the issues or cause, which he could not, with due diligence, have obtained before or during the trial or hearing. La. R.S. 49:959; La. Code of Civ. Proc. art 1972.

The Code of Civil Procedure addresses the issue of a prematurely filed appeal by providing, “An order of appeal is premature if granted before the court disposes of all timely filed motions for new trial ...” La. Code of Civ. Proc. arts. 2088 and 2123. The Gaming Control Act and the APA are silent regarding the issue of an appeal filed before the Hearing Office disposes of a timely filed motion for a rehearing or reopening. Recognizing the analogous nature of a request for a new trial and a request for a rehearing, we will look to the Code of Civil Procedure and relevant cases for guidance in resolving the matter before us.

We agree that an appeal filed before the Hearing Officer acts on a timely filed motion for rehearing or reopening is premature. Jurisdiction still rests with the Hearing Officer until he rules on the motion and a timely appeal is taken to the Board. See *Richard v. Lafayette Fire and*

testimony or fictitious evidence. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a subordinate deciding officer. The hearing shall be confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

Police Civil Service Board, 07-1010 (La. App. 3 Cir. 9/19/07), 966 So. 2d 685.

The Division's motion for reopening was timely and the Hearing Officer has not ruled on the motion therefore the appeal is premature. The Board lacks jurisdiction over the appeal and the appeal will be dismissed. See ***Cleary v. Owens, 07-942 (La. App. 3 Cir. 9/19/07), 966 So. 2d 688.***

Pursuant to La. R. S. 49:959(B) and La. R. S. 27:25(E), either party shall have thirty (30) days from the Hearing Officer's final disposition of the request for rehearing or reopening to appeal to the Board.

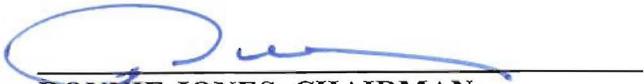
ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of January 16, 2014:

IT IS ORDERED THAT the appeal by Voodoo, L.L.C. d/b/a Voodoo Bar, License No. 3601115312, is **DISMISSED**.

THUS DONE AND SIGNED on this the **16th** day of **January, 2014**.

LOUISIANA GAMING CONTROL BOARD

BY: 

RONNIE JONES, CHAIRMAN