

NOV Border

National Indian Gaming Commission

NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

No: CFA-01-02

To: Principal Chief
Seminole Nation of Oklahoma
P.O. Box 1498 (½ mile E of junction 59 & 270)
Wewoka, OK 74884
Fax: (405) 257-6205

1. Under the authority of 25 U.S.C. § 2713(a), of the Indian Gaming Regulatory Act (IGRA), and the regulations of the National Indian Gaming Commission (NIGC) at 25 C.F.R. § 575, the Chairman of the NIGC hereby provides notice of his intent to assess a civil fine against the Seminole Nation of Oklahoma (Respondent), Wewoka, Oklahoma, for violations of 25 C.F.R. §§ 571.12 and 571.13, as set forth in detail in Notice of Violation No. NOV-01-02, issued May 18, 2001, a copy of which is attached hereto (Exhibit 1). NOV-01-02 required that Respondent submit independent audit reports and management letters for each gaming operation for four gaming operations for the years ending September 30, 1999, and September 30, 2000, within ten (10) days after issuance of the NOV.
2. Pursuant to 25 U.S.C. § 2713(a) and 25 C.F.R. § 575.4, the Chairman of the NIGC may assess a civil fine, not to exceed \$25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each violation cited in a notice of violation issued under 25 C.F.R. § 573.3. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation. 25 C.F.R. § 575.4(a)(2).
3. The NIGC regulation at 25 C.F.R. § 575.5 provides that, within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, a respondent may submit written information about the violation. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine. The following information was submitted within 15 days after service of the Notice of Violation No. NOV-02-01:

On May 22, 2001, the Seminole Nation Development Authority's auditor submitted a letter stating that it had prepared drafts of the fiscal year 1999 audit and that the fiscal year 2000 audit was tentatively slated to be started June 4, 2001 (Exhibit 2);

On May 30, 2001, Respondent submitted a letter stating that it had been unable to obtain financial information from the Seminole National Development Authority

(Exhibit 3); and On May 30, 2001, Respondent's attorney submitted a letter stating that the fiscal year 1999 audit was "substantially complete" and could be completed June 2001 and that the fiscal year 2000 audit would require "several months" before completion (Exhibit 4).

4. The Chairman has considered the factors set forth in 25 C.F.R. § 575.4, as follows:

- i. Economic benefit of noncompliance. Respondent obtained an economic benefit from failure timely to submit audits for fiscal years 1999 and 2000 by postponing the cost of paying an independent auditor for performing timely audits.
- ii. Seriousness of the violations. Respondent failed to submit audit reports for two fiscal years. Submission of the annual independent audit by a firm of certified public accountants is critical to NIGC's mission to protect the integrity of Indian gaming. Annual audit reports provide both the Tribe and the NIGC with important information on the financial strength and security of the assets of the tribal gaming operation. The ability of a firm to conduct the audit assures the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements. These, in turn, assure the integrity of the gaming operation. Respondent's failure to submit audit reports left Respondent's gaming operations vulnerable to financial improprieties.
- iii. History of violations. Respondent has been the subject of two final orders of the NIGC:
 - a. Notice of Violation No. NOV-98-01 and Order of Temporary Closure No. CO-98-01, January 13, 1998, for operating "Reels of Skill," a Class III gambling device, in the absence of a tribal-state compact (Exhibit 5). Following issuance of the Commission's final decision in NOV-98-01, the Chairman and Respondent entered into an Agreement on November 30, 1998, whereby Respondent agreed to pay a civil fine in the reduced amount of \$7,500 (Exhibit 6), which was paid.
 - b. Notice of Violation No. NOV-99-03, March 2, 1999, for failure to conduct background investigations on primary management officials and key employees and to submit employee applications, investigative reports, and suitability determinations to the Commission (Exhibit 7). A Civil Fine Assessment was issued June 3, 1999, in the amount of \$4,500 for the violations identified in NOV-99-03 (Exhibit 8). Respondent did not pay the fine.
- iv. Negligence or willfulness. Respondent's fiscal year 1999 audit was due January 28, 2000. Respondent's fiscal year 2000 audit was due January 28,

2001. Respondent was made aware of its continuing failure to submit the audits. On August 14, 2000, the NIGC issued a Potential Notice of Violation (PNOV) concerning the 1999 audit; the purpose of the PNOV was to make Respondent aware of the violation and to provide an opportunity for voluntary compliance (Exhibit 9). On March 16, 2001, the NIGC requested submission of the fiscal years 1999 and 2000 audits (Exhibit 10).

By Respondent's own admission, Respondent was unable to maintain control over the Tribe's gaming operations. Chief Jerry Haney's May 30, 2001, letter (Exhibit 3) to NIGC states: "Just as you [NIGC] have not received audits, we too have not received any financial information despite repeated requests. The requests to the Director were referred to the SNDA Board and then disregarded or refused."

"Some immediate concerns pertain to SNDA's contract with Mr. Ivy Ong as a vendor, but in his capacity as vendor acts as a management contractor seemingly to avoid NIGC's requirement for background check. Mr. Ong has managed the gaming for 10 months under an agreement only approved by SNDA and not the General Council...."

"We have requested reports on the distribution to the vendor and band statements in order to verify reports. We continue to see discrepancies in their financial reports."

Respondent submitted the fiscal year 1999 audit on July 27, 2001, almost eighteen (18) months late. Respondent submitted the fiscal year 2000 audit on December 5, 2001, more than ten (10) months late.

Respondent failed to meet its responsibilities under IGRA and the implementing regulations. Respondent cannot explain its failure to submit timely audits by blaming others within the tribe; Respondent must exercise control over its own gaming establishment. Respondent's failure to maintain control over the gaming operation and, as a result, failure to compel submission of the required audits, is evidence of negligent conduct of Respondent's governmental duties.

- v. Good faith. Failure to submit the fiscal year 1999 audit for eighteen (18) months and failure to submit the fiscal year 2000 audit for more than ten (10) months shows a minimal good faith effort to comply with IGRA and NIGC regulations.

5. WHEREFORE, the Chairman, having carefully reviewed the above factors, has determined that a fine in the amount of three thousand dollars (\$3,000) is assessed on Respondent for failure timely to submit the fiscal year 1999 audit, and a fine of one thousand five hundred dollars (\$1,500) is assessed on Respondent for failure timely to submit the fiscal year 2000 audit.

6. The above-described amounts represent an appropriate balancing of the factors cited

above.

7. Pursuant to 25 C.F.R. § 577.3, within 30 (thirty) days after service of this Notice of Proposed Civil Fine Assessment, Respondent may appeal the proposed fine to the full Commission by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must identify this Notice of Proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, Respondent must file with the Commission a supplemental statement that sets forth with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If Respondent wishes to present oral testimony or witnesses at the hearing, Respondent must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. Respondent may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

Dated this 26th day of April 2002.



Montie R. Deer
Chairman

Cynthia Shaw Omberg
Attorney