

**STATE OF ILLINOIS
ILLINOIS GAMING BOARD**

Gold Rush Amusements, Inc. d/b/a)
Gold Rush Gaming,)
)
Petitioner,)
)
v.)
)
American Video Gaming, LLC, and)
Charhouse, LLC d/b/a John & Tony’s,)
)
Respondents.)
)

No. 18-UP-024

RE: Charhouse, LLC d/b/a John & Tony’s (Lic. No. 170702714)

FINAL BOARD ORDER

This cause is before the Illinois Gaming Board (the “Board” or “IGB”) pursuant to the Video Gaming Act (the “VGA”), 230 ILCS 40, and Section 1800.320(b) of the Board’s Adopted Rules (the “Rules”). 11 Ill. Adm. Code 1800.320(b).

FINDINGS OF FACT

Before me is the entire record of *Gold Rush Amusements, Inc. d/b/a Gold Rush Gaming, Petitioner* (“Gold Rush”) v. *American Video Gaming, LLC* (“AVG”) and *Charhouse, LLC d/b/a John & Tony’s* (“Charhouse”), *Respondents In Re Charhouse*, Docket No. 18 UP 024. The record includes the Petition, all Responses, other documents properly submitted, and the Administrator’s Recommended Decision.

On August 6, 2018, Gold Rush petitioned the Board to declare Gold Rush’s July 25, 2017 agreement with Charhouse to be valid for the placement and operation of video gaming terminals (“VGTs”) in Charhouse; invalidate the January 2, 2018 agreement between AVG and Charhouse; and order AVG to remove its VGTs from Charhouse. On December 15, 2018, AVG and Charhouse separately filed Responses to Gold Rush’s Petition. I issued an Administrator’s Recommended Decision (“ARD”) on February 2, 2024 recommending dismissal of Gold Rush’s Petition because the Gold Rush Agreement provides that it would commence upon installation of Gold Rush’s VGTs and AVG was the first licensed terminal operator to place and operate VGTs inside Charhouse. No Exceptions were filed to the ARD.

CONCLUSIONS OF LAW

Pursuant to the VGA, the Rules, and *J&J Gaming Ventures, LLC v. Wild, Inc.*, 2016 IL 119870, the Board has exclusive and original jurisdiction over agreements that purport to control the placement and operation of video gaming terminals. In *Wild*, the Illinois Supreme Court affirmed that there is no common law right to profit from gambling. *Wild* at ¶ 32. The Court further held that the VGA’s legalization of video gaming is an exception to the general prohibition on gambling, that video gaming is allowed only as authorized by the VGA and the Rules, and that by “legalizing the use of video gaming terminals for commercial gambling purposes, the legislature enacted a comprehensive statutory scheme, creating rights and duties that have no counterpart in common law or equity.” *Id.*

On February 2, 2024, I issued an ARD recommending the Board dismiss Gold Rush’s Petition. On February 9, 2023, the Board delegated to the IGB Administrator authority to issue a Final Board Order to dispose of a Rule 320 Petition where none of the parties file Exceptions to the ARD. As noted above, none of the parties filed Exceptions in this matter.

Therefore, after careful review and consideration of the entire record, I hereby:

- (1) Adopt the Administrator’s Recommended Decision as a Final Board Order; and
- (2) Dismiss Gold Rush’s Petition.

This is a Final Order subject to judicial review under the Administrative Review Law pursuant to 230 ILCS 10/17.1. The Rules of the Illinois Gaming Board do not permit motions or requests for reconsideration of this Order.

DATED: February 20, 2024



**MARCUS D. FRUCHTER, ADMINISTRATOR
ILLINOIS GAMING BOARD**

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RE: Charhouse, LLC d/b/a John & Tony's (Lic. No. 170702714)

ADMINISTRATOR'S RECOMMENDED DECISION

This dispute comes before the Illinois Gaming Board (the "Board" or "IGB") under Section 1800.320(b) of the Board's Adopted Rules (the "Rules"). 11 Ill. Adm. Code 1800.320(b). This Recommendation issues under Rule 320(b)(6). 11 Ill. Adm. Code 1800.320(b)(6).

On August 6, 2018, Gold Rush Amusements, Inc. ("Gold Rush") filed a Petition pursuant to 11 Adm. Code 1800.320(b)(1) asking the Board to: (1) declare that Gold Rush has a valid and enforceable agreement (the "Gold Rush Agreement") to place and operate video gaming terminals ("VGTs") in Charhouse, LLC d/b/a John & Tony's¹ ("Charhouse"); (2) find the Gold Rush Agreement valid and enforceable during any period of overlap with a competing

¹ On February 20, 2020, Charhouse surrendered its video gaming establishment license. Subsequently, on September 9, 2021, the Board issued a new license to Charhouse as Charhouse d/b/a North Avenue Pub & Grill. Accel currently operates VGTs in Charhouse under an agreement signed by Accel and Charhouse on August 23, 2022.

agreement between American Video Gaming, LLC (“AVG”) and Charhouse (the “AVG Agreement”); (3) order AVG to remove its VGTs from Charhouse; and (4) allow Gold Rush to immediately install and operate its VGTs and related equipment in Charhouse. Gold Rush argues the Gold Rush Agreement should prevail over the AVG Agreement because the Gold Rush Agreement predates the AVG Agreement. On December 15, 2018, AVG and Charhouse separately filed timely Responses (hereinafter collectively referred to as, “Response”).

After considering the parties’ submissions, and for the following reasons, I recommend the Board deny Gold Rush’s Petition.

I. JURISDICTION

The Video Gaming Act (the “VGA”) confers jurisdiction and authority upon the Board to supervise all video gaming operations in Illinois. 230 ILCS 40/78; *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶¶ 3, 39-40. The Board has all powers necessary and proper to effectively execute the VGA, including authority to adopt regulations for the purpose of administering it and “provide for the prevention of practices detrimental to the public interest and for the best interests of video gaming.” *Wild*, 2016 IL 119879, ¶ 3. The VGA provides “a comprehensive statutory scheme that vests jurisdiction over video gaming operations” with the Board. *Id.* at ¶ 42. The Board’s broad authority over all aspects of video gaming includes the “exclusive, original jurisdiction” to determine the validity and enforceability of agreements that “purport to control placement and operation of video gaming terminals.” *Id.*; *see also* 11 Ill. Adm. Code 1800.320(b)(1).

II. RELEVANT BACKGROUND

On July 25, 2017, Gold Rush and Charhouse signed an agreement to place video gaming terminals in Charhouse. (Petition ¶ 5, Ex. A; Response ¶ 5, Ex. I.) Later, on January 2, 2018, Charhouse signed a similar placement agreement with AVG. (Petition ¶ 7, Ex. B; Response ¶ 7.)

Both the Gold Rush and AVG Agreements provide that they commence on the date their respective VGTs begin operating inside Charhouse. (Petition Exs. A and B.) After the Board granted Charhouse a video gaming establishment license, AVG installed and began operating its VGTs in Charhouse on January 31, 2018. (Petition ¶ 4; Response ¶ 4.) Subsequently, on August 6, 2018, Gold Rush filed this Petition. AVG and Charhouse filed timely Responses to Gold Rush's Petition.

III. DISCUSSION

In its Petition, Gold Rush asserts the Gold Rush Agreement is the valid and enforceable use agreement ("UA") because it predates the AVG Agreement. (Petition ¶ 11.) AVG responds that the Gold Rush Agreement violates various provision of Rule 320, including failing to meet the applicable Minimum Standards for Use Agreements. (Petition ¶ 5.) Both the Gold Rush and AVG Agreements provide they commence on the date VGTs first begin operating in Charhouse. (Petition Exs. A and B.) AVG began operating its VGTs in Charhouse on January 31, 2018. (Petition ¶ 4; Response ¶ 4.)

In *J&J Ventures Gaming, LLC v. Accel Entertainment Gaming, LLC*, ARD 17-UP-003, the Board resolved a Petition similarly disputing the validity and enforceability of multiple competing agreements. In that case, Petitioner J&J asserted that its agreements should prevail because the contested establishments signed them before they signed the competing Accel agreements. The Board rejected that argument, finding instead that Accel's agreements were valid and enforceable UAs because Accel was the first licensed terminal operator to place and operate its VGTs in the contested licensed establishments. The terms of the parties' competing agreements with the establishments compelled the Board's decision. Those agreements provided they would "*commence* upon the date the first video gaming terminal described herein *first*

operates in the [l]icensed [e]stablishment.” ARD 17-UP-003, at 7-8 (emphasis added). Thus, the Board concluded that licensure of the establishments and installation of Accel’s VGTs in the locations satisfied contingencies found in the Accel agreements such that the agreements constituted valid and enforceable UAs under Rule 320. ARD 17-UP-003, at 8-9. Conversely, because J&J had not placed and activated its VGTs in the contested establishments, the Board did not find J&J’s agreements to be valid and enforceable UAs. *Id.*

An indistinguishable situation in terms of pertinent facts and arguments exists here. Since the Gold Rush Agreement states it would commence upon installation of Gold Rush’s VGTs and AVG was the first licensed terminal operator to place and operate VGTs inside Charhouse, the Board should not find the Gold Rush Agreement to be valid and enforceable. There are no other facts in the record that would remove this Petition from the framework established by 17-UP-003.² Therefore, in accord with its decision in 17-UP-003, I recommend the Board reject Gold Rush’s Petition.

IV. CONCLUSION

For the foregoing reasons, I recommend that the Board enter an Order:

1. Adopting this Recommended Decision;
2. Denying Gold Rush’s Petition; and
3. Directing that all further proceedings be cancelled, and this matter be concluded.

² Note, however, that the 2022 revisions to Rule 320(b)(2) adopted a first-in-time UA priority rule for all video gaming location applications filed on or after October 1, 2022. 11 Ill. Adm. Code 1800.320(b)(2). Revised Rule 320(b)(2) does not control the outcome of this dispute because the agreements at issue in this Petition predate October 1, 2022.

Pursuant to Rule 320(b)(7), any party to this Petition wishing to file exceptions must do so by 5:00 p.m. central standard time on the 14th day after receipt of this Recommend Decision.

DATED: February 2, 2024

RESPECTFULLY SUBMITTED,

A large black rectangular redaction box covering the signature of Marcus D. Fruchter.

**MARCUS D. FRUCHTER, ADMINISTRATOR
ILLINOIS GAMING BOARD**

SERVICE LIST

Pursuant to Board Rules 1800.320(b)(12), and 1800.140, this Final Order is being served *via* e-mail upon all parties of record to *Gold Rush Amusements, Inc. v. American Video Gaming, LLC (Charhouse d/b/a John & Tony's)*, Docket No. 18-UP-024 at the following addresses:

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CERTIFICATE OF SERVICE

I, Agostino Lorenzini, certify that on February 20, 2024, I served a copy of the attached Final Order to all parties of record in *Gold Rush Amusements, Inc. v. American Video Gaming, LLC (Charhouse d/b/a John & Tony's)*, Docket No. 18-UP-024 at the following e-mail addresses:

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