

PROPOSED CIVIL FINE ASSESSMENT

Ref. No. : NOV-97-M02
June 27, 1997

To: James P. Weisman
President
JPW Consultants, Inc.
3801 North 44th Avenue
Hollywood, Florida 33021

Respondent

1. Under the authority of 25 U.S.C. 2713(a) of the Indian Gaming Regulatory Act (IGRA) and 25 C.F.R. part 575, the Vice-Chairman of the National Indian Gaming Commission (Commission) hereby provides notice of his intent to assess a civil fine against the JPW Consultants, Inc., located at 3801 North 44th Avenue, Hollywood, Florida 33021 (hereinafter referred to as "JPW or the Respondent"), for violations of 25 C.F.R. §573.6(a)(7) and 25 C.F.R. §573.6(a)(11) as set forth in detail in Notice of Violation No. 97-M02 issued on May 30, 1997.

2. Under 25 U.S.C. 2713(a) and 25 C.F.R. §575.4, the Vice-Chairman may assess a civil fine, not to exceed \$25,000 per violation per day, 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. In the subject proceeding, the gaming operation is owned by the Seminole Tribe of Florida (Tribe) and is located on tribal lands in Hollywood, Florida (hereinafter referred to as the "Hollywood gaming operation"). The Respondent is a management contractor and has managed the Hollywood gaming since approximately July 2, 1996.

In arriving at a proposed civil fine, the Vice-Chairman has considered the factors prescribed in 25 C.F.R. §575.4, as follows:

i. Economic benefit of noncompliance. The economic benefit to the Respondent is reflected in the financial reports of the Hollywood gaming operation prepared by accountants for the Tribe. These documents reflect that the Respondent received approximately \$850,000 per month in management fees during the period July 2, 1996 to May 30, 1997. This results in a total benefit to the Respondent of approximately \$ \$9,300,000.

ii. Seriousness of the violation. This is a serious violation. Throughout the violation period the Respondent has managed the Hollywood gaming operation without an approved contract since July 1996. Such an action threatens the integrity of Indian gaming by circumventing the management contract review

process specifically included in the Indian Gaming Regulatory Act (IGRA) and the Commission's regulations to ensure the suitability of individuals and entities involved in Indian gaming.

In addition, the Respondent installed and operated a variety of video machines which are electronic or electromechanical games of chance at the Hollywood gaming operation. There is no compact between the Seminole Tribe of Florida and the State of Florida. By offering Class III games in the absence of a tribal-State compact the Respondent is disregarding the basic regulatory scheme of the IGRA.

iii. History of violations. The Chairman of the Commission issued a Notice of Violation dated May 30, 1997, to the Respondent alleging that the Respondent was operating without an approved management contract and that Class III games were being operated at the Hollywood gaming operation in the absence of a tribal-state compact. Although JPW has no history of previous violations, the Commission has determined that for several years the President of JPW has been directly involved in the installation and operation of illegal gaming machines in the Hollywood gaming operation .

iv. Negligence or willfulness. The Respondent has submitted various agreements to the Commission for review as management contracts including the present agreement with the Tribe. Such actions indicate that JPW understood it was involved in management activities at the Hollywood operation and recognized the need to obtain governmental approval before such activities would be lawful. The fact that the Respondent knowingly disregarded this requirement demonstrates that this was willful violation.

v. Good faith. The Vice-Chairman of the Commission may adjust a fine based on the degree of good faith of the Respondents in attempting to achieve rapid voluntary compliance after a Notice of Violation has been issued. Although the Respondent has informally advised the NIGC that it has discontinued the unauthorized management, to date it has not provided evidence which substantiates this fact. Accordingly, as of the date of this assessment, the Respondent has not demonstrated a good faith effort to come into compliance with the Commission's regulations.


THEREFORE, the Vice-Chairman, having carefully reviewed the above factors, has determined that a fine in the amount of \$25,000 per day is assessed on the Respondent. This amount represents an appropriate balancing of the factors cited above.

For purposes of assessing this fine, the Vice-Chairman has

determined that a violation occurs each day that JPW continued to manage the Hollywood gaming operation without an approved contract and to offer Class III games at this facility in the absence of a tribal-state compact. The Chairman hereby proposes to assess fines in the amount of \$25,000 per day, beginning on the day the unauthorized management began and continuing for each day that the noncompliance cited in the Notice of Violation continued. This results in a total current fine assessment of \$8,500,000.

Under 25 C.F.R. §575.4, fines for continuing violations may be assessed in an amount up to \$25,000 per day of noncompliance.

Under 25 C.F.R. §577.3, the Respondent may appeal the proposed fine to the full Commission within 30 (thirty) days after service of this Notice of Proposed Civil Fine Assessment, by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L Street, N.W., Ninth Floor, Washington, D.C. 20005. The Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, the Respondent must file with the Commission a supplemental statement that states, with particularity, the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If the Respondent wishes to present oral testimony or witnesses at the hearing, the 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. The Respondent may waive his or her right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.



Thomas J. Foley
Vice-Chairman
National Indian Gaming Commission