

MARYLAND LOTTERY AND GAMING CONTROL COMMISSION MAY MINUTES

DATE: May 23, 2024

TIME: 10:00 a.m.

PLACE: Maryland Lottery and Gaming Headquarters
and virtual

PRESENT: Chair E. Randolph Marriner
Vice Chair George L. Doetsch, Jr.
Commissioner Ade Adebisi
Commissioner Everett D. Browning, Sr.
Commissioner Diane M. Croghan
Commissioner Harold E. Hodges
Commissioner James J. Stakem

John Martin, Director
James Nielsen, Deputy Director, Chief Operating Officer
James Butler, Assistant Deputy Director, Chief of Staff
Michael Eaton, Managing Director, Gaming
John Mooney, Managing Director, Regulatory Oversight
Solomon Ramsey, Managing Director, Sales and Marketing
Paula Yocum, Managing Director, Chief Financial Officer
Seth Elkin, Managing Director, Communications
Holly Citko, Principal Counsel, Attorney General's Office
Jennifer Tosky, Deputy Counsel, Attorney General's Office
Kathy Lingo, Executive Assistant

OTHERS: Representative from Ocean Downs Casino
Representative from Hollywood Casino
Representative from Live! Casino
Representative from Rocky Gap Casino Resort
Representative from Horseshoe Casino Baltimore
Representative from MGM National Harbor
Representatives from Betr
Representative from Chesapeake Amusements, Inc. d/b/a Rod-N-Reel Bingo
Representative from Kagan Stern Marinello & Beard, LLC for Emergency
Suspension Hearings

E. Randolph Marriner, Chair

Ade Adebisi, Everett D. Browning, Sr., Diane M. Croghan, George L. Doetsch, Jr., Harold E. Hodges, James J. Stakem

QUORUM ESTABLISHED

Chair Marriner, present in person, announced that there was a quorum present for the meeting. Also present in person were: Vice Chair George Doetsch and Commissioners Ade Adebisi, Everett Browning, Diane Croghan, Harold Hodges, and James Stakem.

CALL TO ORDER

Chair Marriner called the meeting of the Maryland Lottery and Gaming Control Commission to order at 10:00 a.m.

APPROVAL OF THE REVISED AGENDA

Chair Marriner asked for a motion to approve the revised agenda. Commissioner Stakem motioned to approve, Commissioner Browning seconded, and the motion was unanimously approved.

APPROVAL OF THE MINUTES

Chair Marriner asked if there were any comments or corrections to the minutes of the April 25, 2024, Open Session. There being none, Chair Marriner asked for a motion to approve the minutes. Vice Chair Doetsch motioned to approve, Commissioner Browning seconded, and the motion was unanimously approved.

CONSENT AGENDA

1. Four New Instant Ticket Games: #709 (\$5) *Game of Thrones*; #710 (\$5) *Deluxe Crossword 9th Edition*; #711 (\$10) *\$2,000 Large*; #712 (\$30) *\$5,000 Large*;
2. EGD Games and Component Testing: Certified Lab Software, Hardware and Game Certifications: VLTs, Table Game Components, Instant Bingo Machines, Sports Wagering Systems and Kiosks (4/22/24 – 5/20/24)
3. Consent Agreements – Regulatory Violations
 - a. Hollywood Casino – January 2024
 - b. Horseshoe Casino – December 2023 and January 2024
 - c. Ocean Downs Casino – January 2024
 - d. Rocky Gap Casino – January 2024
4. Consent Agreements – Mobile Sports Wagering Violations
 - a. BetMGM, LLC – January 2024
 - b. Crab Sports – January 2024
5. Gaming License Application Denials/Revocations
6. Lottery Retailer License Revocations
7. Staff Reports: James Nielsen, Deputy Director, Chief Operating Officer; James Butler, Assistant Deputy Director, Chief of Staff; Michael Eaton, Managing Director, Gaming; John Mooney, Managing Director, Regulatory Oversight; Solomon Ramsey, Managing Director, Sales and Marketing; Paula Yocum, Managing Director, Chief Financial Officer; Seth Elkin, Managing Director, Communications; and Holly Citko, Principal Counsel, Office of the Attorney General.

Chair Marriner asked if any Commissioners cared to remove and discuss any items on the Consent Agenda. There being no discussion or requests, Chair Marriner asked for a motion to approve the consent agenda. Vice Chair Doetsch motioned to approve, Commissioner Browning seconded, and the motion was unanimously approved.

Commissioner Hodges asked about the rationale for amounts levied against regulatory violations, in particular, risk levels provided. He stated they are not consistent and wanted a better understanding.

Chair Marriner noted that there is consistency, and asked Mr. John Mooney to explain it to Commissioner Hodges. Mr. Mooney stated that the settlement amounts are consistent with the schedule reviewed by Deputy Director, Director and Chair and MLGCA follows that schedule. Repeat violations double the amount, and it hits sports wagering underage and inappropriate bets a bit harder. Mr. Mooney did not have a copy of the schedule at the meeting but offered to send it to Commissioner Hodges. Commissioner Hodges agreed to have Mr. Mooney send it to him.

OPERATOR REPORTS

Hollywood Casino

Ms. Amy Brennan, General Manager, reported that April gross gaming revenue was up 7.5%, driven by revenue up in slot machines, table games and sportsbook. Poker revenue was down. Gross gaming revenue year-over-year was up 2.1%. In April, the casino had several promotions including Dueling Pianos, Fri-Yay Slot Tournament, and on April 6 the Penn Million drawings. The casino also held a VIP event that recognized team members that provided great service. When a guest would win, an employee would win also. Hollywood Casino continued the Cash Cube in April, adding a \$1,000 gold ticket. In the community, the casino focused on Earth Day and participated in the 24th Annual River Sweep in Perryville, and also cleaned up around the property.

Ocean Downs Casino

Ms. Bobbi Jones, General Manager, reported that April was a soft month. Coin-in was up \$144,000 year-over-year, but revenue was down 7%. Table drop was down 6%, wins were down 7%, and sports wagering was down 37%, but hold was up 12.7 points. Local bands again played in the event center. The casino held a charity slot tournament for Hands and Hearts Ending Homelessness and raised over \$1,500. Ocean Down had several promotions, including a Plinko event with over 350 attendees. Blackjack tournaments continued in the month of April which were at capacity every night. The casino held a sportsbook drawing with over 5,000 entries. Team members participated with their dogs in the Dog parade. Town hall meetings with the team members have continued. In the community, the casino was a sponsor for the King Kennedy Dinner and the Worcester County Fair, and hosted the Ocean Refoundation Annual Luncheon.

Chair Marriner asked if the performance was off due to weather or gambling performance. Ms. Jones responded it was a little bit of both. Like 2022 when the first quarter did not do well, but in the summer, it was huge, the casino expects higher numbers with summer approaching.

Live! Casino

Ms. Yvonne Mrha, Senior Vice President, Chief Financial Officer, reported that gaming revenue in April was \$60.9 million, down 2.5% year-over-year. Slot machine revenue was up 1.3%, table game revenue was down 11% year-over-year, and poker was up .5% year-over-year. Retail Sportsbook revenue is down 52.2%, with online Sportsbook up 52.2%. The casino had a VIP Anniversary weekend with gaming, shows and drawings. Live! had several gift giveaways in April. Team members volunteered with Autism in the Park event, and the Howard County Community College Gardening event. April was Stress Awareness Month and Live! Casino provided massages for team members. Live! Casino hosted and sponsored the Central Maryland Chamber Awards Gala, the

GMBC Walk a Mile in Their Shoes for domestic violence awareness, and the Believe in Tomorrow Gala. The casino also hosted the Governor's Office of Small Minority and Women Business Affairs Seminar.

Commissioner Hodges asked about projections for the end of year outlook. Ms. Mrha said there is a positive outlook for this year compared to last year. The casino is not a publicly traded company, so they do not provide forecasts, but look at a very high increase year-over-year.

Commissioner Hodges asked what the casino is currently doing for outreach to minority businesses. Ms. Mhra responded that the casino sponsored two large events in the Hall with up to 3,000 people to attract minority businesses. The casino talks to MBEs directly. Live! goes throughout the region and local communities to talk to minority owners, noting that the State has a website to help identify MBE businesses already registered with the State. Live! calls those businesses and asks them to come in. Live! is working to keep their goal with MBE participation.

Commissioner Hodges asked if the casino has had success with that. Ms. Mrha said that COVID set the casino back, at the end of 2021 the casino fell below 10%, not because of lack of trying, but because many MBE businesses went out of business during that time, and the casinos were reducing their overall spend. In 2023, the percentage jumped back up to 25%.

Chair Marriner asked if Gerald Stinnett, MBE Compliance Manager for the Governor's Office of Minority Affairs was in the room. Mr. Stinnett responded he was present. Chair Marriner asked that at the end of the meeting Mr. Stinnett meet with Commissioner Hodges to explain how Mr. Stinnett helps with the MBE process.

Rocky Gap Casino

Mr. Brian Kurtz, General Manager, reported that April gaming revenue was soft. Total gaming revenue was down 20.6% year-over-year. Slot machine revenue was down 17%. There was a drop in coin-in primarily in the mid-week segments of business, with a slight improvement in hold. Table game revenue was down 45%, driven by hold, with a full 10-point drop in hold with many winners in April. Revenue is improving in May. Property visits are softer during the week with decrease in rooms at 16%. Rocky Gap continued weekly giveaways throughout each week. There was one Bonkerz Comedy Show in April due to other activities outside of the building. In the community, the casino collected over 274 items to the Western Maryland Food Bank. In May, Rocky Gap partnered with the Local Family Crisis Resource Center. Volunteer Day in May was a day of caring and sharing with clean-up of local parks and playgrounds. Rocky Gap is seeing trends improving in May, with the hotel running at 80%. The swimming beach at Rocky Gap opens tomorrow. The MBE contract with Full Circle for slot tech labor has been extended out to 2027. The casino hired a new Director of Finance in May.

Commissioner Hodges requested that Mr. Kurtz talk about projections for the year for business lines. Mr. Kurtz said the casino is a publicly traded company so he will not make financial speculations. Trends are improving in May. In the third and fourth quarters last year, the casino had substantial changes with transition of ownership. The casino switched out accounting systems, gaming system and players club. Rocky Gap is the second property in Maryland to do a conversion since opening. Best case scenarios were still disruptive, and interface disruptions can cause issues. The third and fourth quarters are looking good.

Rocky Gap's MBE partner, Wheels Up Adventures handles all outdoor activities. There is an overall uniqueness in the area because it is right beside West Virginia and Pennsylvania. Pennsylvania numbers are down 4%, table games from a retail standpoint, meaning brick and mortar, is down 7%, with softness in the area in this market. Travel is strong during summer.

Horseshoe Casino

Mr. Randy Conroy, Vice President and General Manager, reported slot revenue of \$10 million, table game revenue of \$4.7 million and sports revenue was \$0. There was unusually low hold in the retail sports book and it had carryover from a very poor outcome for the Superbowl. The casino can carryover those losses for a certain amount of time, and now the casino has reached the point that it is caught up from that poor Superbowl outcome. The casino had the final week of the Tax Man Drawing with one guest winning \$10,000. The casino had several promotions through April and the beginning of May, including celebrating the Preakness with free play while watching the race. The Brew Brothers Sports Bar renovated the menu after shutting down for a week and retraining the staff. Mother's Day was celebrated with a luncheon at Gordon Ramsey's Steak. Horseshoe was a major sponsor for a Cystic Fibrosis fundraiser. In May, the casino is celebrating team members with various giveaways.

Commissioner Hodges asked if the casino has been affected by the bridge collapse – employee-wise and customers, and if the casino is affected by crime which has been bad in the City. Mr. Conroy responded that no team members seem to be impacted by the bridge collapse, although downtown traffic is a mess. Mr. Conroy said that there has been an increase in security staffing levels, taking additional measures, and like MGM National Harbor, Horseshoe conducts 100% ID check. The goal is to know who is in the building, and there were people who have behaved badly in the past and are not allowed back in the casino. Horseshoe has enacted gated parking, with guest getting through the gate as Caesars Reward members, or paying \$5 if not a member. The casino wants to know who is in garage and the building. Other security measures cannot be discussed.

Chair Marriner asked if the casino scans IDs. Mr. Conroy said that Horseshoe does scan to make sure a driver's license is valid, and stores the data in the casino's security system.

MGM National Harbor

Mr. Efrain Perez Agosto, Vice President, CFO, reported that April gaming revenue was down 10%, with a decline in table games, all hold related. The casino, similar to the previous year, held a large Blackjack tournament for high end guests. Last year had a high hold, this year did not. Overall there is growth in volumes in both slot machines and table games. Slot machine revenue was up 2% year-over-year, poker revenue was up 2.5%. Regional sportsbook wrote more than 30,000 tickets, and generated approximately \$3.5 million in handle. In April, MGM National Harbor had a \$850,000 Winner Takes All Blackjack tournament, had smaller baccarat tournaments, and several kiosk games. Smokey Robinson performed a sold-out show. In the community, MGM celebrated National Heritage Month, and team members volunteered to do clean up at Oxon Cove Park and Oxon Hill Farm to conduct park and shoreline clean up. The casino partnered with the Alice Ferguson Foundation to sort trash into compost and recycling bins, and with the American Horticultural Society for their Spring Garden Market. December was the seventh year in operation for the casino and MGM National Harbor recently published their community benefits report. Mr. Agosto shared information in that report regarding employing staff, money raised in financial aid for non-profit organizations, and \$190 million spent in minority owned businesses, and mentioned employee volunteer hours.

Commissioner Hodges asked Mr. Agosto to talk about projections of what the casino plans for the future. Mr. Agosto said because MGM National Harbor is a publicly traded company there is not much that he can share. Leading indicators are positive, as the casino is working very hard to track growth year-over-year. The casino does not expect to experience the same issues as last year, like the carpet replacement, which impacted business. MGM National Harbor expects to do better.

Commissioner Hodges asked if the casino has been impacted by the bridge collapse. Mr. Agosto

said there is minimal impact to guests coming in, and supply chain issues have also been minimal.

Commissioner Hodges asked if there has been an increase in security. Mr. Agosto said that the casino is working with law enforcement and has spent millions of dollars over the last few years to take care of safety for team members and guests.

Chair Marriner asked if it was safe to assume that team members are residents of Prince George's County. Mr. Agosto said over 46% are from Prince George's County.

Commissioner Adebisi asked if the County Executive in Prince George's County, who signed an order restricting teenagers in the area, worked with the casino on that. Mr. Agosto stated that the County Executive did not consult with the casino and is not expected to work with the casino.

Commissioner Adebisi asked if it was a benefit for the County Executive to work with the casino, or if the casino is not affected by the youth. Mr. Agosto said because the youth are under age, the order does not affect the casino.

DIRECTOR'S REPORT

Director's Report — John Martin, Director

Director Martin reported that Sales in April year-over-year were up by a significant margin primarily due to the increase in Powerball jackpots. Profits have been flat as reflected in the year-to-date numbers. Numbers reflect Sales are down 1.3% from last year, and down 1% on the profit side. Director Martin said that MLGCA is optimistic that the gap can be closed in the two remaining months of the fiscal year. Overall casino revenue is down 5.8% year-to-date, and contributions to the State are down 3.9%. On the sports wagering side, combined retail and mobile platforms are over \$4.5 billion in handle year-to-date, with hold at 10.5%, and contributions are over \$47.5 million. MLGCA is anticipating a strong close to sports wagering, and hopes to break even on the lottery side, and close to breaking even on the casino side.

Commissioner Hodges asked if the casino contributions to the State are based on a percentage of revenue or fixed. Director Martin referred Commissioner Hodges to page 2 of the Dashboard which shows the proportional shares of casino revenues broken down each month. Chair Marriner asked Director Martin to show Commissioner Hodges the page to which he was referring. Director Martin held up the Dashboard and showed Commissioner Hodges the page with the revenue break down.

COMMISSION ACTION ITEMS

John Mooney – Managing Director, Regulatory Oversight

Chair Marriner stated there are three qualification hearings: Chesapeake Amusements, Inc. d/b/a Rod-N-Reel Bingo is seeking qualification for a Sports Wagering Facility License; and Betr MD, LLC is seeking qualification for two Sports Wagering Licenses: A Mobile Sports Wagering License and an Online Sports Wagering Operator License.

Chair Marriner then read the procedures for the hearings.

Chair Marriner swore in MLGCA staff John Mooney, Phil Metz, Michael Pfisterer, Greg Domogauer, Mark Williams, Barry Laurent, Joseph O'Shea, Eric Jordan, and Lester McCrea; and representatives for the applicants: Mary Lanham, CEO/President, Chesapeake Amusements, Inc.; and for Betr MD,

LLC: Ashwin Krishman, Head of Legal & Business Affairs, Adrian Figueroa, Head of Finance; Robert Warrant, Compliance Lead; and Adrian Figueroa, Head of Finance.

Chair Marriner then asked Mr. Mooney to summarize the licenses being sought for each.

Mr. Mooney said there would be three qualification hearings with Betr MD, LLC a single presentation because it is seeking two sports wagering licenses. Mr. Mooney read a statement that pertains to all of the qualification hearings. An applicant must submit the appropriate license application and prove to the Commission by clear and convincing evidence, that it meets the qualification criteria in the Sports Wagering Law. Applicants must prove that they are qualified under State Government Article § 9-1E-07(e) and Code of Maryland Regulations (COMAR) 36.10.03.02 and must not be disqualified under State Government Article § 9-1E-07(g)(1). An applicant must provide all information to the Commission that is necessary for a qualification determination.

Mr. Mooney said that at the conclusion of the hearings for the facility and mobile sports wagering licenses, if found qualified, the decision statement of the Commission will be forwarded to the Sports Wagering Application Review Commission (SWARC) for it to determine whether to award a license.

Mr. Mooney reported that the Agency conducted a complete and thorough background investigation of Chesapeake Amusements, Inc. and Betr MD, LLC as authorized under the Sports Wagering Law by analyzing corporate records and documents; scrutinizing the business operations, practices, and transactions and conducting interviews of key personnel, focusing on required qualification criteria involving integrity and financial stability. The Agency adhered to well-defined and approved investigative protocols in assembling the factual information incorporated in the Agency's report and found each of the applicants appearing before you today to:

- 1) Have financial stability, integrity and responsibility;
- 2) Have no material issues involving the known financial backers;
- 3) Possesses the requisite good character, honesty and integrity;
- 4) Have sufficient business ability and experience; and
- 5) Have no potential disqualifying factors.

All Applicants have submitted a completed application for each license they are seeking, adequate proof of bond and all required fees.

QUALIFICATION HEARINGS

Commission Action Item – Chesapeake Amusements, Inc. d/b/a Rod-N-Reel Bingo – Sports Wagering Facility License

Mr. Mooney reported that Chesapeake Amusements, Inc. has submitted an application for a Class B-1 Sports Wagering Facility License. Mr. Mooney summarized the publicly available Executive Summary of the MLGCA's investigation report on Chesapeake Amusements, Inc.

Mr. Mooney said the Agency's investigation has confirmed that the Applicant has sufficient financial resources and found no derogatory information regarding the Applicant's qualifications. Staff recommends that the Commission find Chesapeake Amusements, Inc. qualified for a Class B-1 Sports Wagering Facility License based on the provisions of the Sports Wagering Law by clear and convincing evidence.

Chair Marriner then asked if anyone from Chesapeake Amusements, Inc. had any questions or would like to speak. Ms. Mary Lanham thanked the Commission for the opportunity to add sports betting to their resort in Maryland.

There were no questions from the Commission. Chair Marriner asked for a motion to find that the Applicant has established that it is qualified for the license it is seeking by clear and convincing evidence. Vice Chair Doetsch motioned; and Commissioner Browning seconded and the motion passed unanimously.

Chair Marriner asked for a motion directing Staff the authority to draft the Commission's decision statement on the qualification of the Applicant for the license it is seeking. Vice Chair Doetsch motioned; and Commissioner Browning seconded and the motion passed unanimously.

Chair Marriner asked for a motion to direct the Secretary of the Commission to transmit the decision statement to the SWARC. Vice Chair Doetsch motioned; and Commissioner Stakem seconded and the motion passed unanimously.

Commission Action Item – Betr MD, LLC – Mobile Sports Wagering License and Online Sports Wagering Operator License

Mr. Mooney reported that Betr MD, LLC submitted applications for a Mobile Sports Wagering License and an Online Sports Wagering Operator License. Betr MD would be the online operator for its own mobile sports wagering operations, so it is required to apply for the two licenses. Today's hearing is for the Commission to determine whether Betr MD meets license qualification requirements. The Commission's determination will apply to both applications.

Mr. Mooney summarized the publicly available Executive Summary of the MLGCA's investigation report on Betr MD, LLC. The Applicant was formed to hold the mobile and online sports wagering operator licenses in Maryland, and is a wholly-owned subsidiary of Betr Holdings, Inc., which was formerly known as Instabet, Inc. Instabet had a name change to Betr Holdings, Inc. on August 4, 2022. Betr Holdings will manage and operate the mobile sportsbook through Betr MD, LLC.

Mr. Mooney recommended that a review of its operating performance and financial condition be conducted annually, but said that the Applicant and its principal entity satisfy the applicable qualification criteria and are not disqualified under the Sports Wagering Law. Jake Paul, Joey Levy, Jessica Cotto, and Dennis Cotto were identified as Principals of the Applicant and each has submitted, been approved for, and issued a Principal Employee License or temporary principal employee license.

The Agency's investigation has confirmed that the Applicant has sufficient financial resources and found no derogatory information regarding the Applicant's qualifications. Staff recommends that the Commission find Betr MD, LLC, qualified for a Mobile Sports Wagering License and an Online Sports Wagering Operator License based on the provisions of the Sports Wagering Law by clear and convincing evidence.

Chair Marriner then asked if anyone from Betr MD, LLC had any questions or would like to speak. Mr. Ashwin Krishman, Head of Legal and Business Affairs for Betr MD, LLC thanked the Commission and MLGCA staff for their consideration. He stated that he was available to answer questions.

Commissioner Hodges asked Mr. Mooney to clarify whether Betr MD, LLC had poor financial performance. Mr. Mooney responded that was correct for the reporting period. Commissioner Hodges asked Mr. Mooney how MLGCA warrants a positive opinion from the team based on Betr's poor performance.

Mr. Mooney stated that the applicants have financial backers and it is not uncommon for any business with start-up costs, but specifically for sports wagering to lose money for a period of time. Even major operators have not had profits for a number of years, but have financial backers just like Betr. Commissioner Hodges asked Mr. Mooney to name one or two. Mr. Mooney said the biggest one is Draft Kings, and Chair Marriner noted FanDuel lost money as well. They both turned positive after a number of years.

Commissioner Hodges said Simple Bet is only a 5% owner of entity, and wanted to know the name of the majority shareholder of Simple Bet. Mr. Mooney asked Ashwin Krishman to respond. Mr. Krishman said he did not have a breakdown of the capital table. Mr. Krishman asked Mr. Wellendorf if he had that information. John Wellendorf does not have specifics to Simple Bet's account table. His understanding is that they had applied for license in Maryland for work they do.

Betr Motions for Mobile Sports Wagering License:

Chair Marriner asked for a motion to find that the Applicant has established that it is qualified for the license it is seeking by clear and convincing evidence. Vice Chair Doetsch motioned; and Commissioner Browning seconded and the motion passed 6 to 1, with Commissioner Hodges opposed.

Chair Marriner asked for a motion directing Staff the authority to draft the Commission's decision statement on the qualification of the Applicant for the license it is seeking. Vice Chair Doetsch motioned; and Commissioner Browning seconded and the motion passed unanimously.

Chair Marriner asked for a motion for the facility and mobile sports wagering licenses, a motion to direct the Secretary of the Commission to transmit the decision statement to the SWARC. Vice Chair Doetsch motioned; and Commissioner Browning seconded and the motion passed unanimously.

Betr Online Sports Wagering Operator License Motions:

Chair Marriner asked for a motion to find that the Applicant has established that it is qualified for the license it is seeking by clear and convincing evidence. Commissioner Browning motioned; and Vice Chair Doetsch seconded and the motion passed 6 to 1, with Commissioner Hodges opposed.

Chair Marriner asked for a motion directing Staff the authority to draft the Commission's decision statement on the qualification of the Applicant for the license it is seeking. Vice Chair Doetsch motioned; and Commissioner Browning seconded and the motion passed unanimously.

Mr. Mooney thanked the investigative team and attorneys for their help in completing these investigations. Chair Marriner also thanked them for the hard work, and said he understands what it takes, and appreciated their diligence.

Commissioner Browning congratulated the applicants.

EMERGENCY SUSPENSION HEARINGS – Nicholas Clemens and Robert Clemens

Chair Marriner said the Director had scheduled five emergency suspensions of sports wagering licenses to be heard before the Commission today. The Commission's review here today is narrow. It is within the Commission's discretion to determine whether to continue the suspension in order to protect the integrity, security and profitability of the Sports Wagering Program.

The Commission received requests for postponement of three of the five emergency suspensions. Chair Marriner granted those requests prior to today within his authority under Code of Maryland Regulations 36.01.02.06.C(2). Those emergency suspensions remain in effect.

Because the two hearings involve common facts Chair Marriner offered to consolidate them into one presentation, with the following special procedures:

1. The Commission will provide an opportunity for each party to be heard separately on the particular facts that pertain to their emergency suspension, and they may present their testimony and witnesses at that time; and
2. The Commission will issue a separate decision statement to each party.

Chair Marriner asked for a motion to consolidate the two hearings into a single presentation, while allowing each party to be heard separately as to their particular facts and be issued a separate decision by the Commission.

Commissioner Hodges asked if there is a down side for applicants to consolidate. Chair Marriner stated that it does not affect the licensees, it just makes it easier to present. Vice Chair Doetsch motioned, Commissioner Browning seconded and the motion passed unanimously.

Mr. Alan Goodwich, Assistant Attorney General from the Office of the Attorney General for the Maryland Lottery and Gaming Control Agency presented on behalf of the Agency. Ms. Meagan Borgerson, of the law firm Kagen Stern Marinello & Beard, LLC presented on behalf of the licensees.

Chair Marriner explained that at the hearing both the parties are represented by counsel. This means that only counsel may submit evidence; examine and cross-examine witnesses; provide argument; and make objections, and motions. As presiding officer of this hearing, Chair Marriner indicated he is to ensure that a clear record is created. Chair Marriner explained that he:

1. May exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence;
2. May call additional witnesses upon the Chair's own motion, or upon request by a member of the Commission;
3. Shall give effect to the rules of privilege recognized by law; and
4. Shall inform the parties of notices taken by the Commission.

The Commission may:

1. Use its experience, technical competence, and specialized knowledge in its evaluation of the evidence;
2. Take notice of judicially cognizable facts; and general, technical, or scientific facts within its specialized knowledge; and
3. Examine a witness.

The Commission is required to create a clear record of the hearing. Chair Marriner administered the oath to anyone who may testify or answer questions in the hearing. Anyone who is present on behalf of a party was allowed to speak and take questions. The Commission was allowed to ask questions of Staff, a party, or additional witnesses.

At the end of the hearing, the Commission must determine whether to continue or lift the emergency license suspension for each licensee. In making this determination, the Commission can only consider evidence which is introduced in the course of the hearing and made a part of the record in the case. Chair Marriner said he would ask for separate motions for each party as to whether the Commission will affirm the emergency suspension. He will also ask for a motion to delegate to Staff the authority to draft a decision statement of the Commission for each licensee.

Commissioner Hodges wanted to know if the vote today was to continue the suspension or end it. Chair Marriner said that the Commission would be deciding whether to continue or end it.

Commissioner Hodges asked how long would the suspension continue? Ms. Holly Citko, Principal Counsel for the Attorney General's Office, said that would be part of the hearing.

Commissioner Hodges asked if there would be alternative penalties. Chair Marriner indicated that this hearing was regarding continuing the suspensions and nothing else.

Chair Marriner asked that any individual who may testify or answer questions identify themselves and their affiliation. The following were collectively sworn in: John Mooney, and Phil Metz from MLGCA; and Nicholas Clemens, Robert Clemens, Randy Clemens, Nathan Benefiel, and Ernest J. Litty.

Mr. Goodwich started his opening statement, but due to microphone issues, he repeated his opening statement. Mr. Goodwich explained that there would be testimony regarding participation in payroll fraud by Mr. Nicholas Clemens and Mr. Robert Clemens, but only a snapshot of the period would be discussed because the investigation is ongoing. The individuals Mr. Goodwich intended to call were Mr. Nathan Benefiel, General Manager at Bingo World who would explain the payroll system and how entries of adding extra salary, holiday and vacation pay were made, Mr. Ernest J. Litty who is the principal for Bingo World would testify that he didn't give authorization for the payments made, and Phil Metz of MLGCA licensing unit would testify regarding the allegations and evidence and the continuing integrity and trustworthiness that licensees must exhibit.

Meagan Borgerson, attorney for Nicholas Clemens and Robert Clemens then presented her opening statement wanting to address due process issues and procedures. She thanked Ms. Citko, Ms. Tosky and Mr. Goodwich for working on this matter.

Ms. Borgerson entered two exhibits: a letter of representation submitted to Director Martin, Mr. Mooney, and Mr. Metz and the Attorney General's Office setting forth concerns to receive a copy of the file presented to the Agency and understanding of policies and procedures for the discovery process; and an email correspondence between Mr. Peter Sheehan, attorney for Randy Clemens, also suspended, and Mr. John Kagan from her office, concerning due process concerns.

Ms. Borgerson provided her opening statement where she noted that the initial notice was deficient; there was no understanding of a "payroll scheme" and what it was or where the numbers came from; and with no internal discovery and subpoena process, they only have those witnesses that would appear voluntarily.

Ms. Borgerson claimed there was no evidence of risk of harm to the State's Sports Wagering System because there is no exigency because there is no imminent risk of harm or that there is payroll fraud at their current employer. Ms. Borgerson claimed that manual adjustments made in payroll were the sole discretion of Randy Clemens or other employees at Bingo World, and that Nicholas and Robert did not have ability to adjust their own hours or pay.

Ms. Borgerson completed her opening statement stating that her clients will lose their jobs if the suspensions are upheld.

While the witness table was being set up with microphones, the Commission took a 5-minute break at 11:27 a.m. and Ms. Citko reminded everyone that they are not discuss the matter during the break.

The hearing resumed at 11:32 a.m.

Mr. Goodwrich called Nathan Benefiel, President and General Manager of Bingo World for a direct examination.

Mr. Goodwrich presented Exhibits 1 and 2 – emergency suspension letters for Nicholas Clemens and Robert Clemens, respectively. He also presented Exhibit 3 – payroll snapshot for each. Mr. Goodwrich stated that Mr. Benefiel had reviewed the payroll snapshots for each and confirmed the exhibits were accurate. Mr. Benefiel summarized the various sections on the payroll sheets, and the subsequent manual adjustments to the time cards.

Commissioner Hodges wanted to know who performed the manual actions. Mr. Benefiel pointed to the page that showed the list of which employee made the changes, which were primarily done by Randy Clemens. Commissioner Hodges had difficulty finding the referenced page and Ms. Jennifer Tosky showed him.

Mr. Benefiel discussed the audit trail and changes made by Randy Clemens manually. Commissioner Hodges asked if Mr. Benefiel had to approve those time changes. Mr. Benefiel stated that he did not work there during the time in question and that Mr. Randy Clemens would have made the changes as General Manager at the time.

Mr. Goodwrich continued his direct examination of Mr. Benefiel wherein he summarized the erroneous time discrepancies focusing in particular on December 24 and 25.

Commissioner Hodges noted that Randy Clemens was the supervisor and asked who did the override. He wanted to know who Catherine Richardson was. Mr. Benefiel stated that she was the Accounting Manager.

Commissioner Hodges asked if Randy Clemens was related to Nicholas and Robert Clemens, and if so, what was in place for that type of situation when family works under a supervisor. Mr. Benefiel stated he was not sure as he did not work for the company at that time, but he did not believe there were any policies in place covering working under a family member.

Commissioner Adebisi asked that Mr. Benefiel walk through the process of when employees clock in, and the process of why a manager would change the time in order to understand why this is a problem.

Mr. Benefiel said that employees were expected to use the hardware to clock in and out. Commissioner Adebisi asked if he meant a physical card. Mr. Benefiel said yes, and that it requires a fingerprint to ensure the employees is the one clocking in. Managers and above do have the ability to correct timecards. Catherine Richardson would do the majority of processing the work and then would report it to Randy Clemens.

Commissioner Adebisi wanted to know what happens when an error is made, the process for correcting the error. Mr. Benefiel said if an employee forgets to clock in or out the Manager would edit the timecard.

Commissioner Browning inquired that when looking back at the edits noted that there was an assumption that edits were made, how is it known if he was there or not. An employee may clock in and forget to clock out, how does anyone know they missed it and the supervisor corrected it.

Mr. Benefiel said there is no perfect evidence, looking broadly it was noted that only 30% of the hours paid were actual punch in, and so there was a question on why 70% needed to be entered manually, making the hours well over 60 hours a week. Most employees at Bingo World can attest that they were not there over 60 hours.

Commissioner Hodges asked since Mr. Benefiel was not employed there at the time, how did he come across the error discovering the issue. Mr. Benefiel stated that Mr. Jay Litty would be able to answer that question, but the cost of payroll increase caused Mr. Litty to check into the dramatic increase.

Commissioner Hodges said that we were also looking at why this happened. He wanted confirmation that this has been going on for 10 years. Mr. Benefiel said that was correct. The CPA firm hired to do the audit completed the audit for a 10-year period, and the U.S. Secret Service checked the payroll.

Commissioner Hodges wanted to know why the U.S. Secret Service was involved. Mr. Benefiel said it was due to the allegations of payroll fraud.

Commissioner Adebisi wanted to know if working consistently over 60 hours every week, if there was a valid business reason. Mr. Benefiel noted that there were two manager shifts per day with 14 manager shifts per week. Working with five managers provides ample coverage. A comparison was made between hours added for Nicholas and Robert, as well as Randy, and those of other manager's shifts at the same time.

Chair Marriner asked if Nicholas and Robert were managers, and Mr. Benefiel said yes. Chair Marriner asked if they are aware of the procedure for clocking in and out. Mr. Benefiel said that they were and they also participated in correcting time cards during their time as managers.

Commissioner Croghan wanted to know if there is a process at the end of every payroll period for employees to attest to what their hours are for that period. Mr. Benefiel said that he was not aware of any procedure, but there is one underway with transitioning to the new payroll company.

Chair Marriner pointed out that anyone testifying should try to make references easier to follow to make the hearing go better. Commissioner Hodges pointed out that page numbers would be helpful. Mr. Goodwich apologized for the lack of page numbers on the exhibit.

Ms. Tosky took the additional notes provided as part of the exhibit and made copies for the Commission at 11:59 am.

Ms. Borgerson objected to the additional pages provided into evidence as to relevance on to who produced them. Chair Marriner noted her objection.

Commissioner Hodges asked what payroll system was used. Mr. Benefiel replied Alpine HR.

Commissioner Hodges asked what was the setup of the accounting department. What is the accounting department's role? Mr. Benefiel said that Catherine Richardson was the head of accounting. Ms. Richardson and Randy Clemens controlled payroll at the time.

Mr. Benefiel continued to discuss the payroll documents and specific amounts taken by Nicholas and Robert including salary payments. Chair Marriner wanted to know why hourly for other managers versus Robert and Nicholas Clemens. Mr. Benefiel indicated that he would defer to management at the time.

Mr. Goodwich continued his direct of Mr. Benefiel who identified that there were seven managers at the time. Mr. Goodwich asked whether Nicholas and Robert were the only ones to receive the bonuses.

Chair Marriner clarified that the document indicated an \$800 weekly salary. Mr. Benefiel confirmed that Nicholas and Robert were the only managers to receive the weekly salary and that the bonuses are listed elsewhere.

Chair Marriner asked about the bonuses and Mr. Benefiel explained that in addition to Randy Clemens, they were the only ones to receive bonuses. With \$11,000 in bonuses year-to-date shown. Three for Nicholas, one in May for \$2,000; October \$3,000 and year end \$6,000. Mr. Benefiel indicated they were not contesting the legitimacy of the bonuses

Commissioner Hodges indicated that the bonuses were pointed out and wanted to know the policy of the firm on bonuses and the normal process for issuing to employees, and was it based on performance. Mr. Benefiel said that it was at the sole discretion of Randy Clemens.

Commissioner Hodges said Randy Clemens was hired under contract and wanted to know if Randy Clemens decided bonuses without any control over him. Chair Marriner pointed out that Randy Clemens was a 30% partner at that time, and was General Manager who operated the facility. Mr. Benefiel confirmed this.

Commissioner Hodges wanted to know what the violation is if Randy Clemens has control. Mr. Benefiel said that Randy Clemens falsified labor hours for family members, including family that did not work for the company, and those cases have been postponed.

Chair Marriner reminded the Commissioners that this hearing was just to deal with continuation of these emergency suspensions.

Commissioner Browning wanted to know if there is a guide book for managers or some type of outline of responsibilities. Mr. Benefiel said he did not believe so but could look into it.

Commissioner Browning wanted to know what employees could be doing in order to forget to clock in and out. Mr. Benefiel explained some reasons to forget to clock in or out that happen on occasion.

Commissioner Browning asked if an employee gets to check for errors and whether there is any statute regarding over or under payment. Ms. Citko pointed out that this is not licensing matter and it would be payroll.

Commissioner Adebisi wanted to know the company policy that indicates if there is a payroll error, who should be contacted. Mr. Benefiel was not able to speak on that as he was not employed there at the time. Commissioner Adebisi wanted to know how many managers were consistently working 60 hours a week for years. Mr. Benefiel said that overtime was to be minimized and the managers were to work 40 or less hours per week. Commissioner Adebisi wanted to know how many managers worked 60 hours consistently. Mr. Benefiel responded only Nicholas and Robert.

Chair Marriner identified the newly provided exhibit as being marked as Exhibit 3a, which has 11 pages and shows paystub manual adjustments for Nicholas Clemens pointing out due compensation versus undue compensation.

Commissioner Hodges wanted to know why Mr. Benefiel was testifying on these records if he was not employed at Bingo World at the time. Chair Marriner pointed out that as the current General Manager, Mr. Benefiel was asked to come and testify regarding the company records. Mr. Benefiel indicated they were his analyses of the company records.

Commissioner Adebisi confirmed the numbers of the pages being referred to making sure everyone was on the same page of Exhibit 3a.

Mr. Benefiel explained if someone did not clock in that their time would reflect the clock out time as their clock in time. Chair Marriner clarified that Robert Clemens clocked in on the 20th, failed to clock in for 4 days.

Commissioner Browning asked if - I show up and forgot to clock in, do I clock out when I leave. Mr. Benefiel discussed the missed clocking and how it would be treated.

Commissioner Hodges asked how the manual additions constitute a red flag or violation. Mr. Benefiel discussed that similar to Nicholas most were manual additions, and not actual clocking-in the system. Then Commissioner Hodges asked whether someone over him would approve those times. Mr. Benefiel said Randy Clemens approved all of the times.

Commissioner Adebisi wanted to know if Robert clocked in on 12/20, then for next 4 days after that hours were entered manually, did Robert not work those days. Mr. Benefiel said that is correct. Chair Marriner stated that one would expect a manager to follow procedures to clock employees in and out.

Commissioner Croghan stated that it does not show sick time or other leave. Mr. Benefiel said the sheet showed paid time off bank and sick leave bank. Robert started the year with 200 hours for paid time off and 64 for sick leave, with none used for the entire year.

Commissioner Hodges asked if it is a fact whether he worked or not. Chair Marriner again reminded the Commission that the hearings today were on whether to keep the suspension based upon the appearance of fraud.

Commissioner Adebisi said that it would be expected that if they are not at work the manager would ensure they use leave. Mr. Benefiel agreed it should look that way. Chair Marriner asked if anyone not related to Randy Clemens used leave. Mr. Benefiel responded yes.

Mr. Goodwrich continued the direct and Mr. Benefiel said the managers were all paid \$60 an hour, Chair Marriner asked whether the other managers received an \$800 a week salary. Mr. Benefiel indicated no and that there did not appear to be an agreement for the Clemens brothers.

Commissioner Browning asked if Robert Clemens clocked in manually half the time, and Mr. Benefiel responded that was correct.

Ms. Borgerson then cross-examined Mr. Benefiel.

Commissioner Browning wanted to know what "true" and "false" on payroll information is. Mr. Benefiel indicated that true would be an approved change to the time card and false would be not approved. Commissioner Browning asked if that meant employee approved was not needed for the change. Mr. Benefiel confirmed this.

Chair Marriner noted that on the time card all times were approved except for the December 25 time. Catherine Richardson approved that and Randy Clemens manually entered and approved the rest of the time. Mr. Benefiel said it appeared to be 9 hours of premium pay for the holiday. He is not accustomed to payroll systems that apply extra hours or increased pay rates for premium shifts.

Ms. Borgerson continued her cross-examination of Mr. Benefiel.

A discussion about payroll adjustments continued and within the cross-examination of Mr. Benefiel, Chair Marriner pointed out that he would assume there was a hierarchy in any payroll system that would allow certain people to do certain things.

Ms. Borgerson brought the cross-examination to Exhibit 3a. holiday pay. Ms. Borgerson pointed out the "false" down the line for the employee approval. Commissioner Browning asked about the indications of true and false on the timesheet record Mr. Benefiel noted that he believed true would be a yes, and false would be a no response. Commissioner Browning then clarified that based on that entry employee approval is not required for a change. Mr. Benefiel confirmed that statement.

Commissioner Hodges asked for the question to be repeated. Ms. Borgerson repeated that Nicholas nor Robert ever approved their time sheet.

Chair Marriner directed the attention to page 3 under supervisor approval, all were approved except December 25 the rest were approved by Randy Clemens.

The discussion about a possible erroneous time entry for December 23 at 2:00 a.m. occurred and Commissioner Hodges wanted to know if Bingo World has special events on Christmas Eve at 2:00 a.m. Mr. Benefiel said that there is a sports wagering area but Bingo World did not hold bingo hours during the middle of the night.

Ms. Borgerson continued her cross-examination about the audit that was conducted.

Mr. Goodwrich then did a redirect of Mr. Benefiel.

Ms. Borgerson conducted re-cross.

Mr. Goodwrich stated that he had 2 more witnesses to introduce. He then called Ernest J. Litty and conducted his direct examination.

Mr. Litty is the owner and CEO of Bingo World since 1991. He described his responsibilities as owner, and stated that he oversees the entire business.

Possible payroll fraud was discovered by Mr. Litty when he reviewed the year end financials, and noticed a large increase for bingo operations. Mr. Litty then asked for a forensic audit of the entire Clemens family payroll. Once Mr. Litty became aware of the possible fraud, the entire family was terminated. Randy Clemens was terminated in person on May 10; the rest of the family were given notice of termination on the same day. Mr. Goodwrich offered Exhibits 4 and 5 to the record – terminations of Nicholas and Robert Clemens. Mr. Litty stated that both were given their termination paper by Catherine Richardson stating the termination was for cause.

Commissioner Browning asked whose signature was on the termination documents. Mr. Litty responded it was his signature.

Commissioner Browning wanted to know how long Nicholas and Robert worked at Bingo World. Mr. Litty did not know the exact time as Randy Clemens hired them.

Commissioner Hodges wanted to know if Mr. Litty had internal controls in place for hiring of family members. Mr. Litty did not control the hiring because he put his trust in Randy Clemens to handle the hiring. Mr. Litty said financials were reviewed with Randy Clemens monthly and with the accountant only at year end.

Chair Marriner asked if Mr. Litty was aware that Nicholas and Robert Clemens had a salary on top of an hourly wage. Mr. Litty was not aware of this. Chair Marriner asked if there is a buy/sell

agreement including payroll salaries, Mr. Litty said shareholders deal with corporate matters when it comes to fiduciary duties and that decision rests solely with Mr. Litty.

Ms. Borgerson conducted her cross-examination of Mr. Litty going into details of the shareholder agreement with Mr. Randy Clemens.

Mr. Goodwich objected to this line of questioning and Chair Marriner agreed that it was not relevant. Ms. Borgerson stated it was relevant in regard to the payroll fraud because it was just a business dispute. Chair Marriner reminder her that was not the issue before the Commission today, which is just the suspension extension.

Ms. Borgerson continued her cross examination of Mr. Litty and Randy Clemens' role at Bingo World. The cross-examination continued to ask about the salary of Nicholas and Robert Clemens and their eventual termination. Mr. Goodwich objected to the line of questioning as to the termination and Chair Marriner tried to focus it back to what was relevant and noted that the exhibits show Nicholas and Robert were terminated. Ms. Borgerson tried to establish that her clients never received the termination and Chair Marriner indicated that she could bring it up when her clients were testifying.

Ms. Borgerson inquired about whether Nicholas and Robert Clemens knew they were terminated for cause. Chair Marriner interjected to ask Mr. Litty as to whether on May 10 they returned their keys and Mr. Litty confirmed that keys were turned in on May 10.

Ms. Borgerson asked about Nathan Benefiel replacing Randy Clemens when he was terminated. Mr. Benefiel is Mr. Litty's nephew and he was given a 3% interest in Bingo World. Mr. Goodwich objected to the relevance of the line of questioning. Ms. Borgerson said that she was trying to establish the relevance of Mr. Litty's family members working for Bingo World compared to Mr. Clemens' family working for Bingo World. Chair Marriner sustained the objection.

Commissioner Hodges asked for clarification that Mr. Benefiel is Mr. Litty's nephew. Mr. Litty stated that he is.

Ms. Borgerson asked about a hearing before the Anne Arundel County Amusement Licensing Commission. Mr. Goodwich objected to the line of questioning as irrelevant. Ms. Borgerson said it was relevant. Chair Marriner noted that hearing has nothing to do what we're dealing with here. Commissioner Hodges started to ask why it wouldn't be relevant. Ms. Citko stated there would not be legal advice provided at a public meeting. It is up to the Chair only.

Ms. Borgerson continued her cross-examination of Mr. Litty.

When Ms. Borgerson asked about Courtney Jackson, Mr. Litty stated that she is his daughter. Chair Marriner asked Ms. Borgerson where she was going with this; she proffered that her salary is the same as Nicholas and Robert Clemens. Chair Marriner reminded Ms. Borgerson that is a broader scope, to keep questioning narrow. Ms. Borgerson continued to ask questions about the daughter and was told it was not relevant to this matter.

Ms. Borgerson continued her cross examination with Mr. Litty about when he informed MLGCA of these allegations and when he knew about it.

Chair Marriner said in Mr. Litty's testimony that in his annual review of payroll and bonuses at year end. Mr. Litty said at year end they would see where the company was to determine an amount for bonuses. Chair Marriner asked if Mr. Litty would agree on hourly rates for certain job descriptions. Mr. Litty said correct for all job descriptions. Managers increased up to \$60/hour

over time. Mr. Litty was totally unaware that on top of \$60/hour rate, that Robert and Nicholas Clemens got salary of \$41,300.

Mr. Goodwich conducted his re-direct of Mr. Litty.

Ms. Borgerson said she wanted to be heard again on the prior objection regarding the salary being paid to Mr. Litty's children. The basis was in the letters of termination her clients were being told they were paid undue salary if not approved by Mr. Litty, Mr. Randy Clemens or the owners of the company. She believed it was relevant since Mr. Litty's children were also receiving a weekly salary comparable to what Nicholas and Robert Clemens were receiving. Ms. Borgerson asked to be allowed to ask those questions again. Chair Marriner denied the request based on the fact that this hearing is about her two clients and not his daughter, nephew, or nieces. Ms. Borgerson continued to argue and Chair Marriner said the discussion on that was done.

Commissioner Hodges requested a 5-minute break. Chair Marriner asked Mr. Goodwich how long to testimony of Mr. Metz would take. Mr. Goodwich did not anticipate it taking much time. At 1:33 p.m. there was a 5-minute break in the hearing. At 1:38 p.m. the hearing resumed.

Chair Marriner reminded all parties that this is a narrow review. It is within the Commission's discretion whether to continue the suspension; they are not here to determine innocence or guilt. The Agency only received information in April, which is why the Director in his role acted prudently. And this hearing is to determine whether the suspensions continue while an investigation continues and any different litigation is not before the Commission today.

Mr. Goodwich conducted the direct examination of Philip Metz, Director of Regulatory Licensing and Investigations of the Maryland Lottery and Gaming Control Agency. He gave his background and noted an investigation still need to be conducted. He indicated he received documentation of alleged payroll fraud by these licensees on April 22, 2024. He believes the investigation should continue.

Ms. Borgerson conducted the cross-examination of Mr. Metz focusing on when, what and from whom he received information with regards to these allegations.

Commissioner Browning asked Mr. Metz if the Commission allows the suspension to continue to explain what the investigation will look like. Mr. Metz said the Agency would review the documentation from the 10-year audit, interview employees at Bingo World and the Clemens family, and go wherever the investigation takes MLGCA staff. Mr. Metz said the U.S. Secret Service, in partnership with the Anne Arundel County Police conducted an active criminal investigation. The U.S. Attorney declined to prosecute, but would not comment on that as it is still an active investigation. The case is currently under review by the Anne Arundel County State's Attorney's Office.

Commissioner Hodges asked if the reason that the Secret Service and Criminal Investigations were related to the time fraud? Mr. Metz said yes, the Secret Service advised it is involved due to the payroll fraud scheme.

Chair Marriner stated this was too broad and not part of the investigation.

Commissioner Browning asked why there was a gap between when notice was received and when documentation was received for which the recommendation for suspension was made. Mr. Metz stated that it is common practice to have supporting documentation before taking any action on the license, and until documentation is received the Licensing Unit does not take additional action. The common practice is that supporting documentation is needed, not just a verbal assertion.

Commissioner Adebisi asked if it would have made a difference if it was just a one-week period as opposed to a 10-year period of alleged fraud, and if the result would be the same. Mr. Metz said it was definitely the amount of time and the overall dollar amount that contributed to the recommendation of the emergency suspension.

Commissioner Hodges asked if the suspensions being discussed are what is being voted on today and if they cover the time period for the investigation to take place. Mr. Metz said yes. Commissioner Hodges then asked how long would the investigation take. Mr. Metz said it would not be a year or six months, as they are actively doing it as quickly as possible. It depends on the cooperation of the licensees. Licensees are required to talk to MLGCA, and if they do not speak with MLGCA that will create another problem. The active criminal investigation will not be provided to MLGCA until a decision is made. The timeframe is unknown, as documents need to be reviewed and will take time. Several investigators are needed for the review.

Commissioner Hodges asked if the investigation is based on the criminal investigation and whether Anne Arundel County decides to prosecute or not, will MLGCA investigation still happen. Mr. Metz stated that MLGCA will investigate no matter what happens with the criminal investigation as that is completely separate from MLGCA's investigation. MLGCA will give the status of the criminal investigation, if available at the time of the decision by MLGCA.

Commissioner Hodges asked if the criminal investigation is done after MLGCA's investigation, what will be done. Chair Marriner said it would depend on the outcome.

Mr. Goodwrich ask Mr. Metz, given what he knows and his experience, does he believe it is in the best interest of the Agency to continue the suspension until the Agency completed the investigation process in order to protect the Agency. Mr. Metz said yes, that is why he was part of making that recommendation.

Ms. Borgerson cross-examined Mr. Metz to clarify the scope of his investigation and that it is not related to alleged payroll fraud at their current employer. Mr. Metz responded that is correct.

Chair Marriner asked Mr. Metz, with his knowledge, if he would license these two individuals if they came before the Lottery before this got cleared up. Mr. Metz said no, if not already licensed, prior to licensing there would have to be an investigation.

Chair Marriner asked if it is MLGCA's responsibility to make sure all licensees have good character and nothing derogatory that could affect the program. Mr. Metz said yes, there is an ongoing obligation to maintain honesty, integrity and good character.

Mr. Goodwrich stated he had no further witnesses.

Ms. Borgerson started her case and called Nicholas Clemens. Ms. Borgerson sought the background of Nicholas Clemens and his family, their source of income, and his history with work at Bingo World. Ms. Borgerson asked about their employment progression and that Randy Clemens came to Nicholas and Robert regarding putting in a plan to retire at 65 in 2025, and the brothers would receive a \$500/week salary to prepare for the future to take over. Commissioner Hodges interjected throughout to confirm who the individuals were that he was referencing.

Commissioner Hodges asked if the owner was aware that this was part of the conversation. Nicholas said yes, the owner was aware. In 2019, Randy Clemens had an informal discussion of the 5-year succession plan.

Commissioner Browning asked if this conversation was with Randy Clemens and not Mr. Litty. Nicholas responded yes, Randy Clemens informed Nicholas and Robert that they would be managers with a salary and would be on call 24/7.

Ms. Borgerson's discussion went into the succession planning and other meetings that Nicholas Clemens would attend. Chair Marriner asked who "he" was and Nicholas Clemens responded Randy Clemens.

Commissioner Browning asked if Nicholas was compensated for the extra duties, or just received the weekly salary of \$500/week. Nicholas said he just the weekly salary of \$500/week.

Commissioner Hodges asked if in December 2022, 2:00 a.m. was a normal work start. Nicholas responded he was probably there earlier in the day and forgot to clock out so it looked like clock in at 2:02 am and clock out 4:30 pm.

Chair Marriner asked if he was there at 2:00 a.m. Nicholas Clemens said he could not confirm or deny that.

Commissioner Browning asked how long the timekeeping software and hardware had been at Bingo World. Nicholas responded that the Alpine hardware had been there for 10 years.

Commissioner Browning rearticulated what he believed Nicholas Clemens had said that he had been at Bingo World his entire life and then was given additional duties and responsibility. Commissioner Browning wanted to know given Nicholas' familiarity on how things are run, how he could keep forgetting to clock in and out. Nicholas stated that he is "hands on," and if an issue comes up, he would go look into problems. There are six different access points of entry, it was possible he could have entered another set of doors and went directly to the problem.

Commissioner Adebisi asked, as a manager, if it seemed strange that Randy Clemens kept manually entering time for Nicholas. Nicholas said there was no policy in place.

Commissioner Adebisi asked, as manager for such a long time, did he not see the hours on his paystub and questioned why Nicholas did not notice the hours that were entered on his behalf that he did not enter. Nicholas stated he spent many hours in the building and he may have been where the instant bingo machines were, getting caught up in duties and forgot to punch in or out.

Commissioner Adebisi asked if someone else determines how many hours Nicholas worked in a day; how would they arrive at that amount of time. Nicholas responded that Randy Clemens had all say with payroll, along with Catherine Richardson.

Commissioner Adebisi asked if there was ever an instance where he was there for 8 hours, and Randy Clemens entered 4 hours and Nicholas corrected them. Nicholas said no, he was likely there for a full shift and probably would not notice.

Commissioner Croghan asked if they never spoke about hours; they just assumed. Nicholas said yes for clocking in and out. Chair Marriner clarified that Nicholas Clemens was saying he was there for 40 hours a week. Nicholas Clemens indicated he was in the building for a minimum of 40 hours a week, usually 8 hours per day.

Chair Marriner asked why clock in at all if you just do 40 hours a week. When it shows you clocked in less, it is highly suspect. Nicholas said he was born and raised in this background of customer service. Chair Marriner asked if he's the IT person going in troubleshooting he should know how to clock in. Nicholas Clemens stated he did not always enter the building the same way.

Commissioner Hodges asked about the clock-in location and side door. Nicholas responded that the side door was hundreds of feet away from the clock so he did not go to the clock first, but would figure out the problems first, so he did not clock in.

Commissioner Hodges confirmed that this would not be captured in the accounting system. Nicholas said that was correct.

Commissioner Adebisi asked if there were any direct reports, any employees that reported to Nicholas. Nicholas responded that any employee could report to him. Commissioner Adebisi asked as a manager if he had any employees that would consistently fail to clock in, what would he do. Nicholas said they would be counseled. When asked if he was ever counseled by Randy Clemens, Nicholas said no.

Ms. Borgerson asked if hours worked were only adjusted if work was under the 40-hour threshold. Nicholas stated a shift would be added to bring it up to 40 hours starting in 2020.

Commissioner Browning asked if that was the case even if Nicholas did not work 40 hours. Nicholas said yes, it was his assumption that Randy Clemens had control of day to day operations. Nicholas never reported to Mr. Litty, only to Randy Clemens.

Ms. Borgerson asked about Bingo World going into sports wagering. And the \$500 salary went up to \$800.

Commissioner Hodges asked if Mr. Litty was aware of the holiday pay. Nicholas said Mr. Litty was aware of the holiday pay and the bonuses. Commissioner Hodges asked if Nicholas was aware he was contradicting what was said by Mr. Litty.

Mr. Goodwich objected to questioning related to what Mr. Litty was aware of, and Chair Marriner reiterated that Nicholas Clemens would not know what Mr. Litty was aware of.

Commissioner Hodges asked why does the employee approve on the sheet say false if not approved. Nicholas said he did not approve it and he never approved it.

Commissioner Browning asked if Nicholas could not remember whether he worked 40 hours, and if time be entered so he would get 40 hours. Nicholas said that was correct.

Chair Marriner said it was odd that when he clocked in on the 20th he worked 8 hours, when he clocked in on the 23rd he worked 7 hours, other days that were manually entered he then got 9 hours. Chair Marriner wanted to know how many days a week Nicholas worked, the response was at least 4.

Commissioner Hodges asked if Nicholas did not clock in to 40 hours, hours, were they added as a full-time employee. Did the increase in responsibilities guarantee 40 hours, and who put in the time? Nicholas said that Catherine Richardson would process payroll.

Nicholas said over the last 10 years Mr. Litty was an absentee owner. Mr. Goodwich objected. Ms. Borgerson said it shows Mr. Litty's involvement. Chair Marriner allowed it to go forward. Nicholas was never instructed to report to Mr. Litty nor did he discuss compensation with Mr. Litty.

Nicholas Clemens claimed he was never formally terminated. He received a phone call from Randy Clemens and he went to Bingo World for closure, and to say goodbye and turn in his shirts and keys.

Commissioner Browning asked if his supervisor told Nicholas he was no longer employed. Nicholas said no one told him. Commissioner Browning asked if Randy Clemens notified Nicholas of the termination. Nicholas indicated that Randy Clemens was fired at the same time and was presented a termination packet with security present.

Nicholas found employment with Canton Gaming LLC.

Commissioner Adebisi asked Nicholas to work through the termination process. Nicholas discussed the termination process. Commissioner Adebisi asked about Randy Clemens' authority; if Randy Clemens no longer worked there could he fire Nicholas. Nicholas stated that Randy Clemens did not fire him, Mr. Litty told Randy that his family was fired too.

Commissioner Adebisi asked whether Nicholas assumed he was fired. Nicholas Clemens agreed.

Commissioner Adebisi asked if Bingo World contacted Nicholas' new employer. Nicholas said they did not.

Commissioner Hodges asked if Nicholas was terminated. Nicholas said he never saw the termination and never received official termination from the company.

Ms. Borgerson entered Exhibits E and F – affidavits – submitted by Scott Hammond and Jay Saperstein from Canton Gaming. Questions continued about payments from work received and taxes paid by Nicholas.

Chair Marriner stated that he did not believe they were concerned about whether he did or did not pay taxes. Ms. Borgerson then went through questioning about Nicholas manually approving time changes for Robert Clemens. Chair Marriner confirmed that would have been reflected in the time sheets and Nicholas confirmed.

Commissioner Browning asked about Exhibit 3a looking at the paid time off it indicates that Nicholas did not take time off. Nicholas confirmed and noted that even when on vacation, Nicholas was paid 40 hours.

Commissioner Adebisi asked why accumulate vacation hours at all if you never use it. Nicholas said it was use it or lose it. Then Nicholas noted it was likely just an administrative oversight of Catherine Richardson for putting it in for them as she did for other managers. Mr. Goodwrich objected. Chair Marriner noted it and allowed the questioning from Commissioner Adebisi to continue.

Commissioner Adebisi said looking at it as someone who is not a payroll expert, if someone grants 200 hours at the beginning of year and at end of year still have 200 hours it appears that either he took vacation that was not reflected and paid for it, or never took vacation at all. Commissioner Adebisi asked which was the case. Nicholas responded that because he would still be on call while on vacation, taking phone calls, he would have to answer them, so they were paid as full-time employees.

Commissioner Hodges asked what the letters in Exhibits E and F were supposed to support. Ms. Borgerson said they were character affidavits from the current employer. Commissioner Hodges asked when they refer to the "situation" what are they referring to. Ms. Borgerson indicated the license suspension.

Chair Marriner asked Nicholas' age and current salary. Nicholas is 33, with a current hourly salary of \$31/hour and no salary. Annual compensation is \$65,000. Chair Marriner reflected that Nicholas went from almost \$250,000/year to \$65,000/year.

Mr. Goodwrich cross-examined Nicholas as to the termination and asked why he stopped showing up. Nicholas stated a screenshot from the Facebook page was texted to him saying he was no longer working at Bingo World.

Ms. Borgerson objected.

Ms. Borgerson conducted the direct examination of Robert Clemens. His relationship with Bingo World was the same as Nicholas'. Compensation changed in 2020 when Robert started receiving raises and getting a salary. Compensation was done the same time as his brother. Robert was a full-time employee and guaranteed 40 hours a week no matter how many hours worked.

Commissioner Browning asked if Robert worked 36 hours would he get 40, and when he worked 46 would he get 40. Robert indicated no they would get 46. Commissioner Browning wanted to know why clock in or out then. Robert said they sometimes wouldn't they knew they would get 40 hours.

Commissioner Hodges asked about page 9 of Exhibit 3a where there were manually added hours on the 22nd and 24th worked. Commissioner Hodges inquired were those hours entered because Robert did not enter the building in the same way due to multiple entrances. Robert said he would stop to greet customers and take care of issues and that was why there were so many entries to the building. Commissioner Hodges asked further about those specific days and Robert's entry into the building. Robert indicated that he was being guaranteed 40 hours he didn't bother clocking in. He noted that was the first Christmas with his daughter so a lot was going on at that time.

Commissioner Browning asked, so you're thinking that week you were not there and time was entered for you. Commissioner Browning asked if Robert did not work 40 hours, explain why the added hours would take the time above 40 hours. Robert could not explain this.

Commissioner Hodges asked if Robert received the official termination letter for cause. Robert said he did not.

Commissioner Croghan asked if Robert ever looked at his paystub to justify the hours that were worked each week. Robert said he never looked at the hours, he just knew the accounting was given to payroll.

Commissioner Adebisi asked Robert the same question he asked the previous witness regarding leave, if he had 200 hours granted of PTO and was out, why he did not use leave. Robert said it was possible he was at work. It was the first Christmas with his daughter and there was a lot going on. He confirmed he had 200 hours of leave and never used any of it.

Commissioner Hodges asked if Robert was at Canton Gaming now. Robert said he was making \$27/hour but is currently suspended, not terminated, but cannot work in any Maryland regulated capacity. Robert said he can go back if the suspension is rescinded.

Ms. Borgerson continued her direct of Robert inquiring if he still had his keys to Bingo World. He confirmed that he did. The inquiry continued into his sports wagering license and the raises he received.

Commissioner Browning asked if Robert made changes to Nicholas' time. Robert said that he did.

Commissioner Croghan asked how often changes were made. Robert said he rarely made changes to Nicholas' time but did for other employees all the time. Commissioner Croghan asked generally

how many times a week would that be. Robert responded it could be as much as once or twice a shift.

Commissioner Browning asked again if guaranteed 40 hours a week, why would he clock in and out. Robert could not answer that.

Commissioner Adebisi asked if Robert was paid for vacation time when terminated. Robert said he was not. Commissioner Adebisi then asked whether it was customary for employees to be paid out their vacation time when they leave employment. Robert indicated in that he's been told that.

Ms. Borgerson continued her direct examination of Robert asking about how he found out he was terminated. Ms. Borgerson questioned Robert about the Agency's Exhibit 2, his emergency suspension notice.

Commissioner Hodges asked whether Robert ever received payment for hours not worked. Robert noted that he was always on call. Commissioner Hodges confirmed that Robert did not understand what the amounts were.

Commissioner Hodges asked about the definition of scheme. Chair Marriner stated the Commission was already told that was referring to people paid for hours not worked over a 10-year period. This did not happen by accident so it is called a scheme.

Commissioner Hodges asked what scheme means. Chair Marriner told him it is fraud. It is a fraudulent scheme to incorrectly pay employees for hours not worked. Payroll fraud is the allegation.

Commissioner Hodges noted that scheme assumes other people. Chair Marriner said they received ill-gotten gains – that is a scheme.

Commissioner Hodges was not following that path and wanted to know if they are being held accountable, what is the scheme and what scheme are they being held accountable for. Ms. Citko stated that Mr. Metz testified as to that. Ms. Borgerson interjected that she felt this was a legal question as to what a scheme is, their argument is receiving the funds without further participation is not a scheme. Ms. Citko responded that this is not a criminal proceeding, this goes to the integrity of the licensees and if suspension should be upheld while they continue their investigation.

Commissioner Hodges asked if the language should be changed because it means criminality. Ms. Citko said not necessarily. This is where we are. Chair Marriner asked them to move on.

Ms. Borgerson's questioning of Robert Clemens continued about the pay received for 12/22 – 12/25.

Commissioner Browning asked for Robert's best recollection of the first Christmas with his daughter, wouldn't he be at home, so possibility on the 40-hour understanding, Robert was not at Bingo World on Christmas Day, but he received additional holiday pay not being there. Robert talked about how they split money up. One manager does not work both holidays but could have worked morning or evening on these important holidays.

Ms. Borgerson continued her questioning about the documents and whether taxes were paid.

Mr. Goodwich objected that taxes were not relevant.

Ms. Borgerson stated that she was showing they were not paid under table, taxes are shown on W2's.

Chair Marriner confirmed we're looking at the same documents and acknowledged Ms. Borgerson's assertion that her clients were not paid under the table.

Commissioner Browning asked if any other managers had the same guarantee of 40 hours. Robert did not believe so.

Ms. Borgerson continued questioning about Robert's hours and changes to those hours.

Chair Marriner asked when he went to Canton Gaming did he help set Nicholas up. Robert said no. Robert's annual salary at Canton is \$27/hour - \$50K - \$60K/year.

Ms. Borgerson followed-up the questionings that Robert is not being groomed to take over Canton Gaming and does not attend fund raising events, is not on call and does not let the cleaners in. Robert agreed to these assertions.

Chair Marriner asked if he went from being paid \$125,000 to now \$50,000. Robert replied yes.

Mr. Goodwich cross-examined Robert asked for clarification on how Robert was paid whether it is hourly or salary? Robert said he was paid both hourly and salary because he was supposed to be available 365 days a year.

Mr. Goodwich asked if at any point in the course of the last year was Robert ever approached by or spoke with Secret Service at Bingo World? Ms. Borgerson objected to this question as outside the scope. Mr. Goodwich explained Robert claimed he had no knowledge, but this shows he did have knowledge. Chair Marriner asked Mr. Goodwich to keep it really tight, but allowed it to proceed. The detective showed up at Robert's house right before Thanksgiving. Robert got a call from his wife that they wanted to ask questions about Bingo World. Chair Marriner cut off this continued line of questioning.

Mr. Goodwich continued his cross-examination of Robert.

The hearing then moved on to closing arguments. Chair Marriner told counsel to keep it short.

Chair Marriner stated that the Commission had been there for a long time. He reminded everyone that they have to go back to the purpose of today and keep it narrow and tight, and not talking about adjudicating what happened. Talk about integrity of the two licensees. When Metz said he could not license them today, the cloud over their head speak volumes.

Chair Marriner asked if there was any further discussion by the Commission. Commissioner Hodges asked if the Commission would now be voting. Chair Marriner said yes.

Nicholas Clemens - Emergency Suspension of a Sports Wagering Employee License

Chair Marriner asked for a motion to affirm the Director's emergency suspension of Mr. Nicholas Clemens' sports wagering employee license until the conclusion of the Agency's investigation. Commissioner Browning motioned; Commission Stakem seconded and the motion passed 5 to 2, with Commissioners Hodges and Adebisi opposed.

Chair Marriner then asked for a motion delegating to Staff the authority to draft the Commission's decision statement on the emergency suspension of Mr. Nicholas Clemens' sports wagering employee license and to transmit it to Mr. Clemens. Vice Chair Doetsch motioned; Commissioner Browning seconded and the motion passed unanimously.

Robert Clemens - Emergency Suspension of a Sports Wagering Employee License

Chair Marriner asked for a motion to affirm the Director's emergency suspension of Mr. Robert Clemens' sports wagering employee license until the conclusion of the Agency's investigation. Vice Chair Doetsch motioned; Commissioner Browning seconded and the motion passed 5 to 2 with Commissioners Adebisi and Hodges opposed.

Chair Marriner then asked for a motion delegating to Staff the authority to draft the Commission's decision statement on the emergency suspension of Mr. Robert Clemens' sports wagering employee license and to transmit it to Mr. Clemens. Vice Chair Doetsch motioned; Commissioner Browning seconded and the motion passed unanimously.

CLOSED SESSION

There was no need for the Commission to go into a closed session.

DATE AND TIME OF NEXT MEETING

Chair Marriner announced that the next Commission meeting will be held on Thursday, June 20, 2024, at 10:00 a.m. in person at Lottery Headquarters and via video conference.

ADJOURNMENT

There being no further business, Chair Marriner adjourned the meeting at 4:00 p.m.

Respectfully submitted,



John Martin
Director