



State of Louisiana

KATHLEEN BABINEAUX BLANCO
GOVERNOR

Gaming Control Board

H. CHARLES GAUDIN
CHAIRMAN

ANNE LACOUR NEEB
EXECUTIVE DIRECTOR

DECISION OF THE LOUISIANA GAMING CONTROL BOARD

IN RE: FINE FOODS OF LOUISIANA, INC.
NO. P082601645

AND

IN RE: LOUISIANA SEAFOOD EXCHANGE, INC.
NO. P082600172

This matter is before the Louisiana Gaming Control Board on appeals from the Hearing Officer's decision. The State of Louisiana, Department of Public Safety, Office of State Police ("Division"), appeals that portion of the decision which does not revoke Louisiana Seafood Exchange, Inc.'s ("Louisiana Seafood") non-gaming supplier permit and fails to find Karl D. Turner, Bennet C. Miller, Jr. and Robert A. Walker unsuitable. Fine Foods of Louisiana, Inc. ("Fine Foods") and Louisiana Seafood Exchange appeal that portion of the decision that denies Fine Foods' renewal application.

FINDINGS OF FACT

The Board adopts the Hearing Officer's "Findings of Fact" as follows:

Louisiana Seafood Exchange, Inc. ("La. Seafood") is a Louisiana corporation, incorporated in 1988. On January 21, 1994 La. Seafood applied for a non-gaming supplier permit, listing Thomas M. Lusco, Jr., as president and a 80% shareholder, Bennet C. Miller, as vice-president and a 20% shareholder and Robert A. Walker as sales manager. On April 19, 1994 La. Seafood was issued a non-gaming supplier permit. Subsequently, its renewal

applications have been approved and La. Seafood currently holds a non-gaming supplier permit.

On June 28, 2001 Mr. Lusco sold his 80% ownership interest in La. Seafood to Miller & Walker, LLC. On October 18, 2001 Miller & Walker, LLC merged with La. Seafood so that currently Mr. Miller is a 60% shareholder and Mr. Walker, a 40% shareholder of La. Seafood.

Fine Foods of Louisiana, Inc. ("Fine Foods") was incorporated in Louisiana on April 26, 1999. On September 7, 1999 Fine Foods applied for a non-gaming permit. The application listed Melissa L. Hemelt as a 60% shareholder and Mr. Lusco with a 40% ownership interest. Fine Foods was subsequently issued a non-gaming supplier permit. On June 28, 2001 Ms. Hemelt and Mr. Lusco sold a 60% ownership interest in Fine Foods to Karl D. Turner, a member of an ethnic minority, and a 40% ownership interest in Fine Foods to Bennet C. Miller.

In its July 2001 renewal application, Fine Foods listed Mr. Turner as president and a 60% shareholder and Mr. Miller as secretary/treasurer with a 40% ownership interest. The renewal application was approved. Fine Foods' 2003 renewal application is currently pending with a recommendation by the Unit for denial.

Mr. Turner, who has held a senior management position at Xavier University and served the past 11 years as the full time Executive Director of the Louisiana Seafood Promotion & Marketing Board, testified that he was contacted by Mr. Miller about becoming involved with him as owners of Fine Foods. Mr. Turner stated :

"Q. How did Fine, how did you become involved in Find Foods?

A. Well, when there was a decision to purchase this company, we looked at the opportunities uh, for minority vendors to s, to sell to casinos quite frankly. This, this business uh, was born with that in the background, looking at uh the fact that quite frankly, there are no minorities in the seafood business. There are no minority owned processing plants, or shrimping boats or distribution companies. So by establishing a brokerage company uh, the minority firm, Fine Foods of Louisiana, might be able, uh, if we could source product and deliver it on time, be in the position to make sales uh, into that market. And so, Benny Miller contacted me about this opportunity. Exhibit 20, page 38, lines 5-13."

Both Turner and Miller devised a business procedure whereby Fine Foods, as a minority owned and operated business would seek seafood

business from the casinos, especially those who had set goals for the procurement of goods and services from minority-owned businesses. Fine Foods would operate as a broker in the seafood industry. Fine Foods entered into an agreement with La. Seafood whereby La. Seafood would send a price list to the various casinos with Fine Foods' name on it and a list of different seafood and prices. In ordering, the casinos would fax their orders to Fine Foods at La. Seafood's office or phone Fine Foods at a phone number answered by La. Seafood's employees, then the employee would take the order, deliver it and invoice the sales on Fine Foods' letterhead. The casino would issue a check to Fine Foods, which was deposited by Mr. Miller, or an employee of La. Seafood; then Mr. Miller would sign-off on a check to pay La. Seafood and a check to Mr. Turner. Mr. Turner was to receive 1% of the gross sales.

Under this business arrangement, Fine Foods did not need employees, an inventory, delivery trucks or a refrigeration plant to keep the seafood. It did lease an office from La. Seafood at its premises; however, the office was not functional.¹ After concluding its agreement with La. Seafood, Fine Foods commenced submitting vendor packets to the casinos describing itself as a minority-owned business. Fine Foods gross sales were:

1999	\$28,518
2000	207,156
2001	372,112
2002	503,728
2003	935,356

Only .05% of sales was made to non-gaming entities. On occasion Mr. Turner would contact a customer and thank him for the business, however, primarily; all contact people for Fine Foods were employees of La. Seafood.

David Kushner, a CPA and expert in business formations, testified that the out-sourcing business model used by Fine Foods was an excellent way to conduct business without a large overhead. According to Mr. Kushner, Fine Foods would need sales of approximately \$1.4 million dollars to break even if it sought to have employees, delivery trucks, inventory and a refrigeration plant.

Additionally, the Board finds that Mr. Miller initiated Mr. Turner's involvement with Fine Foods. Miller testified that:

¹ See Exhibits 23a, 23b and 23c. Photos

[Fine Foods] was set up to fill a niche market. That niche market was minority – to fulfill minority procurement for properties that require it, and they have plenty of other properties other than casinos that have set-aside business for minorities. Under the way that Louisiana Seafood Exchange is set up, both myself and Robert Walker being white male Caucasians, we didn't fit into too many minorities. So there was a whole section of business out there that was implied through us out there that wasn't being fulfilled.

Now in business, if you can get the upper hand or you could fulfill these procurement requirements, why wouldn't you do it?

The Board also finds that Mr. Walker was aware of the arrangement, in part, by handling many of the day - to - day operational activities of Fine Foods.

APPLICABLE LAW

The legal provisions applicable to the issues in this matter are found in general gaming, riverboat, landbased casino, and slots-at-the-track laws and regulations as follows:

Louisiana Revised Statute 27:28(A) and (B)(4) provides:

No person shall be eligible to obtain a license or permit, enter into a casino operating contract with the state, or obtain any other approval pursuant to the provisions of this Title unless the applicant has demonstrated by clear and convincing evidence to the board or division, where applicable, that he is suitable. For the purposes of this Title, "suitable" means the applicant, licensee, casino gaming operator, permittee, or other person is:

- (1) A person of good character, honesty, and integrity.
- (2) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or carrying on of the business and financial arrangements incidental thereto.
- (3) Capable of and likely to conduct the activities for which the applicant, licensee, permittee, casino gaming operator, or licensed eligible facility is licensed, permitted, or approved pursuant to the provisions of this Title.

(4) Not disqualified pursuant to the provisions of Subsection B of this Section.

. . .

B. The board or division, where applicable, shall not grant a license or permit, enter into a casino operating contract, or issue any other approval pursuant to the provisions of this Title to any person who is disqualified on the basis of the following criteria:

(4) The failure to provide information and documentation to reveal any fact material to a suitability determination, or the supplying of information which is untrue or misleading as to a material fact pertaining to the suitability criteria.

Louisiana Revised Statute 27:28(F) provides:

All licensees, all permittees, the casino gaming operator, and any other persons who have been found suitable or approved by the board or division shall maintain suitability throughout the term of the license, permit, casino operating contract, or approval. In the event of a current prosecution of an offense as provided in R.S. 27:28(B)(2), the board, or division where applicable, shall have the discretion to defer a determination on a person's continuing suitability pending the outcome of the proceedings provided that if a decision is deferred pending such outcome the board, or division where applicable, may take such action as is necessary to protect the public trust, including the suspension of any license or permit.

Louisiana Revised Statute 27:28(G) provides:

All licensees, all permittees, the casino gaming operator, and any other persons required to be found suitable shall have a continuing duty to inform the board and division of any possible violation of this Title and of any rules adopted by the board. No person who so informs the board or division of a violation or possible violation shall be discriminated against by the applicant, licensee, permittee, or casino gaming operator because of supplying such information.

Louisiana Revised Statute 27:28(H) provides:

(1) Any person who has or controls directly or indirectly five percent or more ownership, income, or profit or economic interest in an entity which has or applies for a license or permit or enters into a casino operating contract with the state pursuant to the provisions of this Title, or who receives five percent or more revenue interest in the form of a commission, finder's fee, loan repayment, or any other business expense related to the gaming operation, or who has the ability, in the opinion of the board, to

exercise a significant influence over a licensee, the casino gaming operator, a permittee, or other person required to be found suitable pursuant to the provisions of this Title, shall meet all suitability requirements and qualifications pursuant to the provisions of this Title.

- (2)(a) A lessor of immovable property forming any part of the complex of a licensed gaming operation is required to submit to suitability.
- (b) Notwithstanding anything contained in this Chapter to the contrary, the obligations to the division of the real estate lessor of a licensee who receives less than two percent of the net gaming revenue of a licensee and who is not involved in the day-to-day operations of the licensee shall be to provide such financial information, documentation, and necessary release forms for the division to make a determination that no person who fails to meet suitability requirements is receiving any funds received by the lessor from the licensee, or is participating in the management of the affairs or business operations of the lessor. An individual who is an officer, director or has five percent or more economic interest in a lessor who receives less than two percent of the net gaming revenue of a licensee shall provide only the information required of a person permitted as in R.S. 29.4(B).

Louisiana Revised Statute 27:28(I) provides:

If the board finds that an individual owner or holder of a security of a licensee, permittee, or the casino gaming operator, or of a holding or intermediary company of a licensee, permittee, or the casino gaming operator, or any person or persons with an economic interest in a licensee, permittee, or the casino gaming operator, or a director, partner, officer, or managerial employee is not suitable, and if as a result, the licensee, permittee, or casino gaming operator is no longer qualified to continue as a licensee, permittee, or casino gaming operator, the board shall propose action necessary to protect the public interest, including the suspension or revocation of the license or permit, or any action authorized under the casino operating contract. The board may also issue under penalty of revocation or suspension of a license or permit, or any action authorized under the casino operating contract, a condition of disqualification naming the person or persons and declaring that such person or persons may not:

- (1) Receive dividends or interest on securities of a person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval.
- (2) Exercise directly, or through a trustee or nominee, a right conferred by securities of a person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval of the board issued pursuant to the provisions of this Title.

- (3) Receive remuneration or other economic benefit from any person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval issued pursuant to this Title.
- (4) Exercise significant influence over activities of a person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval issued pursuant to the provisions of this Title.
- (5) Continue owning or holding a security of a person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval of the board issued pursuant to the provisions of this Title or remain as a manager, officer, director, or partner of a licensee or permittee.

Louisiana Administrative Code 42:XIII.2331 provides:

- A. The division shall determine whether suppliers providing goods and/or services to licensees are legitimate ongoing businesses. In making such determination the division shall consider any or all of the following nonexclusive factors:
 1. years in business providing specific goods and/or services procured by licensees;
 2. number of employees;
 3. total customer base;
 4. dollar volume of all sales compared to sales to licensees;
 5. existence and nature of warehouse and storage facilities;
 6. existence and number of commercial delivery vehicles owned or leased;
 7. existence and nature of business offices, equipment and facilities;
 8. whether the goods and/or services provided to the licensee are brokered, and if so whether the actual supplier distributes through brokers as a common business practice;
 9. registration with and reporting to appropriate local, state and federal authorities, as applicable.

Louisiana Administrative Code 42:IX.2174 provides:

- A. The division shall determine whether suppliers providing goods and/or services to the casino operator or casino manager are legitimate ongoing businesses. In making such determination the division shall consider any or all of the following nonexclusive factors:
 1. years in business providing specific goods and/or services procured by the casino operator or casino manager;

2. number of employees;
3. total customer base;
4. dollar volume of all sales compared to sales to the casino operator;
5. existence and nature of warehouse and storage facilities;
6. existence and number of commercial delivery vehicles owned or leased;
7. existence and nature of business offices, equipment and facilities;
8. whether the goods and/or services provided to the casino operator are brokered, and, if so, whether the actual supplier distributes through brokers as a common business practice;
9. registration with and reporting to appropriate local, state and federal authorities, as applicable.

Louisiana Administrative Code 42:VII.2108(I) provides:

The division shall determine whether non-gaming suppliers providing goods and/or services to licensees are legitimate ongoing businesses and are not utilized for the primary purpose of compliance with voluntary procurement goals. In making such determination the division shall consider any or all of the following nonexclusive factors:

1. years in business providing specific goods and/or services procured by licensees;
2. total customer base;
3. dollar volume of all sales compared to sales to licensees;
4. existence and nature of warehouse and storage facilities;
5. existence and number of commercial vehicles owned or leased; and/or
6. existence and nature of business offices, equipment and facilities.

Fine Foods was used to take advantage of the minority business requirements of gaming licensees. This was done by Mr. Miller, Mr. Turner and Mr. Walker. Mr. Miller and Mr. Walker handled the day-to-day work of Fine Foods. The only participation of Mr. Turner was a few sales calls since the beginning of his ownership in Fine Foods.

Fine Foods does not meet the criteria of a minority business. It was a sham that does nothing for the promotion of true minority businesses but in fact takes business away from these entities.

All three parties participated in this activity knowing of the requirements of law and regulation. Misrepresentations were made as to the nature of Fine Foods as a minority business. This practice rises to the level of unsuitable conduct in that it poses a threat to the effective regulation of gaming and creates unfair and unsuitable practices in conducting business incidental to gaming. La. R. S. 27:28.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of September 14, 2004:

IT IS ORDERED THAT that portion of the Hearing Officer's decision denying the renewal of Fine Foods of Louisiana, Inc.'s non-gaming supplier permit, No. P082601645, is **AFFIRMED** and that portion of the decision wherein Karl D. Turner, Bennet C. Miller, Jr., and Robert A. Walker were found suitable and Louisiana Seafood Exchange, Inc.'s non-gaming permit, No. P082600172, was not revoked is **REVERSED**. Karl D. Turner, Bennet C. Miller, Jr., and Robert A. Walker are hereby **FOUND UNSUITABLE** and Louisiana Seafood Exchange, Inc.'s non-gaming supplier permit, No. P082600172, is hereby **REVOKED**.

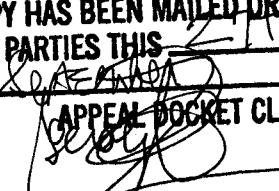
THUS DONE AND SIGNED on this the 24th day of September, 2004.

LOUISIANA GAMING CONTROL BOARD

BY:



H. CHARLES GAUDIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 24th DAY
OF SEPTEMBER, 2004

APPEAL DOCKET CLERK