ELECTRONICALLY FILED
Pulaski County Circuit Court
Terri Hollingsworth, Circuit/County Clerk
2023-Jan-12 16:09:45
60CV-21-1653
C06D06 : 6 Pages

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

GULFSIDE CASINO PARTNERSHIP — APPELLANT/PLAINTIFF

VS. — CASE NO. 60CV-21-1653

ARKANSAS RACING COMMISSION,
LEGENDS RESORT AND CASINO, LLC,
and CHEROKEE NATION BUSINESSES, LLC — APPELLEES/DEFENDANTS

CHOCTAW NATION OF OKLAHOMA — INTERVENOR

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the 3rd and 4th days of January, 2023 came on for hearing all pending motions in the subject case. From the pleadings filed herein and arguments of counsel, the court doth make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This action is an appeal by Gulfside Casino Partnership ("Gulfside"), as well as an original action for declaratory judgment, concerning the Arkansas Racing Commission's action on November 12, 2021, in issuing the Pope County casino license jointly to Cherokee Nation Businesses ("CNB") and Legends Resort and Casino, LLC ("Legends").

2. The Arkansas Racing Commission ("Racing Commission") issued a public notice on March 26, 2019, that the Racing Commission would begin accepting applications for casino gaming licenses in Pope and Jefferson counties on May 1, 2019, and that the license application period would expire on May 30, 2019.

3. There were five casino license applications submitted to the Racing Commission for the Pope County casino license during the thirty-day application period beginning May 1, 2019, and ending on May 30, 2019.

4. Casino license applications were submitted by Gulfside, CNB, Choctaw Nation of Oklahoma ("Choctaw") and two other applicants.

5. At its June 13, 2019 meeting, the Racing Commission denied all five casino license applications submitted during the May 2019 license application period. The Racing Commission determined that none of the five applicants were qualified license applicants, as they failed to meet the Amendment 100 casino application requirement to have either a letter of support from the Pope County Judge or a resolution of approval from the Pope County Quorum Court.

6. On June 17, 2019, the Racing Commission issued written notice of denial to all five applicants who applied for the Pope County casino license during the May 2019 application period.

7. The Racing Commission's denial of the five casino license applications was the final administrative action involving such licenses.

8. Of the five applicants, Gulfside was the only applicant with a letter of support from a Pope County Judge. Gulfside's letter of support was from the then immediately prior county judge whose term ended on December 31, 2018.

9. Gulfside appealed the denial of its application. None of the other four applicants, including CNB and Choctaw, appealed the denials of their applications.

10. The Racing Commission subsequently opened a second casino license application period but ultimately dissolved such application period because the stated time period of sixty

days was in clear violation of its own regulation limiting a casino license application period to thirty days.

11. For all times relevant to this action, the only Pope County casino license application period that was noticed and conducted in accordance with Amendment 100 and the casino regulations enacted by the Racing Commission was the May 2019 casino license application period.

12. Legends, an Arkansas limited liability company, was incorporated on September 11, 2019, a little more than three months after the May 2019 Pope County casino license application period closed.

13. On January 15, 2020, Legends submitted an application for the Pope County casino license. The Legends application asked the Racing Commission to accept its application as part of the May 2019 application period after the submission deadline for "good cause shown," pursuant to a Racing Commission regulation.

14. Legends did not legally exist during the May 2019 application period.

15. There was no published or announced thirty-day casino license application period on January 15, 2020 as required by the Racing Commission's promulgated casino regulations.

16. Amendment 100, §2(b) defines "casino applicant" as "any individual, corporation, partnership, association, trust, or other entity applying for a license to conduct casino gaming at a casino."

17. On January 15, 2020, Legends had no prior "gaming experience" as required by Amendment 100.

18. On January 15, 2020, CNB did not have a pending application with the Racing Commission. CNB's only viable casino license application had been administratively denied, along with all of the other May 2019 applications, in June of 2019.

19. The Amendment 100 definition of a "casino applicant" does not include the terms "and/or related entities," or "and/or closely related entities."

20. The Amendment 100 definition of a "casino applicant" clearly and unambiguously speaks in terms of a single individual or business entity as being the casino applicant and licensee.

21. The Racing Commission ultimately determined that the fact that Legends had the required letter of support from the Pope County Judge when it submitted its application on January 15, 2020 constituted "good cause shown" for accepting Legend's application in January 15, 2020 as a late application for the May 2019 casino license application period.

22. On November 12, 2021, the Racing Commission inexplicably issued the Pope County casino license not just to the license applicant Legends, but jointly to two separate legal entities, "Cherokee Nation Businesses, LLC/Legends Resort and Casino, LLC."

CONCLUSIONS OF LAW

23. Gulfside has standing to bring this appeal, as well as an original action for declaratory judgment.

24. Choctaw has standing to intervene in this matter as it has alleged that the Racing Commission's actions were illegal and *ultra vires* and that the *ultra vires* issuance of a Pope County casino license will be materially adverse to Choctaw's business interests.

25. CNB and Legends are two separate legal entities. The fact that CNB may be one of the members of Legends, or even the only member of Legends, does not alter the legal status that CNB and Legends are distinct and separate legal entities.

26. The "shall" language utilized in Amendment 100, §4(m) concerning prior experience conducting casino gaming is mandatory and does not allow for the Racing Commission to exercise any discretion.

27. Legends was not even incorporated until September of 2019 and the record is clear that Legends didn't have any prior casino gaming experience.

28. Legends was not a qualified casino applicant as defined by Amendment 100, and the Racing Commission acted *ultra vires*, in violation of Amendment 100, when it issued the Pope County casino license jointly to Legends.

29. Amendment 100 allows only for a single applicant for a casino license, and the Racing Commission acted *ultra vires*, in violation of Amendment 100, when it issued the Pope County jointly to Legends and CNB.

30. CNB did not have a casino license application pending at the time the Racing Commission jointly awarded it the Pope County casino license. Amendment 100 requires the submission of a casino application license and the Racing Commission acted *ultra vires*, in violation of Amendment 100, in issuing a casino license jointly to CNB when it had not submitted a casino license application.

31. Amendment 100 clearly and unambiguously requires either a letter of support from the Pope County Judge or a resolution in support by the Pope County Quorum Court as part of a casino license application. Failure to provide such document was the reason the Racing Commission denied all five applications at the conclusion of the May 2019 license application

period. The Racing Commission acted *ultra vires*, in violation of Amendment 100, when it allowed an application to be tendered late for the May 2019 period for the sole reason that Legends' late application contained a constitutionally required letter of support.

32. The Racing Commission abused its regulatory agency discretion in allowing "good cause shown" for the Legends' casino license application to be tendered over seven months after the May 2019 license period closed when Legends did not even exist at the time of the May 2019 application period. It was a legal impossibility for Legends to have submitted a timely casino license application, so there could not legally be "good cause shown" for its application to be submitted late.

33. The casino license issued by the Racing Commission on November 12, 2021 jointly to CNB and Legends was an *ultra vires* action as it was issued unconstitutionally, in violation of the clear and unambiguous language of Amendment 100. Such license is a legal nullity, void and of no effect.

TIMOTHY DAVIS FOX
CIRCUIT JUDGE

1/12/23

DATE