

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW AND EQUITY DIVISION**

**2015/CLE/gen/01694**

**IN THE MATTER of Section 84 of the Gaming Act, 2014**

**IN THE MATTER of an appeal by BVC Holdings Ltd. d/b/a Bet Vegas  
Casino against the decision of the Minister Responsible for Gaming,  
refusal to grant a Gaming House Operators Licence**

**BVC HOLDINGS LTD.  
(d/b/a Bet Vegas Casino)**

**Appellant**

**AND**

**MINISTER OF TOURISM RESPONSIBLE FOR GAMING**

**AND**

**ATTORNEY GENERAL**

**Respondents**

**Before:** The Honourable Madam Senior Justice Indra H. Charles

**Appearances:** Mr. Jairam Mangra of Mangra & Mangra for the Appellant  
Ms. Kenria Smith and Ms. Crystal Knowles of the Office of the  
Attorney General for Respondents

**Hearing Dates:** 14 November 2016, 13 November 2017, 20 January 2020, 21  
February 2020, 19 January 2023, 30 January 2023

**Appeal from the Decision of the Minister Responsible for Gaming – Section 31 (3) of the  
Gaming Act 2014 – Illegality - Whether Appellant is prohibited to bring his claim because  
he was illegally operating - Whether decision of Minister Responsible for Gaming was  
unreasonable and unsatisfactory – Whether the Appellant was denied due process –  
Whether Appellant had a legitimate expectation to qualify for a licence**

These proceedings relate to an appeal, pursuant to section 84(1) of the Gaming Act, 2014 (“the Act”), of the Decision of the Minister Responsible for Gaming (“Minister”) to refuse to grant a Gaming House Operator Licence to BVC Holdings Ltd (d/b/a Bet Vegas Casino) (“the Appellant”) on 19 October 2015 pursuant to section 31 of the Act.

The Appellant alleges that: (i) the Decision of the Minister was unreasonable and unsatisfactory having regard to all the circumstances; (ii) the Appellant was denied due process under the law pursuant to section 31(3)(b) of the Act; (iii) any decision of refusal cannot be supported by evidence; and (iv) the Appellant had a legitimate expectation to be qualified for a licence.

The Minister and the Attorney General (together “the Respondents”) raised a preliminary objection that the Appellant ought not to be heard on his appeal because it continued to operate numerous gaming facilities in contravention of the Act. The Respondents deny that the Decision of the Minister was unreasonable and unsatisfactory and contend that due consideration was given to the Appellant’s application for a Gaming House Operator Licence. The Respondents further contend that more than reasonable opportunities were extended to facilitate the Appellant during the transitional period and qualification process. The Respondents assert that after stringent probity investigations, the Appellant failed to meet its burden of proving its suitability for licensure under the Act as the Appellant failed and/or refused to provide all of the requisite information and supporting qualification documentation in accordance with the Act. The Respondents further assert that the ultimate disqualification of the Appellant was in accordance with the law. With respect to legitimate expectation, they contend that they did not provide any form of legitimate expectation regarding the Appellant’s application for a Gaming House Operator Licence. They further contend that pursuant to section 22(1) of the Act, no one has a right to be awarded any licence referred to in the stated Act; therefore, any claim to a legitimate expectation in obtaining a Gaming House Operator Licence is misconceived and devoid of merit. The Respondents assert that the Appellant was under an expressed legal and statutory obligation to cease its business operations by notice dated 19 October 2015.

**HELD: dismissing the appeal with costs to the Respondents to be taxed if not agreed**

1. The Appellant ought not to be heard on his appeal. The Appellant continued to operate numerous gaming facilities in contravention of the Act and was not entitled to be heard as he relied on what he clearly understood to be his continued illegal act, upon which he moved the court to consider. The period for cessation of the Appellant’s business operations ended on 26 October 2015. However, the Appellant’s continued operation of Bet Vegas rendered its operation unlawful under the Act and such illegal operation was also ground for the disqualification of

the Appellant's business for any licence under the Act: **Section 85 of the Act** applied.

2. The Decision of the Minister not to grant a Gaming House Operator Licence to the Appellant was reasonable and supported by cogent evidence. The Appellant was not deprived of any right to due process or prejudiced in any way in having his application investigated. The investigation was meticulous and thorough and based on the law and best practices and methodologies that are utilized in all reputable gaming jurisdictions. The Appellant is unable to prove that the Decision of the Minister was so unreasonable that no reasonable authority could ever have come to it: **Associated Provincial Picture Houses Ltd. v Wednesbury Corporation** (1948) 1 K.B. 223 at page 230 and **Nottinghamshire County Council v Secretary of State for the Environment** (1986) Law Reports, HOL, 240 at page 241 applied.
3. Section 22(1) of the Act clearly states that no person has a right to be awarded any licence referred to in the Act, thereby unequivocally dispelling the notion of a right to or legitimate expectation of licensure under the Act: **Section 22 of the Act** applied.
4. The Appellant has misconceived the principle of legitimate expectation as none arose in this case. A legitimate expectation could arise either (i) by altering rights or obligations of that person which are enforceable by or against him in private law; or (ii) by depriving him of some benefit or advantage which either he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment or he has received some assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn: **Council of Civil Service Unions v Minister for the Civil Service** [1985] AC 374 at page 408 applied.
5. The principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts: **United Policyholders Group and others v The Attorney General of Trinidad and Tobago** [2016] UKPC 17 applied.

## JUDGMENT

### **Charles Snr. J: Introduction**

- [1] On 31 January 2023, this Court dismissed the Appellant’s appeal against the Minister of Tourism responsible for Gaming and the Attorney General (together “the Respondents”) with oral reasons and promised a written Judgment. I do so now.
- [2] By Notice of Appeal filed on 2 November 2015, the Appellant appeals the decision of the Minister of Tourism Responsible for Gaming (“the Minister”) made on 19 October 2015 not to grant a Gaming House Operator License pursuant to section 31(3) of the Gaming Act, 2014 (“the Act”) on the grounds that:
1. The refusal was unreasonable and unsatisfactory;
  2. The Appellant was denied due process under the law pursuant to section 31(3)(b) of the Act;
  3. The decision of refusal cannot be supported by evidence and;
  4. The Appellant has a legitimate expectation to be qualified for a licence.

### **Understanding the Gaming Industry: Appellant’s Request For Proposal (“RFP”)**

- [3] On or about 10 March 2015, the Appellant, through its President Anthony Brown, submitted a detailed Request For Proposal (“RFP”) in response to an invitation to participate in the cited RFP which effectively constituted an application for a Gaming House Operator Licence under section 44 of the Act, including authorization of Gaming House Premises Licences under section 45 of the Act and Gaming House Agent Licences under section 46 of the Act.
- [4] Part Five, Sections A and B of the RFP required the Appellant to submit information necessary to enable the Respondents to evaluate its overall suitability for licensure.
- [5] Following regulatory best practices in the gaming industry around the world, the RFP required that the Appellant, as well as each corporate entity or natural person

holding a financial interest of 5% or more in the Appellant, to file with the Gaming Board for The Bahamas (“the Board”) a Multi-Jurisdictional Business Entity Disclosure (“MJBED”). Executive directors, officers and executive level key employees were similarly required to file a Multi-Jurisdictional Personal History Disclosure (“MJPHE”) in connection with the RFP Response.

[6] The requirement to file both the MJBED and the MJPHE is also contained in Regulation 12(1) of the Gaming Regulations, 2014 (“the Regulations”).

[7] The MJBEDs and MJPHEs subject to review during the investigation for the Appellant included Anthony Livingston Brown (“Mr. Brown”) (99.96% ownership), Florence Knowles (.02% ownership under 5%, activity triggered review) and Leonardo Rodgers (.02% ownership under 5%, activity triggered review).

[8] The officers and key employees of the Appellant were represented to the Respondents as being Anthony Livingston Brown (President), Leonardo Rodgers (Vice President) and Florence Knowles (Secretary). The Executive Directors of the Appellant were listed as Florence Knowles and Leonardo Rodgers.

[9] Holders of a financial interest in the Appellant, executive directors, officers, key employees may be collectively referred to as “Qualifiers” of the Appellant. Less senior employees whose duties and responsibilities nonetheless require a key employee licence and line employees are subject to investigation concurrent with or immediately following the award of a Gaming House Operator Licence.

[10] The Board, by and through its Intelligence, Investigations and Enforcement Department (“IIE”), is responsible for the conduct of the investigations pertaining to probity, integrity, character, reputation, prior conduct, habits, associations, financial stability and ability, criminal record, competence, experience and suitability that are the foundation of the Board’s recommendation to the Minister with regard to the grant of a Gaming House Operator Licence. Drawing upon significant past investigative experience in law enforcement and within the gaming industry, IIE’s Special Agents conducted an exhaustive background to determine

the Appellant's suitability to participate in the then newly created domestic gaming sector.

- [11] Pursuant to section 23(f) of the Act, as bolstered by the Regulations, an applicant for a Gaming House Operator Licence as well as its Qualifiers, must meet the eligibility and suitability standards as provided for in section 24 of the Act. If an Applicant fails to meet its burden of proving its suitability for licensure under section 24, then the disqualification criteria clearly articulated in sections 25 and 26 of the Act must apply.
- [12] The suitability standards articulated in the Act and the Regulations are generally consistent with regulatory best practices in many well established gaming jurisdictions including Nevada, New Jersey, Mississippi and Singapore.
- [13] Pursuant to Regulation 11(3) of the Regulations, the Appellant bears the burden of proving, on a balance of probability, its full compliance with the qualification/disqualification criteria.
- [14] In formulating its recommendation, IIE performed an internal cross-disciplinary review of the Appellant and its Qualifiers drawing on its collective experience.
- [15] Recognizing the regulatory nature of the investigation, every effort was made to appreciate that both the integrity of the gaming operation and the viability of the Appellant's business were at stake in the process.
- [16] IIE performed its suitability assessment on the basis of information gleaned from a variety of reputable and diverse databases and exercised every effort to conform its investigation methodology to the highest regulatory best practices. IIE focused on the statutory suitability criteria and expanded its review as dictated by the results. Information was accumulated, cross-referenced and compiled in as uniform a manner as possible. Relevant data was verified and, where required, vetted by multiple members of the investigation team. Areas of concern were subject to more intensive investigation activity as well as legal review.

[17] The natural person qualifiers, executive directors, officers and key employees named were interviewed in person and afforded a full opportunity to address any derogatory information identified and to provide clarification with regard to any area of concern.

[18] Every effort was made to maintain a collaborative approach to the suitability assessment and, in full recognition of the continuing nature of the suitability assessment under the new legislation.

### **The law**

[19] Section 85(22) of the Act provides that:

**“In the event that the Minister fails to set a date for the closure of the businesses referred to in subsection (16) prior to the award of gaming house operator and gaming house premises licences by the Minister-**

- (a) **the Board shall, within two days of being informed of the decision of the Minister regarding the award of such licences, cause to be served on all the business establishments which have elected to continue the operation of their businesses under subsection (18), a written notice advising such business establishments of the decision of the Minister and requiring every business establishment in respect of which no gaming house premises licence has been awarded by the Minister, to effect the closure of such businesses within seven days of service of such written notice (hereinafter referred to as “the cessation date”);**
- (b) **the business establishments in respect of which no licences have been awarded shall cease their operations on or before the cessation date;**
- (c) **the transitional period shall be deemed to have ended on the cessation date; and**
- (d) **the obligation to cease the operation of such businesses shall remain in force notwithstanding the institution of any proceedings for the judicial review of the decision of the Minister in respect of the award of the licences, unless the court, on application by the party seeking the review of such decision, finds that there are substantial and compelling grounds to order otherwise.”[Emphasis added]**

### **Preliminary objection: Illegality - Whether the Appellant ought to be heard**

[20] On 19 October 2015, the Minister made a decision not to grant a Gaming House Operator Licence to the Appellant.

[21] Section 84 of the Act gives the Appellant the right to appeal to the Supreme Court. It provides:

#### **“Appeals**

**(1) Any person aggrieved by a decision of the Board or the Minister, may appeal the decision to the Supreme Court in accordance with rules of court within thirty days after the later of the making of the decision or the issuing of the reasons for the decision.**

**(2) The Board or the Minister is entitled to be heard by counsel otherwise on the argument of the appeal under this section, whether or not the Board or the Minister is named as a party to the appeal.”**

[22] Lead Counsel for the Respondents, Ms. Smith, argued that it is crystal clear from the evidence of Mr. Brown adduced on 14 November 2016 and 13 November 2017 respectively that the Appellant continued to knowingly and with blatant disregard for the law, operate numerous gaming facilities in contravention of the Act. In doing so, says Ms. Smith, he siphoned domestic players away from licensed Gaming House Operators and deprived the Consolidated Fund of the gaming tax revenue that should have been generated by their play. In light of these illegal activities, this Court ordered that all such unlawful operations cease by 30 April 2020.

[23] Counsel maintained that the Appellant is not entitled to be heard as he relies on what he clearly understood to be his continued illegal act, upon which he moved the court to consider.

[24] The Appellant has not addressed this preliminary objection.

[25] There is a long standing common law principle that the courts will not assist a party whose case is based upon an immoral or illegal act. This principle can be traced as far back as in the seventeenth century in the case of **Holman v Johnson** (1775)



1 Cowp 341 where Lord Mansfield said:

**“No court will lend its aid to a man who found his cause of action upon an immoral or an illegal act.”**

[26] This common law principle is known as the principle of *Ex turpi causa non oritur action*” meaning “No action can arise from an illegal act.”

[27] This principle, of course, was prior to the case of **Patel v Mirza** [2016] UKSC 42 and now, the leading cases of **Grondona v Stoffel & Co.** [2020] UKSC 42 and **Henderson v Dorset Healthcare University NHS Foundation Trust** [2020] UKSC 43 which have simplified and clarified the new approach to illegality laid down in **Patel**.

[28] However, I am not concerned with common law illegality as there is statute governing illegality in the Gaming Industry. Section 85(17) of the Act deals with contravention of the subsection 16(a), (b) and (c) by any business establishment. It reads:

**“(17) Any contravention of the provisions of subsection (16)(a), (b) or (c) by any business establishment permitted to operate under subsection (16) will –**

**(a) render the continued operation of such business unlawful, notwithstanding anything to the contrary in this Act; and**

**(b) be grounds for the disqualification of such business for any licence provided for by this Act.”**

[29] Section 85(16) (c) of the Act also clearly provides that the owner of such business (not awarded a licence) shall:

**“(c) cease the operation of such business on the date on which the transitional period ends.”**

[30] It is not in dispute that the cessation period ended on 26 October 2015 when the Appellant ought to have ceased operation.

[31] Given the Appellant's continued operation of Bet Vegas, renders its operation unlawful under section 85(17)(a) and such illegal operation is also ground for the disqualification of such business for any licence under section 85(17) (b) of the Act.

[32] As the Respondents correctly argued, the Appellant ought not to be heard on his appeal. On this preliminary objection alone, I ought to dismiss the appeal with costs to the Respondents.

[33] In the event that I am wrong to come to this conclusion, I shall carry on with the appeal.

### **The evidence**

[34] The Appellant relies on four Affidavits of Mr. Brown filed on 26 October 2015, 27 November 2015, 11 November 2016 and 18 December 2018. He stated that on 11 November 2014, he along with Florence Knowles and Leonardo Rodgers incorporated the Appellant for the purpose of applying for a gaming licence. He attended numerous meetings at the instance of the Gaming Board ("the Board") so as to be apprised of the requirements in order to obtain a licence.

[35] He opined that he believed that he fulfilled all of the requirements necessary and was granted a transitional licence. Further, he continued with the process of satisfying the Board's due diligence with the intention of being granted a provisional licence under the Act

[36] He stated that by letter dated 8 October 2015, he received a notice from the Board to satisfy the Appellant's deficiencies by 15 October 2015. By letter dated 19 October 2015, the Minister informed him of his decision to refuse a provisional Gaming House Operators Licence to the Appellant. He said that the Minister's letter came only 11 days after the letter of 8 October 2015 which noted that there were deficiencies to be addressed.

- [37] He was informed by one of his former attorneys that by section 31(3) of the Act, the Appellant was entitled to at least one calendar month to address any deficiencies and had the Appellant been given one calendar month he would have met the deadline and been in good standing for a provisional licence.
- [38] He stated that since the Appellant was deprived of its full benefit under section 31(3) of the Act, the Decision ought to be quashed.
- [39] Mr. Brown was extensively cross-examined. The cross-examination revealed that, despite the fact that the cessation period ended on 26 October 2015, the Appellant continued to operate until the Court ordered that all such unlawful operations ceased by 30 April 2020.

#### **The evidence adduced by the Respondents**

- [40] The oral evidence on behalf of the Respondents came from Mr. Ian Tynes, current Secretary of the Board. He filed two affidavits which stood as his evidence in chief in the trial. The affidavits were sworn to on 28 January 2020 and 10 February 2020 respectively. The Respondents also relied on the affidavits of Mr. Verdant Scott, former Secretary of the Board. Mr. Scott did not attend to be cross-examined.
- [41] Mr. Tynes stated that, on 15 April 2015, the then Secretary notified Mr. Brown with reference to the use of handheld devices by the Appellant advising that employees may currently be engaged in the conduct of gaming transactions through the use of PDA's or handheld devices. Mr. Tynes said that Mr. Brown was also advised that should the allegations be founded, their application for a Gaming House Operator Licence will be denied.
- [42] On 20 July 2015, the then Secretary issued to Mr. Brown a first request for additional information regarding net worth, ownership and financial sources which did not accompany the RFP submission and an invitation for an interview.
- [43] On 22 July 2015, Lead Agent Donald N. Noguez interviewed Mr. Brown.

- [44] On 31 July 2015, Mr. Brown notified the Board's then Secretary that software supplier RSL Limited had discontinued providing casino game platforms to the Appellant in a contract dispute; technical staff conducted status conferences with him (Mr. Brown).
- [45] On 4 August 2015, the Board's then Secretary notified Mr. Brown that a review of the Appellant's Response to the RFP indicated that it had failed to file MJBEDs and MJPHDs for executive directors, officers and key employees identified by Mr. Brown in his 22 July 2015 interview.
- [46] On 6 August 2015, Special Agent Noguez sent a request to Mr. Brown seeking additional information by way of follow-up to his 22 July 2015 interview that repeated many of the questions posed on 20 July 2015 as well as additional questions arising out of that interview regarding source of funds and location of operations.
- [47] On 13 August 2015, the Board's then Secretary notified Mr. Brown of the need to submit to the Board copies of all contracts with suppliers and distributors.
- [48] On 19 August 2015, Donnie Stuart and Antoine Miller submitted a request letter directed to the then Minister seeking consideration to facilitate the reversion and or segmentation of the current gaming company known as Bet Vegas to the predominantly operated and owned Bowes Web. Upon referral by the then Minister to the Board's then Secretary, the then Secretary responded that such a reversion would not be considered as Stuart and Miller were not before the Board.
- [49] On 25 August 2015, Special Agent Noguez sent a request to Mr. Brown for a 27 August 2015 interview. On the same day, Mr. Brown responded that he was unavailable and referred the request to Attorney Donovan Gibson.
- [50] On 31 August 2015, the Board's then Secretary notified Mr. Brown that the need to clarify many issues presented in his MJBED and MJPHD to the Board was now critical.

- [51] On 9 September 2015, Special Agent Donald N. Nouguez interviewed Mr. Brown. Subsequent to the interview, Attorney Donovan Gibson of Munroe & Associates telephoned the Board to ascertain on Mr. Brown's behalf precisely what information was required with regard to the Appellant/Major transaction. The information was provided and Mr. Gibson represented that he understood. Mr. Gibson did not further contact the Board and no additional information was provided.
- [52] On 11 September 2015, the Board's then Secretary notified Mr. Brown of the need to submit to the Board additional documentation with regard to residency, the manner in which the Appellant acquired its five locations from Vernal Major, Mr. Brown's source of funds and other concerns raised by the investigation to date.
- [53] On 14 September, 2015, the Board's then Secretary formally notified all Applicants to cease and desist operations from any gaming house Premises and Agent locations not authorized to be operational during the Transitional Period provided for in the Act within 48 hours. On the same day, the Board's then Secretary also formally notified all Applicants to furnish to the Board valid and current Business Licences for all Agents for whom an Application had been submitted under section 46 of the Act. Mr. Brown took no action.
- [54] On 15 September 2015, the Appellant requested an extension from the Board's then Secretary to submit additional documents which the Board requested to be submitted by 17 September 2015. The request for the extension was submitted some 4 days after the Board's 11 September 2015 request for additional information was made and 2 days prior to the 17 September 2015 submission deadline.
- [55] On 17 September, 2015, the Board's then Secretary notified the Appellant of the denial of the extension request. The Board's denial of the extension request was predicated largely on the fact that much of the documentation at issue should have been included in the Appellant's initial Response to the RFP and the vast majority

of the documentation requested had been under discussion in interviews, telephone calls and subject to multiple requests for additional information since on or before the Appellant's initial interview on 22 July 2015.

- [56] On 24 September 2015, the Board's then Secretary notified the Appellant that its RFP Response with regard to contributions for corporate social investment and community benefits identified as essential minimum criteria in the RFP were insufficient and requested additional information.
- [57] On 25 September 2015, the Appellant submitted a response to the Board's then Secretary's 24 September 2015 inquiry that cited a projected goal of a 2% contribution rather than the firm commitment of a minimum of 2% mandated by the Essential Minimum Criteria.
- [58] On 25 September 2015, the Board's then Secretary notified the Appellant that its RFP Response with regard to project viability was insufficient for failure to provide source of funds data and that more information was required with regard to responsible gaming. No response was received from Mr. Brown before or after the 30 September 2015 deadline set in the notice.
- [59] On 28 September 2015, the Board's then Secretary notified the Appellant that more detail was required with regard to its submitted organizational chart especially as it related to designation and qualification of its Compliance Officer and other functions core to a system of internal control such as security, surveillance, internal audit, accounting, operations and IT. Mr. Brown did not respond before or after the 2 October 2015 deadline set in the notice.
- [60] On 29 September 2015, Special Agent Nouguez interviewed Mr. Brown.
- [61] On 29 September 2015, the Board's then Secretary notified the Appellant that more detail was required with regard to its submitted system of internal control. No response was received from Anthony Brown before or after the 2 October 2015 deadline set in the notice.

[62] Mr. Tynes stated that, unlike a criminal investigation, in a gaming house operator suitability investigation under the Act and its accompanying pieces of legislation, the Applicant bears the full burden of proving that it meets the qualification criteria of section 24 of the Act and is not disqualified under sections 25 and 26 of the Act.

[63] He stated that specific analysis and evidence related to the grounds which supported the Respondents' decision not to grant a Gaming House Operator Licence to the Appellant can be categorized as outlined in the paragraphs below.

[64] **A. Funding by Reputable Persons.** Based upon the totality of the following transactions and events and its repeated inquiry of and interviews with Mr. Brown in which he was apparently unable or unwilling to provide the Board with the requested proof, IIE was unable to conclude that the source of any operational funding drawn upon by the Appellant was reputable nor could it conclude that the Appellant had been transparent with regard to the Appellant's ownership. The Respondents concluded that the Appellant, by and through its controlling shareholder Mr. Brown, had failed to meet its burden of proof with regard to:

- Financial good standing, funding by reputable persons or institutions and its ability to undertake and sustain the activity for which the licence is required. (section 24(b)(iv) of the Act); and
- Full disclosure with regard to the Essential Minimum Criteria regarding Compliance with Legal Requirements in the RFP related to ownership of, or affiliation with, any other business conducted on or from any premises in The Bahamas and the legitimate conduct of that business.

[65] **Deed of Assignment.** In response to a 31 August 2015 inquiry by the Board with regard to Mr. Brown's relationship with Vernal Major of Nassau, on or about 3 September 2015, Mr. Brown submitted to the Board a copy of a Deed of Assignment between the Appellant and Vernal Major lodged with the Registrar on 8 December 2014.

- [66] By the Deed of Assignment, Vernal Major conveyed to the Appellant a beneficial interest in five active “web shops” then operating under the name “Bet Vegas” for B\$10.00. Upon receipt and review of this document, by letter dated 11 September 2015, the Board requested additional details regarding the specifics of this conveyance, and, as the consideration was conspicuously nominal, queried Mr. Brown regarding Vernal Major’s direct or indirect participation in the ongoing operations of the Appellant or in a share of its revenue. Mr. Tynes stated that Mr. Brown did not put forward any meaningful clarification.
- [67] With regard to the five locations covered by the Deed of Assignment, in the referenced 31 August 2015 request for additional information, the Board also sought clarification as to how the five (5) locations conveyed reconciled with the five locations cited in the Affidavit for the Board executed by Mr. Brown on the same day the Deed of Assignment was lodged with the Registrar, stipulating on behalf of the Appellant, at Paragraph 3, to the specific Premises and Agents it would operate during the Transitional Period provided for under the Act. This reconciliation was requested because in at least two cases, the addresses on the Deed of Assignment and the Affidavit did not match. Mr. Brown did not furnish any explanation for this difference.
- [68] **Reputable Relationships.** The 8 December 2014 Affidavit of Mr. Brown referenced a Bowe’s Sporting Lounge, located at Blue Hill Road and Martin Street, Nassau, New Providence. Throughout the pendency of the investigation interviews and observations repeatedly raised the suggestion that there existed a connection between the Appellant and/or Mr. Brown and businesses related directly or indirectly to businesses operated under a Bowe’s logo including Bowe’s Tavern, Bowe’s Web Shop, Bowe’s Liquor and Bowe’s Electronics.
- [69] Mr. Tynes stated that a possible connection was further raised between the Appellant and/or Mr. Brown and Mr. John Stuart, a/k/a Mr. John Stewart and Mr. Donnie Stuart a/k/a Mr. Donnie Stewart. In the Board’s 31 August 2015 request for additional information, Mr. Brown was directly asked about the relationships and



specifically was asked to provide any available information with regard to transactions with these persons. In response thereto, in his 9 September 2015 interview, he stated that he did not know persons related to Bowe's or Donnie Stuart and that he knew John Stuart only in connection with the Appellant's lease from Stuart of two properties, specifically the operations centre in which the Appellant was headquartered and the Appellant's Premises located at Blue Hill Road and Martin Street.

[70] Mr. Tynes testified that multiple factors brought into question the veracity of Mr. Brown's representations to the Board during the 9 September 2015 and 28 September 2015 interviews namely:

a) On or about 28 May 2015 in connection with a site inspection of the Appellant's Blue Hill Road and Martin Street Premises, senior level Board staff observed a person, who introduced himself as John Stuart and, as Manager of the location, engaged in counting what he represented to be cashier floats impressed at B\$5,000 each in a secure area of the Premises. In discussions with Board staff on that date, John Stuart explained that revenue was also reconciled in that secure location at the end of each shift and was then placed in a secure bag, deposited into a safe and collected and taken to the Appellant's operations centre for processing three times per week. When confronted with the observations of Board staff during the course of the 9 September 2015 interview, Mr. Brown contended "*it could not be John Stuart*" but did not otherwise put forth any information to refute the observation.

b) In the course of the probity investigation, interviews were conducted with the Appellant's management personal in order to more clearly understand the Appellant's gaming house operations and the level of Mr. Brown's involvement with day-to-day operations. These interviews raised a very strong suggestion that at least one of the Premises authorized by the Board for the Appellant, and possibly many of the Premises and Agent locations

into which the Appellant had expanded were not under the control of the Appellant and/or Mr. Brown.

- In an 11 August 2015 interview with Ashrique Duncombe of Human Resources, Ms. Duncombe was asked whether she served as human resources manager in Nassau only or whether her duties were companywide. She responded that her duties were companywide with the exception of the Premises at Blue Hill Road and Martin Street over which she had no authority.
  - In a 14 August, 2015 interview with Tamico Culmer, a security manager, Mr. Culmer was asked whether he served as a security manager in Nassau only or whether his duties were companywide. He responded that his duties were companywide with the exception of the Premises at Blue Hill Road and Martin Street over which he had no authority.
  - In a 14 August, 2015 interview with Patricia Brown, an operations manager, Ms. Brown was asked whether she served as operations manager in Nassau only or whether her duties were companywide. She responded that her duties were companywide with the exception of the Premises at Blue Hill Road and Martin Street over which she had no authority.
  - In a 14 August, 2015 interview with Antonia Miller, an accounts manager, Ms. Miller was asked whether she served as accounts manager in Nassau only or whether her duties were companywide. She responded that her duties were companywide with the exception of the Premises at Blue Hill Road and Martin Street over which she had no authority.
- c) On or about 19 August 2015 a letter was directed to the Honourable Obediah H. Wilchcombe, the former Minister of Tourism, signed by Donnie Stuart and Antoine Miller which is reproduced in full:

**“This correspondence serves as a letter of consideration primarily to facilitate the reversion and or segmentation of current gaming company known as Bet Vegas to the predominantly operated and owned Bowes Web. The proposal is requested as the transaction will allow for independency and equally important seamless operation and ownership of Bowe’s Web as previously benefited prior to recent merge.**

**For the above reasons, should require any additional information to aid in decision please feel free to contact any of the undersigned at (242) 326-3226.**

**Thanking you in advance for your favorable consideration relevant to the required transaction. Your urgent response will be appreciated.**

**Best regards,**

**/s/ Donnie Stuart  
/s/ Antoine Miller”**

- Upon referral of this letter by the Minister to the Board’s then Secretary, the Secretary responded by letter dated 7 September 2015:

**“The Board’s records do not indicate any of you gentleman having any connection to the entity known as Bet Vegas, or any other entity for that matter with an application before the Board, and therefore your request for *consideration primarily to facilitate the reversion and or segmentation of current gaming company known as Bet Vegas to the predominantly operated and owned Bowes Web* cannot and will not be considered at this time.”** [Emphasis added]

- d) Mr. Tynes explained that when confronted with this exchange of correspondence by Special Agent Nouguez during the course of the 29 September 2015 interview, Mr. Brown appeared to be puzzled, argued that he had no knowledge of the letter exchange, further argued that he did not personally know Donnie Stuart but that he had been friends for many years with Antoine Miller and was surprised he would co-sign a letter like that to the Minister. Mr. Brown did not put forth any additional explanation.

[71] **Net Worth Statement.** In response to conflicting information advanced by Mr. Brown during his 22 July 2015 initial interview, he was afforded multiple opportunities to submit to the Board an accurate Net Worth Statement supported by documentation, where requested, corroborating amounts represented. The initial Net Worth Statement filed with the Board listed a Note Payable by the Appellant of \$1.8 M and a valuation for the Appellant of B\$2 M without benefit of any information as to the specifics of the loan transaction including, but not limited to, the identity of the lender, the collateral and the repayment terms. By letter dated 31 August 2015, Mr. Brown was asked to provide all documentation related to this Note Payable and was further advised that if he personally was the lender, that he was to provide a source of funds analysis identifying the basis upon which and manner in which he, in his individual capacity, was able to lend B\$1.8 M to the Appellant.

[72] In response to the 31 August 2015 inquiry and in the context of his 9 September, 2015 interview, Mr. Tynes asserted that Mr. Brown claimed he had made a clerical error and submitted a revised Net Worth Statement which recast the Note Payable down to B\$180,000. He represented during the interview that the Note Payable was a loan from Sanjay Charitable Holdings, LLC, a Florida limited liability company (“Sanjay’s”) that he controlled, and that Sanjay’s ability to lend to the Appellant emanated from the sale of real estate in Florida. Again, no supporting documentation was provided during the interview and subsequent efforts by the Board to have Mr. Brown establish to its satisfaction the source of Sanjay’s funds went unheeded.

[73] By letter dated 11 September 2015, Mr. Brown was asked to provide supporting loan documentation, as well as the terms of repayment and collateral this time for the B\$180,000 Note Payable. He was advised that if no documentation existed, he was to provide a narrative description of the affiliate transaction. Mr. Tynes stated that no such documentation was submitted. Requests for US Federal and Florida Tax returns for Sanjay and Anthony Brown personally, which could have at least in part supported Sanjay’s ability to lend to the Appellant were submitted to the

Board. However, the information provided did not substantiate the claims that Mr. Brown made. Further, the returns provided were unfiled and unexecuted copies.

[74] On or about 29 September 2015, Mr. Brown submitted yet another Net Worth Statement. While this Net Worth Statement addressed less critical clerical inaccuracies in several areas, the Note Payable of B\$ 180,000 remained unsupported by any verifiable documentation.

[75] **Real Estate Sale.** During the course of his 9 September 2015 interview, Mr. Brown represented that he had obtained additional operating funding in the range of B\$ 69,000 from his mother Florence Knowles, holder of 1 share and Secretary of the Appellant. Specifically, Mr. Brown represented that the funds in question were derived from the sale of a home owned by her at Lot #117 Elizabeth Estates. In response to this representation, by letter dated 11 September 2015 the Board requested that Mr. Brown provide evidence of the sale and his mother's consent to his access to the proceeds of the real estate sale and the terms of repayment. While documentation as to the sale was submitted, no representation from Florence Knowles as to the availability of the proceeds to the Appellant and/or Brown was presented.

[76] **Executive Summary – The Appellant's Response to the RFP.** Although not reflected on any Net Worth Statement filed with the Board, in the Executive Summary of the Appellant's March 2015 Response to the RFP, under Financial Arrangements, Mr. Brown represented that he had secured a personal loan to provide working capital for the Appellant. By letter dated 11 September 2015, the Board requested details with regard to the source of funds and the collateral and repayment terms for that loan. No such documentation was presented.

[77] **Banking Data.** The Appellant did not provide all of the banking details requested by the Board. Based on a review of the banking information that had been submitted, it did not appear that any of the accounts, or the accounts collectively, were used in the day to day conduct of gaming house operations.

[78] **B. Ownership by citizens of The Bahamas who are ordinarily resident in The Bahamas.** Based upon the totality of the documentation presented and its repeated inquiry of and interviews with Mr. Brown, in which he was apparently unable or unwilling to provide the Board with the requested proof, IIE had significant reservations regarding the Appellant's ability to meet its burden of proof with regard to establishing that it was wholly owned by citizens of The Bahamas who were ordinarily resident in The Bahamas. While the Appellant's minority shareholders Florence Knowles, Mr. Brown's mother and Leonardo Rodgers, Mr. Brown's brother, demonstrate to be Bahamian citizens ordinarily resident, the Appellant's controlling shareholder Mr. Brown, at a reported 99.96% of ownership, was not conclusive as to his ordinarily resident status. Since on or about the adoption of the new gaming legislation in November 2014, Mr. Brown represented that he had lived in Nassau with his mother Florence Knowles but was unable to provide any utility bill. Notwithstanding his ability to present a Bahamian Driver's Licence, issued on 23 June 2015 and a Bahamian Passport issued on 8 June 2011, Mr. Brown also held and travelled on a Florida Driver's Licence, issued on 7 July 2009 and a US Passport, issued on 25 September 2014. Based on Passport and US Homeland Security data, he appeared to have been in The Bahamas approximately 90% of the time during the period November 2014 through 14 September 2015.

[79] Prior to November 2014, Mr. Brown appeared to have spent the majority of his time in the US. His employment history established that he had been continually involved in real estate and mortgage brokerage or sales in Florida during the period 2008 through 2014 and he asserted that much of the source of operating funds for the Appellant related to Florida real estate sales. He owned a home in Tampa, Florida.

[80] **Operation in Violation of the December 2014 Affidavit on Premises and Agents.** As an element of the Transitional Period provided for in the Act, the Appellant executed an Affidavit on 8 December 2014 stating, at paragraph 3, to the four (4) Premises and one (1) Agent it would operate during the Transitional

Period. An obvious inference arising out of the Affidavit exercise was that unauthorized expansion beyond the Premises and Agents issued Transitional Certificates by the Board in March 2015, based on the Affidavit, would constitute grounds for disqualification of the Appellant and all persons having a financial interest in the Appellant.

- [81] Based upon various submissions to the Board referencing Premises and Agent locations, site inspections and an exhaustive reconciliation of Premises and Agents conducted by the Board's Compliance and/or Electronic Services Departments, there was ample evidence that the Appellant had materially deviated from and expanded well beyond the five (5) locations for which the Appellant was issued Transitional Certificates. This expansion appeared to have occurred over the entire course of the Transitional Period notwithstanding considerable guidance from the Board, issued at the time the Affidavit was executed, as well as in the form of Notices regarding expansion dated 7 July 2015 and 14 September 2015.
- [82] According to Mr. Tynes, the repeated and overt expansion constituted a blatant disregard on the part of the Appellant for its regulatory obligations and demonstrated a lack of corporate integrity, honesty and regard for the law that was deleterious to the fostering of a good reputation for the domestic gaming sector, to the health, safety, morals, good order and general welfare of the inhabitants of The Bahamas and in inimical to the provisions and policies of the Act.
- [83] Mr. Tynes further stated that, on the basis of the investigative results available as of 8 October 2015, IIE advised the Board's then Secretary and the Appointed Board of its considered position that the Appellant had failed to meet its burden of proving by the preponderance of the evidence that it met the qualification criteria of section 24 of the Act and was disqualified under sections 25 and 26 of the Act. For the multiplicity of reasons stated herein, IIE recommended that the Appellant's application for a Gaming House Operator Licence be denied. Likewise, factors were identified which precluded the issuance of Certificates of Suitability to its Financial Sources and Executive Directors.

[84] Mr. Tynes was extensively cross-examined. He stated that while he was not the Secretary of the Board at the time, he became privy to most of the information relating to the Appellant. He maintained that Mr. Brown provided some information but not all, such as no clear ownership of the Appellant, the source of funds and the Deed of Assignment. Mr. Tynes asserted that Mr. Brown was given sufficient time.

[85] Under re-examination, Mr. Tynes said that he became the Acting Secretary in 2018 but he was employed by the Board for 34 years and as such, is intimately familiar with the information.

[86] According to Mr. Tynes, Mr. Brown kept asking for more and more time but, in the end, he still failed to produce the documents needed by the Board.

## **Discussion**

### **Grounds 1 and 3: Whether the Decision of the Minister was unreasonable and unsatisfactory and can be supported by the evidence**

[87] Learned Counsel for the Appellant, Mr. Mangra, submitted that the evidence in the case proves that the Appellant submitted the necessary information in its RFP to enable the Minister to adequately evaluate the suitability of the Appellant for a gaming licence. According to him, the required information provided by the Appellant in its RFP included all the information needed to review the application of the Appellant pursuant to sections 8, 9 and 20 of the Act as it relates to the IIE Department responsible for investigating and making recommendations to the Minister on the suitability of the Appellant.

[88] Mr. Mangra submitted that the conduct of the investigation and request for additional information escalated at rapid pace between August and September 2015 to meet the 2 October, 2015 deadline. During this time, the Appellant was required to provide additional information on different aspects of its RFP at very short notice. According to him, the Appellant was not allowed adequate time and



opportunity to provide the additional information requested under the various heads of the RFP.

- [89] Mr. Mangra next submitted that, on the evidence, the Appellant satisfied the eligibility criteria as specified under the Act with respect to its incorporation, being wholly owned by citizens of The Bahamas and it met the Minimum Criteria outlined in the RFP with regards to the legitimate conduct of business including, but not limited to gaming, on or from any premises in The Bahamas.
- [90] Mr. Mangra further submitted that the Appellant has provided evidence of its good financial standing and financial ability to undertake and sustain its gaming operation for which a Gaming Licence ought to have been granted. The Appellant in keeping with its RFP, paid the requisite fees, operated its gaming Houses during the Transitional Period permitted by the Act and proved that it was a suitable entity to be granted a Licence by providing financial information – Monthly Tax Returns and Payments to the Bahamas Gaming Board - proving its ability to sustain a viable Gaming operation and satisfying the minimum criteria as required under the Act.
- [91] It cannot be disputed that the Appellant has the onus of proving that the decision taken by the Minister fell in the category of the **Wednesbury** unreasonableness.
- [92] I have set out the evidence of Mr. Tynes fully to show the chronology of the Board's more significant and relevant interactions with the Appellant.
- [93] To be succinct, the Decision of the Minister not to grant a Gaming House Operator Licence to the Appellant was reasonable and supported by ample evidence.
- [94] In **Associated Provincial Picture Houses Ltd. v Wednesbury Corporation** (“the **Wednesbury** case) (1948) 1 K.B. 223. Lord Greene MR stated (at page 230):

**“It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is quite right; but to prove a case of that kind would require something over-whelming, and, in this case the facts do not come anywhere near anything of that kind...”**

**It is not what the court considers unreasonable, a different thing altogether. If it is what the court considers unreasonable, the court may very well have different views to that of a local authority on matters of high policy of this kind...**

**The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority that is set in that position and, provided they act, as they have acted, within the four corners of their jurisdiction, this court, in my opinion, cannot interfere.”[Emphasis added]**

[95] In **Nottinghamshire County Council v Secretary of State for the Environment** (1986) Law Reports, HOL, 240, the House of Lords held (at page 241):

**“That in the absence of some exceptional circumstance such as bad faith or improper motive on the part of the Secretary of State [emphasis added] it was inappropriate for the courts to intervene on the ground of ‘unreasonableness’ in a matter of public financial administration that had been one for the political judgment of the Secretary of State and the House of Commons”.**

[96] The Appellant is unable to prove to this Court that the Decision of the Minister was so unreasonable that no reasonable authority could ever have come to it. On the other hand, the Respondents are able to demonstrate that the Decision not to grant a Gaming House Operator Licence to the Appellant was reasonable and justified in the circumstances.

[97] In addition, section 22(1) of the Act clearly states that no person has a right to be awarded any licence referred to in the Act, thereby unequivocally dispelling the notion of a right to or legitimate expectation of licensure under the Act.

## **Ground 2: Whether the Appellant was denied due process under the law**

[98] The Appellant argued that it was denied due process during the investigation and evaluation of its application for a Gaming Licence between 20 July 2015 and 15 October 2015. Mr. Mangra argued that the Board unreasonably required the Appellant to provide additional information within an unreasonable time given for the Appellant to obtain and provide the same. He gave an example with respect to the interview on 29 September, 2015 requiring additional information regarding the

Appellant's submitted system of internal control and which information was required by the 2 October 2015 deadline stipulated in the notice to the Appellant.

[99] In my considered view, there was no pressure placed on the Appellant to furnish additional information. In fact, since 20 July 2015, the Board issued to the Appellant its first request for additional information regarding net worth, ownership and financial sources which did not accompany the RFP submission.

**Ground 4: Whether the Appellant had a legitimate expectation to be qualified for a Licence**

[100] The Appellant contended that it had a legitimate expectation to be granted a Gaming Licence. Mr. Mangra submitted that the Appellant submitted its RFP in March 2015. On 20 July 2015, the Appellant received a request for information and an Interview reference to its RFP application. To this, the Appellant provided adequate information to the investigator on 31 July 2015. By 13 August 2015, the Appellant was deemed to be 'generally' complying and was satisfactorily operating as Bet Vegas Casino in accord with the Transitional Provisions as permitted by the Act. Mr. Mangra submitted that the Appellant submitted monthly Gaming Tax Returns and cheques for payment for its gaming Operations during the Transitional Period and the request for additional information escalated at rapid pace between August and September, 2015 to meet the 2 October 2015 deadline for completion of the vetting/investigation process. Therefore, that evidence and the interaction between the Appellant and the investigators during the course of the investigation, the interviews with Mr. Brown and the provision of the additional information requested caused the Appellant to have a legitimate expectation that it had satisfied the minimum criteria and was eligible for the grant of a Gaming Licence under the provisions of the Act.

[101] In **Council of Civil Service Unions v Minister for the Civil Service** [1985] AC 374 at page 408, Diplock LJ set out two (2) ways in which a legitimate expectation could arise namely:

“To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either:

(a) by altering rights or obligations of that person which are enforceable by or against him in private law; or

(b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. (I prefer to continue to call the kind of expectation that qualifies a decision for inclusion in class (b) a "legitimate expectation" rather than a "reasonable expectation," in order thereby to indicate that it has consequences to which effect will be given in public law, whereas an expectation or hope that some benefit or advantage would continue to be enjoyed, although it might well be entertained by a "reasonable" man, would not necessarily have such consequences. The recent decision of this House in *In re Findlay* [1985] A.C. 318 presents an example of the latter kind of expectation. "Reasonable" furthermore bears different meanings according to whether the context in which it is being used is that of private law or of public law. To eliminate confusion it is best avoided in the latter.)”

[102] More recently, in **United Policyholders Group and others v The Attorney General of Trinidad and Tobago** [2016] UKPC 17, Lord Neuberger stated the principle as follows:

“...the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be “clear, unambiguous and devoid of relevant qualification”... Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body’s statutory duty... Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second

**point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement...”**

[103] Based on the evidence adduced in this matter, the Appellant has misconceived the principle of legitimate expectation as none arose in this case.

### **Conclusion**

[104] The Appellant’s continued operation renders its operation unlawful under section 85(17)(a) and such illegal operation is also ground for the disqualification of such business for any licence under section 85(17) (b) of the Act. On the preliminary objection raised by the Respondents, the Appellant ought not to be heard and the appeal is dismissed with costs to the Respondents.

[105] Further, based on the evidence adduced during this hearing, the Decision of the Minister not to grant a Gaming House Operator Licence to the Appellant was (1) not unreasonable and (ii) not unsatisfactory. It was supported by cogent evidence. In addition, the Appellant was not deprived of any right to due process or prejudiced in any way in having his application investigated. The investigation was meticulous and thorough and based on the law and best practices and methodologies that are utilized in all reputable gaming jurisdictions. Furthermore, no legitimate expectation arose in this case.

[106] For all of the reasons stated, I will dismiss the appeal and the Declarations sought therein with costs to the Respondents to be taxed if not agreed.

[107] Any appeal runs from the date of this Judgment, i.e. 6 February 2023.

**Dated this 6<sup>th</sup> day of February 2023**

**Indra H. Charles  
Senior Justice**