



various loan agreements in July, 1994 that were not timely disclosed to or approved by the Board. Emerald was fined \$30,000.00.

The initial Owner's License issued by the IGB to Emerald was for three years. The IGB renewed the license in July 1995 for one year. In December 1995 Emerald shut down its gaming operation due to financial difficulties caused by increased competition from riverboats located in the State of Iowa. Emerald reopened on May 22, 1996.

On June 24, 1997 the IGB, by Chairman J. Thomas Johnson and Members William B. Browder, Byron G. Cudmore, Gayl S. Pyatt and Robert F. Vickrey, unanimously voted to deny renewal of the Owner's License held by Emerald. The IGB denied Emerald's renewal application for its failure to submit a responsive renewal application, significant compliance shortcomings and failure to adhere to the overall requirements of the Riverboat Gambling Act (the Act). A Notice of Denial was issued on June 27, 1997. Emerald again ceased riverboat gaming operations on July 29, 1997. Emerald has not conducted riverboat gambling since July 29, 1997.

Emerald timely requested an administrative hearing regarding the IGB's July 1997 non-renewal decision. On May 5, 1999 the assigned Administrative Law Judge (ALJ) granted summary judgment in favor of the IGB and recommended that the Board take final action to deny the renewal of Emerald's license. On May 25, 1999, before the IGB issued a Final Order on the ALJ's recommendation, the Illinois General Assembly amended the Act.

The Illinois General Assembly amended the Act to allow "A licensee that was not conducting riverboat gambling on January 1, 1998 may apply to the Board for renewal and approval of relocation to a new home dock location ... and the Board shall grant the

application and approval upon receipt by the licensee of approval from the new municipality or county, as the case may be, in which the licensee wishes to relocate....”

This provision, Section 11.2 of the Act, became effective June 25, 1999.

On September 7, 1999 the Board unanimously determined that the May 5, 1999 recommendation of the ALJ to deny the renewal of Emerald’s license was moot due to the passage of Section 11.2 of the Act. The Board further determined that Emerald could file an application for renewal subject to all applicable provisions in the Act and the Rules. On September 24, 1999 Emerald filed an Application For Renewal Of Owner’s License with the Board.

On January 30, 2001 the Board voted to deny Emerald’s Application For Renewal Of Owner’s License and to revoke the Owner’s License held by Emerald. At that time, the Board consisted of five members who had not been members of the Board in July 1997 when the Emerald Owner’s License was not renewed by unanimous vote. On January 30, 2001 Chairman Gregory C. Jones and Members Sterling M. Ryder, Staci Yandle and Stuart P. Levine voted to deny Emerald’s renewal application and to revoke the Owner’s License that Emerald held. One Board Member voted against the motion to deny the renewal application and to revoke the license.

On March 6, 2001 the Board filed a five-count Complaint For Disciplinary Action against Emerald pursuant to Section 5(c) of the Act and Subpart K of the Rules. Based upon the conduct set forth in the disciplinary complaint, the Board alleged that Emerald failed to maintain its suitability for licensure. Predicated on the facts alleged, the Board sought revocation of the license.

Emerald filed a Verified Answer to the disciplinary complaint. Chairman Jones appointed an ALJ to hear the matters in dispute concerning both the revocation action and the non-renewal action. Emerald, through counsel, elected to proceed with the disciplinary action first. The non-renewal action, numbered GL-01-01, was to be dealt with separately, following the conclusion of the disciplinary action.

The hearing on the Complaint For Disciplinary Action commenced on May 29, 2002. Testimony was heard until June 13, 2002 at which time the Village of Rosemont and others involuntarily forced Emerald into bankruptcy. The trial was scheduled to recommence on several dates thereafter. On August 4, 2004 ALJ Holzman recused himself from further proceedings on the matter.

In April 2005 this disciplinary action remained pending with no date scheduled to resume. At that time, the action had been unresolved for over four years. Maintaining public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process, as expressly required by the Act, called for the resumption of the hearing to resolve the disciplinary action brought against Emerald. On April 14, 2005 Abner J. Mikva was appointed ALJ. At that time, the Board consisted of Chairman Aaron Jaffe and Members Gary L. Peterlin, William E. Dugan, Charles Gardner and Eugene Winkler.

Beginning with the commencement of the hearing in May 2002, there were 31 days of testimony. Testimony resumed before ALJ Mikva on May 25, 2005 and concluded on September 21, 2005. The Report Of Proceedings consists of 6,498 pages. The three witnesses who testified before ALJ Holzman, Sergio Acosta, Michael Belletire and Kevin Pannier, testified again, and in the case of Acosta, more than once, before ALJ

Mikva. There were over 270 exhibits admitted into evidence, including two lengthy and complete staff reports pertaining to the Board's investigation.

All subpoenas requested by Emerald were carried out except for one seeking testimony from Chairman Jaffe. The Executive Inspector General successfully moved to quash a subpoena as to an alleged complaint made by one IGB employee about another IGB employee. Emerald conducted interrogation as to that alleged complaint through another witness. In both instances Emerald made offers of proof which are part of the record. The Board made an offer of proof in lieu of calling witnesses to rebut testimony offered by Emerald on the last day of hearing. The offers of proof are not pertinent to the outcome of this proceeding.

Emerald made at least seven attempts to disqualify the ALJs assigned to hear this action. Emerald brought four separate motions to disqualify ALJ Holzman. In August, 2004, approximately 26 months after he last heard any testimony from witnesses, ALJ Holzman recused himself. ALJ Mikva denied three separate motions to disqualify himself; two were taken to the Board for review and denied. Motions were made to disqualify Chairman Jaffe and add him as a witness. The motions were all denied. On two occasions ALJ Mikva had to remonstrate with Emerald's lawyer, Mr. Clifford, to behave in a professional manner. (R 4919-20, 5084-85)

Multiple, ancillary lawsuits were concluded during this protracted disciplinary action. In two separate actions the Illinois Appellate Court and the Illinois Supreme Court agreed with Emerald's contention that "shall" is mandatory in Section 11.2 of the Act and that the Board had no discretion in terms of the renewal of the license. However, both courts specifically upheld the Board's authority and discretion in all other respects

under the Act and specifically told the Board that it could pursue the revocation hearing, which had previously been instituted. *Emerald Casino, Inc. v. Illinois Gaming Bd.*, 346 Ill. App. 3d 18, 803 N.E.2d 914, 926 (1<sup>st</sup> Dist. 2003) and *Crusius v. Illinois Gaming Board*, 216 Ill.2d 315, 837 N.E.2d 88 (2005). *See also, Emerald Casino, Inc. v. Illinois Gaming Board*, 2003 WL 23147946 (N.D.Ill.).

On November 15, 2005 ALJ Mikva made written recommendations to the Board. ALJ Mikva recommended that the Board revoke the Owner's License held by Emerald and that the Board deny any efforts by Emerald to engage in gambling in Illinois at any location. We note that the current IGB Chairman and Members were not associated with the Board in 1997 when Emerald's Owner's License was not renewed or in 2001 when the Board again resolved not to renew Emerald's Owner's License and determined to impose disciplinary action to revoke the license.

## **FINDINGS OF FACT**

### **1. EMERALD AND ITS PRINCIPALS DISSEMBLED ABOUT ITS PLANS TO MOVE THE LICENSE LOCATION TO ROSEMONT, ILLINOIS.**

Emerald's gambling operations at East Dubuque, Illinois had been financially unsuccessful for some time. At least since 1995 Emerald had been making efforts to move those operations either by obtaining permission from the IGB or by lobbying to get legislation passed, which would allow such relocation. The IGB did not have the legal authority to authorize such relocation. (R. 2846).

In 1997 Kevin Flynn and Victor Cassini, on behalf of Emerald, met with Rosemont Mayor Donald Stephens at the mayor's office (R. 393, R. 5301-5304). At that

meeting, Flynn and Stephens discussed the possibility of relocating the Emerald Casino operation to the Village of Rosemont, according to Stephens in his sworn statement and in his testimony in this hearing. (R. 395-96). Kevin Flynn acknowledged that he met with Mayor Stephens, but testified that they only talked about the Flynn's Blue Chip operation in Indiana. (R. 2431-32). Kevin Flynn's testimony in this aspect was not credible.

In October, 1998 Kevin Flynn and David Filkin, then Vice President and General Counsel of Duchossois Industries, met with other representatives of Duchossois to discuss legislative efforts which would allow the relocation of the Emerald casino. (R. 1783). Kevin Flynn commented that the Village of Rosemont was "a no brainer" as far as relocation. (R. 1785-86). At or about that same time the Davis Companies of California were also interested in owning or investing in a casino in Illinois, particularly in Rosemont.

In December 1998, Kevin Flynn agreed to sell an ownership interest in the Emerald operation to the Davis Companies and to the Duchossois group. The Davis Companies would purchase 37.5 percent of the Emerald operation, while the Duchossois group would have the opportunity to purchase 20 percent of the Emerald operation. The parties also agreed to cooperate to pass legislation that would allow the casino to relocate. (R. 1806-07). In addition to the three way split between the Flynnns, the Davis Companies, and the Duchossois group, a 5 percent ownership interest in the casino was reserved for "local investors". (R. 1806-07). In his September 2000 sworn statement to the IGB, Mayor Stephens testified that the 5 percent designated for local investors "was for me". (Stephens' sworn statement at 69-70). At or about that same time, Filkin

telephoned Kevin Flynn and Kevin Flynn confirmed to Filkin the terms of the agreement. (R. 1809-10). The IGB was not notified of any of these agreements at any time until the Davis Companies tried to enforce the agreements through litigation. (R. 1844-45).

Throughout 1998 and 1999, the Duchossois group and the Davis group were actively involved in and supported the legislative initiative to authorize Emerald's relocation. (R. 1815-16). The Village of Rosemont and Mayor Stephens also participated in the lobbying efforts in 1998-99 to pass the legislation allowing relocation of Emerald's license. (R. 5352). Mayor Stephens stated "you get a bill down there and I can probably kill it with people that I know in the forty-five years I have been around. I can convince enough people to squash your bill unless it is something the public really wants." (Stephens' sworn statement at 47). Emerald repeatedly told the IGB that it never considered Rosemont as its prospective site until after Section 11.2 of the Act was passed by the General Assembly. As late as the filing of its Verified Answer in this proceeding, paragraph 15, it maintained that position. Everybody else seemed to know differently. The legislative history of the debate during which Section 11.2 of the Act was approved was replete with references to Rosemont as the designated city for the relocation.

Representative Hoeft said: "We're [taking the riverboat] and putting it in Rosemont and anyone here that tells me that we're not doing that, pardon the pun folks, but you want to make a bet, because that is where this boat is going." (Transcript from May 21, 1999, Illinois House of Representatives debate on SB 1017 at 102). Senator Shaw said: "and most of us do not come from such rich districts as up in Rosemont and up in Arlington ...I do not have anything against Rosemont.... [Now] the argument is going to be, but do I know it is going to Rosemont. Let me tell you this; Those of us who



are elected to this Body we did not come out of the dust closet to get here: we understand this process.” (Transcript from May 24, 1999, Illinois Senate debate on SB 1017 at 117).

Senator Welsh stated: “the question that we have to ask is why it is going where it is going. Is that really economic development or are we just cutting a deal that started out being dock site gambling for ----- to keep a few boats going... [W]e’ve come to some kind of – secret agreement that it is going to Rosemont. And to get it there, another person, who wanted it up in Arlington Heights, agreed to give up his contention that he deserved it in exchange for a piece of the pie... what we have here is akin to a run-away train.” (Transcript from May 24, 1999, Illinois Senate debate on SB 1017 at 123).

It was not until July, 1999 that Emerald’s attorney advised the IGB that it intended to move its operation to Rosemont. (R. 182, 183). In October, 1999 the parties who had cooperated to see that the legislation allowing relocation had passed were still cooperating with each other and with Mayor Stephens. A fundraiser for the Donald E. Stephens Committeeman Fund produced the following contributions:

- a. American Trade Show Services Inc. – donated \$25,000 to the Fund. Nick Boscarino - husband of a new Emerald investor, Sherri Boscarino, is a principal of that company. The Boscarino interests, individuals who were called to testify in this hearing, asserted their Fifth Amendment right against self-incrimination and refused to answer any questions. The Individuals contributed \$21,000 to the Fund.
- b. D & P Construction, which Emerald claimed was a “lowest bid” vendor hired by the General Contractor, contributed \$5,000 to the Fund.

- c. The Davis interests contributed \$20,000 to the Fund.
- d. The Duchossois interests contributed \$21,000 to the Fund.
- e. The Flynn interests contributed \$25,000 to the Fund.

Loans by Parkway Bank to the Fund were extensive. Apparently there was one gift of over \$208,000 (R. 1695). Principals of Parkway were included as secret investors in Emerald. These included its Chairman, Rocco Suspenzi. Rocco Suspenzi as well as Jeffrey Suspenzi was subpoenaed to testify in this proceeding. Both refused to answer any questions and invoked their Fifth Amendment right against self incrimination. The refusal of Rocco Suspenzi and Jeffrey Suspenzi to testify, notwithstanding their secret investment in Emerald, and notwithstanding their closeness to Mayor Stephens and his activities, entitles the Board to draw reasonable inferences from these political loans and contributions, whether or not they were legal.

Counsel for Emerald insisted that all of these contributions were legal. Illinois has no limit on contributions nor does it prohibit contributions from investors or would-be investors in the gaming industry. However, it is reasonable to infer from these contributions, their timing and the lobbying efforts acknowledged by the parties involved, that there was an agreement in 1998-99 to get legislation passed to relocate the Emerald gaming operations to Rosemont and to divide the pie in some kind of secret arrangement.

**2. THE RENEWAL APPLICATION FILED BY EMERALD ON SEPTEMBER 24, 1999 WAS NEITHER ACCURATE NOR COMPLETE.**

Joe McQuaid testified that as the responsible official of Emerald he completed and filed the Application For Renewal Of Owner's License. He testified that he reviewed

the instructions for the application carefully. (R. 3176-77). McQuaid had extensive experience as the chief enforcement officer and Interim Administrator of the IGB for many years immediately prior to being employed by Emerald. When asked about hiring McQuaid directly from the IGB and employing him while he was still on the State Police payroll, Emerald insisted such conduct was not prohibited by the IGB or State law at that time. (R. 2607). McQuaid was the IGB official who signed the first disciplinary action against Emerald in 1994, immediately prior to his employment with Emerald.

Notwithstanding McQuaid's experience and his testimony that he had reviewed the instructions, the application stated that none of the shareholders were public officials or relatives of public officials. A list of shareholders submitted to the IGB included a relative of State Representative Ralph Caparelli, one of the prime movers of the relocation amendment to the Act, as well as two other public officials. McQuaid never asked any of the persons involved whether or not they were public officials and testified that he thought that it was not important to ask such questions because none of the stock purchased and transferred to these public officials had ever been approved by the IGB. Therefore, even though the proceeds of such sales, and others, were used by Emerald, McQuaid's position was that it was of no consequence who the stockholders were until the IGB finally approved the transfer. Neither McQuaid nor anyone else at Emerald had ever examined the Personal Disclosure Forms (PDF) which were submitted to the Board directly.

The application also requested that Emerald submit "all agreements, arrangements, and commitments related to proposed gaming facility and related projects". Emerald submitted five agreements with its application, none of which were

pertinent to this inquiry, and stated it had not executed any other agreements.

Furthermore, Emerald made no reference to any of the arrangements that it had made with the Davis interests - which were about to result in a lawsuit filed by Davis.

In fact, prior to September 24, 1999, Emerald had executed a Letter of Intent with the Village of Rosemont. In particular, in July and August 1999 Rosemont and Emerald entered into several letter agreements relating to the development of a casino on the Rosemont property. (R. 3229). The IGB first became aware of Emerald's letter agreements with Rosemont in September 2000, pursuant to a letter received from the attorney for Rosemont. Emerald did not disclose these agreements to the IGB until December 2000. (R. 3220). Emerald should have disclosed these agreements to the IGB in and with its September 1999 renewal application.

The application specifically asked whether the licensee or any of its affiliates had been a party to any legal action, including pending or *threatened* litigation. Emerald did not include any information about the threatened litigation by the Davis Companies, even though the Davis Companies had already planned a complaint and notified Emerald of that fact.

The application asked whether any current or proposed shareholders had been arrested, charged, indicted, convicted etc. of any felony or misdemeanor. Emerald answered by saying it relied on the PDF's that were submitted directly to the Board and not reviewed by anyone from Emerald. Emerald thus sought to absolve itself of any responsibility for the background, source of funds and identity of its shareholders, other than alleged perfunctory interviews by McQuaid. McQuaid's testimony in this aspect was not credible.

**3. EMERALD AND ITS PRINCIPALS DISSEMBLED ABOUT ITS CONSTRUCCION ACTIVITES.**

After Emerald and its principals were successful in obtaining the amendment to the Act allowing relocation, it decided that the IGB's Rules and procedures, as well as staffs' requests for information, need not be given too much concern. On July 21, 1999 Rosemont and Emerald entered into a Letter of Intent regarding the construction of a casino at the site agreed upon between them. The Letter of Intent was "intended to memorialize key items that had been agreed to which are to be incorporated into a lease and development agreement". (R 1235-36). This Letter of Intent was extended and augmented by various letter agreements signed in August 1999 and December 1, 1999. As discussed, Emerald did not include the Letter of Intent or any of the documents previously signed with Rosemont in its September 24, 1999 application.

Emerald principals met with IGB staff on several occasions in August and September 1999. In particular, on September 30, 1999 Emerald principals met with IGB staff regarding proposed financing for the casino. Staff specifically explained the need for any contracts or agreements to be sent to the IGB at that meeting. The letter agreements were still not tendered to the IGB despite that specific admonition.

Emerald solicited and accepted more than \$30 million from minority investors and spent those funds on the construction of the casino. (R. 2908-09). Emerald claimed that this expenditure was proper because in the event a shareholder was not found suitable by the IGB it would return that shareholder's investment. (R. 2918-19). Emerald, however, never told the minority investors that it planned on spending their investments on construction. (R. 2914). In fact, Emerald spent the minority

shareholders' investments on construction because it could not secure financing for construction.

On October 4, 1999 Emerald entered into a written agreement with Power Construction and Degan & Rosato. The agreement, again a letter of intent, was the basis on which Power commenced construction of the casino in October 1999. Emerald never tendered the Power letter of intent to the IGB. The IGB first learned of its existence in November 2000 from Power's attorney. The record is replete with credible evidence that Emerald omitted information and made misrepresentations about construction beginning in the Summer of 1999.

On February 10, 2000 Emerald submitted an executed copy of a Lease and Development agreement between Emerald and Rosemont. That Agreement contained many of the identical terms originally memorialized in the July 21, 1999 Letter of Intent. This February 2000 submission to the IGB was long after Emerald had commenced construction at the site and Rosemont had commenced construction of a parking garage. At the Board's February 2000 meeting, Emerald conceded that it had spent millions of dollars on construction of the casino. As of that date, however, Emerald had neither secured nor obtained Board approval for financing, which it had repeatedly advised was a predicate for construction. Emerald ceased all construction activities at the site as of February 29, 2000.

The Lease and Development Agreement contained many provisions violative of the IGB's Rules and procedures. That Agreement allowed the Village of Rosemont to waive the requirement that Emerald obtain necessary regulatory approval from the IGB prior to commencing construction of the casino. That Agreement committed Emerald to

fund the construction of the parking garage addition even though Emerald did not have sufficient financing dedicated to do so. That Agreement failed to provide Emerald the ability to exercise appropriate control or supervision over the management of the contractor or sub-contractors for the casino and parking garage construction project. At the hearing, Emerald took the position that submission of construction contracts or review of construction contractors was not necessary because the IGB would always have an opportunity to reject anything that had been built in the final instance before the “casino” became a “casino”. Such a position is contrary to the Act and the Rules and is antithetic to meaningful regulation.

One company doing work at the casino construction site was D & P Construction. The Federal Bureau of Investigation (FBI), in a memorandum dated April 16, 2003, identified D & P Construction as controlled by Peter and John DiFronzo. The memorandum identified John DiFronzo as a known member of the Chicago Outfit and that Peter DiFronzo was considered to be a member of the Chicago Outfit. The Memorandum stated that D & P obtained contracts through illegal payoffs or intimidation (IGB Exhibit 396). During the hearing, none of the witnesses, either for Emerald or for any other party, would admit that they hired D & P Construction.

**4. KEVIN FLYNN, AS A SHAREHOLDER AND CHIEF EXECUTIVE OFFICER OF EMERALD, CONSISTENTLY DISSEMBLED TO THE IGB AS TO HIS ACTIVITIES ON BEHALF OF EMERALD.**

Kevin Flynn identified himself as a shareholder of Emerald in December 1996. However, Kevin Flynn, in sworn statements, letters to the IGB and testimony, insisted

that he did not become involved in the activities or management of Emerald until June 1999 when he was appointed to the new position of Chief Executive Officer of Emerald.

As far back as November 1997 Kevin Flynn had negotiated on behalf of Emerald with the Lake County Riverboat L.P. to discuss a joint venture for a riverboat in Lake County Illinois. Kevin Flynn acted as the primary spokesman for Emerald in those negotiations. (R. 1890-91, R. 1900-01). In November 1997 Emerald and Lake County Riverboat entered into a non-disclosure agreement and a joint venture agreement to pursue a Lake County operation. (R. 1887). These agreements and Kevin Flynn's role in negotiating these agreements were not disclosed to the IGB. The IGB only became aware of the circumstances through a review of material produced in the Davis litigation at a much later time. (R. 473-75, R. 485-88). Kevin Flynn did not tell the truth about his involvement with Lake County Riverboat L.P.

In 1997 Kevin Flynn met with Mayor Stephens at the Mayor's office. They discussed the possibility of moving the Emerald operation to Rosemont. (Stephens' sworn statement at 12; R. 5301-04). Kevin Flynn later insisted that Rosemont "was not anything considered as far as I know until the legislation passed" in 1999. (R. 2439). Kevin Flynn lied about his 1997 meeting with Mayor Stephens and the possibility of moving to Rosemont.

In October 1998 Kevin Flynn met with representatives of Duchossois Industries including David Filkin, Vice President and General Counsel for Duchossois. Kevin Flynn stated at that meeting that Rosemont was a "no brainer" as to relocation. (R. 1785-86). While Kevin Flynn testified that he was just there listening and that he "had no role" at the meeting as to Emerald, (R 70) Filkin and others testified that Kevin Flynn was the



primary spokesman for Emerald. (R 1785-86). In the Fall of 1998 Kevin Flynn told Filkin that any negotiations or deal among Emerald, Davis and the Duchossois group needed to be kept secret. (R. 1802-03). Kevin Flynn had meetings with representatives of the Davis Companies around the same time. (R. 1793-98).

At a meeting on December 1, 1998 Kevin Flynn agreed or reached an understanding to sell an ownership interest in the Emerald operation to the Davis Companies and to the Duchossois group. (R. 2463-64, R. 1799-1801), R. 1806-07). In addition to agreeing to a division of ownership among the three groups at the meeting, a 5 percent interest was reserved for local investors. (R. 1806-07). Mayor Stephens testified that the 5 percent designated for local investors “was for me.” (Stephens' sworn statement at 69-70). After talking to the parties representing Davis, Filkin called Kevin Flynn and Kevin Flynn confirmed that the terms of the agreement that had been outlined to Filkin were correct. (R. 1809-10).

In 1998 and 1999 the Duchossois group and the Davis Companies were actively involved in lobbying the legislature to allow Emerald to relocate. (R. 1815-16). After the legislation passed which allowed relocation of the license, Filkin learned that Emerald might not abide by the agreement that had been reached in December 1998. (R. 1814-15). McQuaid advised Filkin in the Summer of 1999 that the Duchossois group would be able to invest in Emerald but that the Davis Companies may be cut out of the deal. (R. 1816-17).

On September 20, 1999 Emerald organized a meeting with the Duchossois group. At the meeting Kevin Flynn told the Duchossois group that they would not be given the opportunity to invest in Emerald regardless of the prior agreement or understanding.

Kevin Flynn stated that, “things change.” (R. 1817), (R. 2495). David Filkin’s testimony was credible in all aspects.

Notwithstanding all these negotiations and agreements, Kevin Flynn repeatedly denied that he had made any kind of deal with the Davis Companies or the Duchossois group. (R. 423-24), (Kevin Flynn sworn statement at 107-08). Indeed, in all his presentations to the IGB and in subsequent litigation with the Davis Companies, Kevin Flynn insisted that he had nothing to do with running Emerald until June 1999.

Kevin Flynn attended four of the five Emerald Board of Directors' meetings held between April, 1997 and April, 1999. Kevin Flynn insisted that the only reason he was at the Emerald meetings was because they coincided with the dates of the Blue Chip Casino Board meetings. Kevin Flynn testified that at some Emerald meetings he would get up and leave and sometimes he would stay. Donald Flynn gave similar testimony about Kevin Flynn’s attendance at board meetings. Donald Flynn, father of Kevin and principal stockholder of Emerald, was not in town often and relied heavily on his son to represent his interest. In fact, only one of the five Emerald Board of Directors meetings coincided with a Blue Chip Casino Board of Directors meeting. (R. 499-501), (R. 2451).

In sum, the record is replete with clear and convincing evidence that Kevin Flynn dissembled to the IGB about his activities in and on behalf of Emerald prior to June 1999. Whether his reasons for such dissembling was to establish deniability of responsibility for agreements reached with such groups as the Davis Companies and the Duchossois group or negotiations with other dissenting shareholders or to deny how long Emerald was involved in its desire to relocate to Rosemont, he did not tell the truth to the IGB.

Between April 1996 and 1999 Kevin Flynn was the CEO of Blue Chip Casino, a gambling boat operating in Michigan City, Indiana. In 1999 Blue Chip was sold to Boyd Gaming. (R. 5704-05). At hearing, Emerald first introduced testimony that on June 27, 1999, as part of the sale of Blue Chip to Boyd, Kevin Flynn created a company known as Field Street. That company entered into a consulting and lobbying agreement with Boyd. Under this agreement, known as the Field Street Agreement, Kevin Flynn agreed to lobby to prevent tribal gambling from entering into southwest Michigan; such gambling would compete with Blue Chip in Michigan City. The agreement was also to cover activities in Indiana and Illinois. (R. 5726-27). Under the agreement Kevin Flynn was to be paid \$500,000 a year plus expenses. If Kevin Flynn was successful in keeping tribal gaming out of southwest Michigan for five years, he would be paid five million dollars as a bonus. One of the activities that Kevin Flynn agreed to pursue was to facilitate the funding of money from Boyd to grass roots anti-gambling interests that were opposed to gambling and the expansion of gambling in Michigan. (IGB Exhibit 306, page 129), (R. 5726-27).

Neither Kevin Flynn nor Boyd disclosed the existence of the Field Street Agreement either to Indiana or Illinois authorities. The Indiana authorities determined that it was Boyd's responsibility to disclose the agreement and for such non-disclosure Boyd paid the equivalent of a \$1 million fine. The IGB first learned of the Field Street Agreement in late 1999 on receipt of a telephone call from the Indiana Gaming Commission. Kevin Flynn did not disclose the existence of the Field Street Agreement until June 29, 2000. Whether such an agreement would or would not be against public policy under Illinois precedents, such a contract could affect the gaming industry and the

reputation of persons in the gaming industry in Illinois. When Emerald was asked about the propriety of the Field Street contract and why it was not reported to either the Indiana or the Illinois authorities, Emerald insisted that it was somebody else's responsibility, not Kevin Flynn's.

**5. EMERALD FAILED IN ITS OBLIGATION TO PREVENT INELIGIBLE INTERESTS FROM INVESTING IN ITS CASINO. AS A RESULT, NUMEROUS INELIGIBLE INTERESTS WERE SOLD STOCK IN THE CASINO.**

Throughout these proceedings Emerald insisted that it was the IGB's obligation to investigate the eligibility and background of investors in the casino, since no stock purchase was complete until the IGB approved it. Emerald claimed that its only responsibility was to conduct a very perfunctory review of the eligibility of the proposed stockholders. Emerald directed its shareholders to fill out a PDF 1 and submit it directly to the IGB. Emerald did not review the shareholders' PDFs. In fact, Emerald insisted that it could not look at the PDFs, since they were confidential. As a result, as previously detailed, at least three of the individuals to whom stock was sold were public officials or relatives of public officials. (R. 233). McQuaid, however, did exactly what he testified that he could not do in 1996 on behalf of an Emerald principal. McQuaid's testimony in this aspect is not credible.

In addition, several persons and interests who had some association with organized crime were allowed to purchase stock in Emerald. In a complicated transaction involving a trust instrument with his daughter and a loan from Parkway Bank in the amount of \$1,500,000, Nick Boscarino was allowed to acquire an interest in Emerald. Boscarino did business with the Village of Rosemont. Boscarino was also a co-owner

with Mayor Stephens in American Trade Show Services until December 2001 and a partner in a company called Bomark with Mayor Stephens' son, Mark Stephens. Bomark cleans office buildings including the Rosemont Exposition Center. Mayor Stephens acknowledged that he had been close to Nick Boscarino until Boscarino was indicted and convicted for defrauding the Village of Rosemont, a felony. (R. 5330-32). The FBI memorandums corroborate the association between Boscarino and Mayor Stephens as well as their associations with others.

Boscarino, his mother Ida L. Hansen, the purported Trustee of the Sherri Boscarino Trust, and his wife Sherri, the purported Grantor of the trust, were all subpoenaed to testify in this proceeding. All of them asserted the Fifth Amendment right against self-incrimination and refused to answer questions regarding Emerald, the trust or anything else about their background.

In a surreptitious series of transactions, Emerald and Donald Flynn enabled and then effectuated the transfer of shares to new shareholders - "outsiders" - followed by the purchase of the same number of shares from original shareholders. The backdrop for the transactions was Donald Flynn's July 1999 increase in ownership in order to maintain both shareholder and board control of Emerald coupled with the amendment of Emerald's Shareholder Agreement in early August 1999. The Amended Shareholder Agreement eliminated the right of the original shareholders and the corporation to purchase shares before those shares could be sold to "outsiders". The amended agreement also eliminated the notice requirement to other shareholders and reduced the notice requirement to the corporation from 90 days to 10 days. (R. 227-30). Finally, the amended agreement specifically provided that "...no Shareholder shall be entitled to transfer his Shares under

any circumstances to any person or entity, if such transfer could reasonably expect to result in failure of the IGB to renew or a termination of the gaming license issued by the IGB to the Corporation....” (IGB Exhibit 60).

Donald Flynn was the only Emerald shareholder to sell shares of Emerald to outsiders pursuant to the Amended Shareholder Agreement. (R. 1330; R. 3689). In September 1999, Donald Flynn sold approximately 4.23 % of his ownership interest - 294 shares - to 12 outsiders, including Vito and Joseph Salamone. Between September and early November 1999 Donald Flynn re-purchased 294 shares of Emerald from five original Emerald shareholders at a loss of over \$4 million. The re-purchase was necessary to secure both shareholder and board control of Emerald.

Emerald did not present the ownership transfers to the IGB for pre-approval. Instead, Emerald provided misleading and incomplete information. Ultimately, Emerald provided copies of the stock purchase agreements, but only as a *fait accompli*, to negate any investigation of the transactions by the IGB.

Donald Flynn testified that he did not know any of the 12 individuals to whom he was going to sell shares in Emerald. Nor did he care. As to who the outsiders were, Donald Flynn testified that if they “were willing to come up with the money, I didn’t really care.” (IGB Exhibit 305). Donald Flynn pinned responsibility for the identity and suitability of the 12 outsiders on McQuaid. Donald Flynn, who was in shareholder and board control of Emerald, either intentionally kept himself ignorant of the identities and backgrounds of the 12 outsiders or he knew their identities and backgrounds and wanted to be able to deny knowledge of such if necessary.

Donald Flynn testified that his sale and purchase of 294 shares of Emerald was a “strange coincidence”. He also testified that he was not aware of any circumstances regarding any of the 12 transferees that could have reasonably affected Emerald’s license. Emerald’s and Donald Flynn’s testimony, in all aspects regarding the transfer of ownership, is not credible.

Vito Salamone was identified by the FBI as being close with members and associates of organized crime. (R. 1353). The stock certificate issued by Emerald was originally in the name of Vito Salamone but was changed to Joseph Salamone, his brother. Whatever the effect of this crude change of ownership, there was in fact a secret memorandum of agreement, not provided to the IGB, which showed that both brothers, as well as officers of the Parkway Bank and Trust Company, were sharing in the ownership interest purchased in the name of Joseph Salamone. Rocco Suspenzi was the Chairman of Parkway Bank and Trust and he as well as the Salamone brothers and Jeffrey Suspenzi were all subpoenaed to testify in this proceeding. All of them refused to testify, claiming their Fifth Amendment rights when asked questions about the secret agreement or any other questions pertaining to Emerald. Parkway Bank served as Mayor Stephens’ bank in many other transactions.

Agent John Mallul testified as a special agent employed by the FBI since 1986. In 1988 Agent Mallul was assigned to an organized crime squad and has been assigned to that position since that time. For the last two years Agent Mallul has been a supervisory special agent within the organized crime division of the FBI. Agent Mallul testified as to various terms used to describe organized crime in Chicago. Agent Mallul directed the preparation of five letterhead memorandums, which were introduced into evidence. (R.

2186-94). These memoranda, from confidential sources, provided information regarding Nick Boscarino and the Salamone brothers and their relationships to organized crime. They also described activities of Peter DiFronzo, Joseph DiFronzo and D & P Construction Company, one of the contractors performing work at the Rosemont casino site. (IGB Exhibits 251, 252, 393, 397, 396).

Agent Mallul testified as to the veracity and credibility of the source information that was used in these memoranda. (R. 2199-2200). Agent Mallul's testimony was credible and the FBI had determined to its satisfaction that the sources of the material contained in the memoranda were credible. The IGB was entitled to use this information to make decisions concerning Emerald's conduct and its relocation move to Rosemont. This is particularly true since most of the individuals identified in the FBI memoranda that were involved in stock ownership in Emerald or construction activities in Rosemont refused to testify in these proceedings. In all, seven individuals invoked the Fifth Amendment right against self-incrimination and refused to testify in this hearing.

Mayor Stephens, who was identified in several of the FBI memoranda, vigorously denied any associations with organized crime. He stated that he severed his personal relationship with Boscarino after Boscarino was indicted, although Boscarino and certain of his relatives continued to make political contributions to Mayor Stephens thereafter. He acknowledged knowing John DiFronzo and other organized crime figures identified by Agent Mallul. Mayor Stephens acknowledged that he purchased a hotel from Sam Giancana who was then the head of the Chicago Outfit. (R. 5368-71). Giancana financed the purchase through a \$300,000 purchase money mortgage. (R. 5371).



Mayor Stephens acknowledged that he had brushes with law enforcement early in his career. (R. 5337). However, he vigorously denied that he was present at a meeting where organized crime figures planned their involvement in the Rosemont casino. He also denied that he had anything to do with selecting shareholders in Emerald even though all of the interests that he introduced to Emerald, including Boscarino, became shareholders. He did not make any effort to explain his earlier statement to the IGB that under the arrangement that Emerald made prior to the amendment of the Act - allowing relocation to Rosemont - 5 percent of the stock was set aside for him.

It is not necessary to resolve the conflicts between Mayor Stephens' testimony and the information provided by the FBI. It is not even necessary to resolve the conflict between Mayor Stephens' testimony as to the selection of shareholders at the hearing as compared to his earlier sworn statement. Mayor Stephens' admitted friendship and association with certain of the resulting Emerald shareholders speaks for itself. Moreover, there was sufficient credible evidence about secret agreements, Emerald's stock transactions, Donald Flynn's unapproved stock transactions, Emerald's construction activities and Emerald's lack of candor in its statements and submissions to the IGB to warrant revocation of Emerald's license. The testimony of Sergio Acosta regarding Emerald's and its principals' conduct was exhaustive, compelling and credible.

Similarly it is not necessary to rely on the tape of a conversation between James and Michael Marcello, which was recorded by the FBI pursuant to court authorization. (R. 5921-24). James Marcello is a member of organized crime and was in prison at the time the tape was made. Michael Marcello was visiting his brother and the tape of the conversation was made at that time. An approximate two and one half minutes portion of

recorded tape was presented at the hearing and Agent Mallul stated that no other portion of the conversation pertained to Mayor Stephens or the casino in Rosemont. (R 5932). The tape and the accompanying testimony of Agent Mallul were not useful in resolving any of the controversies involved in this proceeding. The tape itself had very poor fidelity and the brothers were speaking in some kind of cryptic code. Agent Mallul had to testify as to both the words and their true meaning. Although Agent Mallul was confident as to both fidelity and his interpretation of code words and phrases, the Marcello brothers may have been puffing their own exploits and influence to each other. They may also have been deliberately trying to confuse law enforcement or anybody else that may have been listening to their conversation. In any event, notwithstanding the admissibility and relevance of Agent Mallul's testimony concerning this conversation, ALJ Mikva gave it no weight in his findings of fact and neither does the Board.

**6. THERE WAS NO EVIDENCE OF BIAS ON THE PART OF THE STAFF OR MEMBERS OF THE IGB IN THIS REVOCATION PROCEEDING.**

Throughout the proceedings, attorneys for Emerald insisted that staff and members of the IGB were biased against Emerald. These bias challenges raised questions about everyone from former Governor James Edgar to Chairman Aaron Jaffe to the staff of the U.S. Attorney's office to the ALJ's that were involved in this proceeding to numerous members of the IGB staff. No evidence was presented to back up the allegations. Emerald presented some evidence concerning a "voodoo doll" which was given to a departing employee on the day of her departure from the IGB staff. She allegedly stuck a pin into it and stated that the pin was for Joe McQuaid. (R. 4481-82).

There was never any connecting evidence to show that if this incident took place, it was anything more than jest or an expression of irritation against McQuaid. There was nothing to indicate that this employee did anything, said anything or wrote anything which affected the decision to revoke Emerald's license because of any bias. Additionally, if this incident took place, it occurred over five years ago. If it occurred, it has no bearing on this Board's determination.

It is always unfortunate when lawyers decide to challenge the tribunal or the process rather than present their case. In this instance, Michael Ficaro, then attorney for Emerald, delivered his opening statement in this proceeding by turning his back to the presiding officer, ALJ Holzman, and announcing to the assemblage of reporters and others who were present in the room " I would like to welcome everybody to Kangaroo Court. This proceeding is a sham." (R. 82). At the same time, various computers were displayed to the audience showing kangaroos jumping on the screen.

Ficaro also testified on behalf of Emerald. In essence, Ficaro claimed that he was unaware of the substance of the IGB's concerns regarding Emerald until shortly before the Board voted to both deny renewal of and revoke the license. The record, including testimony from Acosta, letters from Emerald principals and Ficaro himself as well as transcripts of interviews from various Emerald principals and persons involved, overwhelmingly belies Ficaro's testimony in this regard. Michael Ficaro is not credible.

## CONCLUSIONS OF LAW

1. When gambling was first authorized in Illinois in 1990, the Legislature

recognized that gambling would only be good for Illinois as follows:

...if public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process is maintained. Therefore, regulatory provisions of this Act are designed to strictly regulate the facilities, persons, associations and practices related to gambling operations pursuant to the police powers of the State, including comprehensive law enforcement supervision. (230 ILCS 10/2(b)).

2. The Act expressly provides that an owner's license is subject to revocation by the Board. (230 ILCS 10/5(c)(15)). The Rules also provide for revocation as a basis of discipline. For instance, Section 3000.140(a) of the Rules provides that "Board licensees and applicants for licenses issued by the Board shall have a continuing duty to disclose promptly any material changes in information provided to the Board." Section (b) of that same Rule requires licensees to disclose agreements, whether oral or written relating to "construction contracts", "agreements with or involving Key Persons", "agreements to sell... or otherwise transfer or share", "agreements in lieu thereof, relating to ownership interest or interest in an owner's license." Subsection (c) of the same Rule *specifically* provides that the failure to meet the requirements of subsection (a) or (b) may result in discipline "up to and including revocation of a license." 86 Ill. Admin. Code § 3000.140(a)(b) and (c).

Section 3000.1105 of the Rules provides as follows:

" All Board licensees have a continuing duty to maintain suitability for licensure. A Board license does not create a property right, but is a revocable privilege granted by the State contingent upon continuing suitability for licensure." 86 Ill. Admin. Code § 3000.1105.

This provision has been in the Rules since 1993 and makes clear the Board's authority to revoke a license if it finds that the licensee is not suitable to maintain its license.

Additionally, Section 3000.110 provides that discipline may be imposed for the following:

...for any act or failure to act...that is injurious to the public health, safety, morals, good order and general welfare of the people of the State of Illinois, or that will discredit or tend to discredit the Illinois Gaming industry of the State of Illinois. 86 Ill. Admin. Code § 3000.110(a).

As examples of such acts that can lead to revocation, Rule 110 provides in subsection

(a)(5) the following:

Associating with, either socially or in business affairs, or employing persons of notorious or unsavory reputation or who have extensive police records, or who have failed to cooperate with any officially constituted investigatory or administrative body and would adversely affect public confidence and trust in Gaming. 86 Ill. Admin. Code § 3000.111(a)(5).

Case law of this state and of other states, where gambling is allowed, is replete with statements of reviewing courts that the regulatory authorities of gambling have wide discretion in exercising their judgement on matters relating to licensure and revocation thereof. *See, e.g., Archview –Casino Cruises Inc. v. the Illinois Gaming Board*, 263 Ill. App. 3rd 375 (1994); *Balmoral Racing Club v. Illinois Racing Board*, 240 Ill. App. 3rd 112 (1991); *State Department Of Law & Public Safety v. Gonzalez*, 142 N.J.618, 667 A.2d 684 (1995) and *Oklahoma Park Inc. v. Oklahoma Horseracing Commission*, 716 P.2d 666 (1986).

Emerald insists that revocation of its license is too harsh a remedy even if some or all of the alleged conduct occurred. It suggests that transgressions of other riverboat gambling licensees were disciplined by settlement short of revocation of their licenses. Indeed, the instant matter was tentatively settled at one point and the hearing process was

held in recess; however, Emerald violated the terms of the tentative settlement and the hearing was rescheduled. Although attempts to stop this disciplinary action have been shopped in multiple forums, no court has done so.

The Board has discretion to judge the seriousness of the transgressions and the fitness of the penalty that should be applied. The Board notes that the transgressions committed by Emerald in this action occurred while Emerald was not operating or generating revenue, against which, pursuant to the Act, monetary fines against Owner Licensees are normally calculated. Moreover, the evidence in this case does not remotely compare to any disciplinary action referenced by Emerald. The fact that no owner license has been revoked before does not cause the revocation authority of the Board to lapse.

3. Section 3000.1145(a) provides the following concerning disciplinary actions:

the hearing need not be conducted according to technical rules of evidence. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action. 86 Ill. Admin. Code § 3000.1145(a).

Hearsay evidence, which might normally be inadmissible in a civil action, thus was allowed to be admitted into evidence. Specifically, the FBI memorandums and the testimony accompanying those memorandums by Agent Mallul were admitted under the evidence rules adopted by the IGB. The information which was identified as reliable by Agent Mallul and which was gathered in the course of law enforcement procedures of the FBI was admitted and given appropriate weight. The tape conversation between the

Marcello brothers, while admitted, was not given weight because of the circumstances described above.

4. Section 3000.1140 imposes on the Board the burden of proving alleged grounds for discipline. The Board must initially present evidence establishing a *prima facie* case in support of the allegations in its disciplinary complaint, and if it fails to do so the ALJ can enter a directed finding in the licensee's favor. If the Board does make out a *prima facie* case, the licensee must rebut it by clear and convincing evidence.

Any one of the transgressions proved in this case is sufficient to justify revocation of Emerald's license. The sum of the parts far exceeds the making of a *prima facie* case against Emerald's suitability. The record contains strong and credible evidence in support of each ground and each count for discipline alleged in the Complaint For Disciplinary Action.

The Board has sustained its burden of proving each of the grounds for discipline. In particular, as to each count of the Complaint For Disciplinary Action, the Board concludes as follows:

### **COUNT I**

1. Section 3000.140(a) of the Rules provides:

(a) Board licensees and applicants for licenses issued by the Board shall have a continuing duty to disclose promptly any material changes in information provided to the Board. The duty to disclose changes in information shall continue throughout any period of licensure granted by the Board. Board licensees or applicants for licenses must maintain current release of information forms as originally submitted to the Board. 86 Ill. Admin. Code § 3000.140(a)

2. Emerald, through its officers, employees, representatives, shareholders, Key Persons, and others, has engaged in a continuous and repetitive pattern of (a) failing to disclose promptly, if at all, material changes in information provided to the IGB, and/or (b) providing false, misleading or incomplete information to the IGB, including but not limited to, material changes in information regarding:

- (a) transfers of shares of Emerald;
- (b) agreements or understandings to sell ownership interests in Emerald;
- (c) nature of Kevin Flynn's involvement in the management and operation of Emerald;
- (d) status of construction in Rosemont;
- (e) agreements between Emerald and Rosemont;
- (f) agreements between Emerald and various construction professionals, contractors, subcontractors and vendors.

3. By failing to comply with Section 3000.140(a), Emerald has failed to maintain its suitability for licensure. The Board proved Count I of the disciplinary complaint which alone supports revocation of Emerald's license pursuant to Section 5(c) of the Act and Subpart K of the Rules.

## COUNT II

1. Section 3000.140(b)(3) of the Rules provides that licensees "shall periodically disclose ... changes in or new agreements, whether oral or written, relating to: ... [c]onstruction contracts." 86 Ill. Admin. Code § 3000.140(b)(3).

2. Emerald, through its officers, employees, representatives, shareholders, Key Persons, and others, has engaged in a continuous and repetitive pattern of (a) failing to disclose promptly, if at all, changes in or new agreements, whether written or oral, relating to construction contracts, and/or (b) providing false, misleading or incomplete information to the IGB regarding construction contracts, including but not limited to:

- (a) status of construction in Rosemont;
- (b) agreements between Emerald and Rosemont;
- (c) agreements between Emerald and various construction professionals, contractors, subcontractors and vendors.

3. By failing to comply with Section 3000.140(b)(3), Emerald has failed to maintain its suitability for licensure. The Board proved Count II of the disciplinary complaint which alone supports revocation of Emerald's license pursuant to Section 5(c) of the Act and Subpart K of the Rules.



### **COUNT III**

1. Section 3000.140(b)(5) of the Rules (now found at § 3000.140(b)(7)) provides that licensees “shall periodically disclose ... changes in or new agreements, whether oral or written, relating to: ... [a]greements to sell ... or otherwise transfer or share an ownership interest or interest in a holder of an Owner’s License.” 86 Ill. Admin. Code § 3000.140(b)(5) (now found at § 3000.140(b)(7)).

2. Emerald, through its officers, employees, representatives, shareholders, Key Persons, and others, has engaged in a continuous and repetitive pattern of (a) failing to disclose promptly, if at all, material changes in information provided to the IGB relating to agreements to sell or transfer ownership interests, and/or (b) providing false, misleading or incomplete information to the IGB relating to agreements to sell or transfer ownership interests, including but not limited to:

- (a) transfers of shares of Emerald;
- (b) agreements or understandings to sell ownership interests in Emerald;
- (c) agreements or understandings to transfer ownership to associates of Mayor Stephens.

3. By failing to comply with Section 3000.140(b)(5) (now found at § 3000.140(b)(7)), Emerald has failed to maintain its suitability for licensure. The Board proved Count III of the disciplinary complaint which alone supports revocation of Emerald’s license pursuant to Section 5(c) of the Act and Subpart K of the Rules.

### **COUNT IV**

1. Section 3000.235(a) of the Rules provides:

- (a) An ownership interest in an entity with a finding of preliminary suitability or in a holder of an Owner’s license may only be transferred with leave of the Board. An ownership interest in a business entity, other than a publicly traded corporation, which has an interest in an entity with a finding of preliminary suitability or in a holder of an Owner’s license, may only be transferred with leave of the Board. 86 Ill. Admin. Code § 3000.235(a).

2. Emerald, through its officers, employees, representatives, shareholders, Key Persons, and others, failed to apply for or obtain pre-approval to transfer ownership, including but not limited to:

- (a) transfers between Donald Flynn and twelve outside, non-statutory minority investors;

- (b) transfers between Donald Flynn and five original investors;
- (c) transfers between Emerald and the statutory minority investors.

3. By failing to comply with Section 3000.235(a), Emerald has failed to maintain its suitability for licensure. The Board proved Count IV of the disciplinary complaint which alone supports revocation of Emerald’s license pursuant to Section 5(c) of the Act and Subpart K of the Rules.

### COUNT V

1. Section 3000.110(a) of the Rules provides, in part, that:

- a) A holder of any license shall be subject to imposition of fines, suspension or revocation or restriction of such license, or other disciplinary action for any act or failure to act by himself or by his agents or employees that is injurious to the public health, safety, morals, good order and general welfare of the people of the State of Illinois, or that would discredit or tend to discredit the Illinois Gaming industry or the State of Illinois. Without limiting the foregoing, the following acts or omissions may be grounds for such discipline.

....

- (5) Associating with, either socially or in business affairs, or employing persons of notorious or unsavory reputation or who have extensive police records, or who have failed to cooperate with any officially constituted investigatory or administrative body and would adversely affect public confidence in gaming. 86 Ill. Admin. Code § 3000.110(a)(5).

2. Section 5(a)(1) of the Act provides that the IGB’s jurisdiction “shall extend under this Act to every person, association, corporation, partnership and trust *involved* in riverboat gambling operations in the State of Illinois.” 230 ILCS 10/5(a)(1)(emphasis added).

3. Section 5(c)(21) of the Act allows the IGB to “take any other action as may be reasonable or appropriate to enforce this Act and rules and regulations hereunder.” 230 ILCS 10/5(c)(21).

4. Section 7(b)(1) and (2) of the Act provide that in the course of determining whether to grant an owners license to an applicant, the IGB “shall consider: (1) the character, reputation, experience and financial integrity of the applicants *and of any other or separate person that either: (A) controls, directly or indirectly, such applicant, or (B) is controlled, directly or indirectly, by such applicant or by a person which controls, directly or indirectly, such applicant; (2) the facilities or proposed facilities* for the conduct of riverboat gambling.” 230 ILCS 10/7(b)(1) and (2)(emphasis added).

5. Emerald, through its officers, employees, representatives, shareholders, Key Persons, and others, repeatedly engaged in activity that would discredit or tend to discredit the Illinois Gaming industry or the State of Illinois, and/or is injurious to the public health, safety, morals, good order and general welfare of the People of the State of Illinois, including but not limited to:

- (a) failing to cooperate fully with the IGB's investigation of Emerald and its Key Persons;
- (b) failing to fully, truthfully, timely and accurately disclose information to the IGB, as required by the Act and Rules, and as specifically requested by the IGB;
- (c) failing to conduct any reasonable inquiry into the background of its investors and other individuals that it chose to associate with;
- (d) selling shares of its stock to individuals of notorious or unsavory character, specifically individuals identified as known members of organized crime and individuals identified as associates of known members of organized crime;
- (e) failing to disclose and actively misleading the IGB as to the status of construction in Rosemont;
- (f) failing to disclose and actively misleading the IGB as to the transfer of shares to and from Donald Flynn;
- (g) Failing to disclose and actively misleading the IGB as to Kevin Flynn's involvement in the operation and management of Emerald;
- (h) Entering into an agreement or understanding that allowed Mayor Stephens to have control over and/or input into sales of Emerald shares;
- (i) allowing the Village of Rosemont to waive the requirement that Emerald first obtain the necessary regulatory approval from the IGB prior to commencing construction of a casino;
- (j) failing to supervise or manage the construction and by failing to do so, allowing work to be completed by a company that has been identified as having connections to known members or associates of organized crime;
- (k) entering into a Lease & Development Agreement with Rosemont that obligated Emerald to fund the construction of a parking garage, even though did not have sufficient financing to do so.

6. Emerald's conduct discredits, or tends to discredit, the Illinois Gaming Industry and the State of Illinois.

7. Emerald's conduct is injurious to the public health, safety, morals, good order and general welfare of the People of the State of Illinois.

8. Emerald's conduct has adversely affected public confidence in gaming.

9. By failing to comply with Section 3000.110(a) and its subparts, Emerald has failed to maintain its suitability for licensure. The Board proved Count V of the disciplinary complaint which alone supports revocation of Emerald's license pursuant to Section 5(c) of the Act and Subpart K of the Rules.

Emerald did not rebut the proof with clear and convincing evidence or even with credible evidence.

5. At least since 1997, when Emerald first lost its license, it and its principals have played fast and loose with the law and with the rules and regulations of the IGB. Its *modus operandi* was "catch me if you can" rather than abide by the legal and ethical standards that the law imposes on those privileged to get a gambling license.

Kevin Flynn flat - out lied and others dissembled as to when Emerald first attempted to move its gambling operations to Rosemont. Instead of obtaining approval from the IGB or advising the IGB of plans to sell interests in its operations to others, Emerald played a shell game with letters and lists that provided little or no explanation in order to prevent any IGB investigation until after the fact.

When confronted with the fact that Emerald had failed to disclose its agreements with Rosemont and Power Construction, Emerald claimed that "Letters of Intent" do not count as anything. When confronted with allegations that Kevin Flynn had entered into secret agreements concerning Emerald's interest in its license, Emerald first claimed that such agreements were not made. When confronted with evidence to the contrary, Emerald then claimed that Kevin Flynn did not have "authority" to make such deals.

When Emerald was confronted with evidence that persons associated with organized crime had obtained interests in Emerald's gaming operation, Emerald's defense was that it was the IGB's responsibility to determine such facts and that such stock transactions were not binding. These positions, along with the record as a whole, underscore Emerald's unsuitability to hold an Owner's License in Illinois.

The Board concurs with ALJ Mikva that the operation of gaming by Emerald would greatly undermine "public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process" in Illinois. Additionally, the Board concurs with and adopts ALJ Mikva's disciplinary recommendation. The Owner's License held by Emerald Casino, Inc. is hereby revoked.

This is a final administrative order subject to judicial review pursuant to section 17.1(a) of the Illinois Riverboat Gambling Act.

Date: December 20, 2005

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Aaron Jaffe, Chairman

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Charles R. Gardner

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Eugene Winkler

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Joseph E. Moore, Jr.

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James E. Sullivan