

**IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JANINE LITMAN and TIMOTHY
MASTROIANNI, individually and
jointly,

CASE NO. 2012-8149

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a
Nevada limited liability company,
WASHINGTON TROTTING
ASSOCIATION, INC., a Delaware
corporation, WTA ACQUISITION CORP., a
Delaware corporation, CANNERY CASINO
RESORTS, LLC, CANNERY CASINO
RESORTS and WASHINGTON TROTTING
ASSOCIATION, INC., t/d/b/a THE
MEADOWS RACETRACK & CASINO, an
unincorporated association, CANNERY
CASINO RESORTS, an unincorporated
association consisting of one or more yet
unidentified natural and/or legal persons,
individually and jointly,

Defendants.

**DEFENDANTS' MOTION TO AMEND
DISCOVERY ORDER**

Filed on behalf of Defendants,
Cannery Casino Resorts, LLC, Washington
Trotting Association, Inc., and WTA
Acquisition Corp.

Counsel of Record for these Parties:

Patrick L. Abramowich, Esquire
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Benjamin I. Feldman, Esquire
PA ID No. 312683

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RESORTS and WASHINGTON TROTTHING
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MEADOWS RACETRACK & CASINO, an
unincorporated association, CANNERY
CASINO RESORTS, an unincorporated
association consisting of one or more yet
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Defendants.

DEFENDANTS' MOTION TO AMEND DISCOVERY ORDER

Defendants, Cannery Casino Resorts, LLC ("Cannery"), Washington Trotting
Association, Inc. ("WTA"), and WTA Acquisition Corp. ("WTA Acquisition") (collectively,

¹ Defendants, Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. (collectively, "Defendants") deny that Cannery Casino Resorts exists as a business organization apart from Cannery Casino Resorts, LLC. Defendants further deny that Cannery Casino Resorts, LLC and/or Washington Trotting Association, Inc. participate in unincorporated associations, and further deny that an unincorporated association can sue as a party. Accordingly, Defendants object to the caption to the extent that it purports to state claims against any entity other than Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. individually.

“Defendants”), by their attorneys, FOX ROTHSCHILD LLP, file the following Motion to Amend Discovery Order, stating as follows:

1. On February 5, 2014, Defendants served their Objections and Responses to Plaintiffs’ First Set of Interrogatories and First Set of Requests for Production of Documents, objecting to certain discovery requests as seeking privileged and/or confidential documents and communications relating to Defendants’ settlement negotiations with the Pennsylvania Gaming Control Board (“PGCB”).

2. Specifically, Plaintiffs’ Interrogatories Nos. 1 and 14 and Plaintiffs’ Document Request No. 1 request that Defendants identify and/or produce all documents, business records and communications relating to Washington Trotting Association, Inc.’s Consent Agreement and Stipulation of Settlement with the PGCB at Docket No. 3071-2013 (the “Settlement Agreement”).

3. Defendants asserted, *inter alia*, that such requests are privileged and/or confidential pursuant to the Pennsylvania Race Horse Development and Gaming Act, specifically 4 Pa.C.S. § 1206(f) (the “Gaming Act”).

4. On February 27, 2014, this Court heard argument on Plaintiffs’ Motion to Compel, in which Plaintiffs asked the Court, *inter alia*, to overrule Defendants’ objections to producing information and documents relating its Settlement Agreement with the PGCB.

5. During the argument, the Court specifically asked Defendants’ counsel whether the PGCB designated documents and information relating to the Settlement Agreement as confidential.

6. Defendants’ counsel was unable to answer the question at the time, but has since obtained a letter dated March 10, 2014, from Cyrus R. Pitre, Chief Enforcement Counsel for the

Pennsylvania Gaming Control Board, in which Mr. Pitre asserts that: (i) correspondence and documents relating to the investigation, negotiation, and resolution of the complaint underlying the Settlement Agreement is confidential pursuant to Title 4 Pa.C.S. § 1206(f)(1), and (ii) any correspondence or documents from the Office of Enforcement Counsel or Bureau of Investigations and Enforcement drafted during negotiations or investigation of the complaint underlying the Settlement Agreement are privileged confidential information. A true and correct copy of Mr. Pitre's March 10, 2014, letter is attached hereto as Exhibit 1.

7. Pursuant to the PGCB regulations:

Confidential information may include...records obtained or developed by the Board or the Department as part of an investigation related to an applicant for or holder of a license, permit, certification or registration containing any of the following:

- (5) Records or information that is designated confidential by statute or the Board.

See 58 Pa. Code § 407a.3(a)(5), a true and correct copy of which is attached hereto as Exhibit 2.

8. The Court issued an Order dated February 27, 2014, granting Plaintiffs' Motion to Compel, subject to privilege claims. However, during argument the Court indicated a willingness to consider evidence that the PGCB had designated documents relating to the Settlement Agreement as confidential.

9. In light of PGCB's March 10, 2014, designation of documents and information relating to the investigation, negotiation, and resolution of the complaint underlying the Settlement Agreement as confidential pursuant to 4 Pa.C.S.A. § 1206(f), Defendants respectfully request that the February 27, 2014 Order be modified to exclude responses to Interrogatories Nos. 1 and 14 and Request for Production of Documents No. 1, and that a protective order be

issued regarding any future requests for documents or information relating to the Settlement Agreement.

Respectfully submitted,

FOX ROTHSCHILD LLP

By:



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Washington Trotting Association, Inc.,
and WTA Acquisition Corp.*



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Office of Enforcement Counsel
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www.gamingcontrolboard.pa.gov

March 10, 2014

Chairman
WILLIAM H. RYAN, JR.

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DANIEL MEUSER

Marie Jiacopello Jones, Esquire
Fox Rothschild LLP
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Atlantic City, NJ 08401-7212

RE: Washington Trotting Association, Inc. – Consent Agreement Vigorish

Dear Attorney Jones:

This correspondence is meant as a reply to your correspondence to me dated March 5, 2014 regarding the above referenced matter and any relation that it may have to the matter presently pending before Judge O'Dell-Seneca.

Please be advised, that pursuant to *Title 4 Pa.C.S. §1206(f)(1)* information obtained by the Pennsylvania Gaming Control Board ("Board") or the Bureau of Investigations and Enforcement ("Bureau") as part of a background or other investigation from any source shall be confidential and withheld from public disclosure. Additionally, as you are aware, pursuant to the Pennsylvania Race Horse Development and Gaming Act ("Act") §§1517(a), (a.1), and (a.2), the Office of Enforcement Counsel and the Bureau of Investigations and Enforcement are independent of the Board and charged with investigating and prosecuting noncriminal regulatory matters under the Act. Additionally, the Act provides that this Office is established with the Bureau.

The information regarding the above referenced matter resulted from an investigation conducted by the Bureau and this Office. All correspondence and documents created in this matter were a part of and emanated from this particular investigation. As a result, any correspondence or documents that you may have in your possession relating to the investigation, negotiation, and resolution of the above referenced matter is not subject to public disclosure pursuant to *Title 4 Pa.C.S. §1206(f)(1)*. Additionally, any correspondence or documents from this Office or the Bureau that were drafted during any negotiations or investigation is privileged confidential information and is not subject to public disclosure.

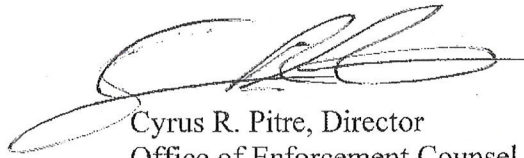


March 10, 2014
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The only information that has been released and that will be released to the public as it relates to the above referenced matter is the transcript of the presentation of the consent agreement to the Board for its approval. This information is available on the Board's website should you require it.

Should you require anything further, please do not hesitate to contact me.

Sincerely,



Cyrus R. Pitre, Director
Office of Enforcement Counsel

CHAPTER 407a. PUBLIC ACCESS TO BOARD FILES

- Sec.
407a.1. Case files.
407a.2. Minutes of public meeting and annual report.
407a.3. Confidential information.

Authority

The provisions of this Chapter 407a issued under 4 Pa.C.S. §§ 1201(f), 1202(b)(25) and (30) and 1206, unless otherwise noted.

Source

The provisions of this Chapter 407a adopted June 22, 2007, effective June 23, 2007, 37 Pa.B. 2808, unless otherwise noted.

§ 407a.1. Case files.

- (a) The Clerk will maintain a file for all formal records.
- (b) Access to formal records will be governed by the following:
- (1) Nonconfidential information in formal records will be available for inspection during normal Board business hours.
 - (2) A request for access to information will be addressed in accordance with the Right-to-Know Law (65 P. S. §§ 67.101—67.3104).
- (c) The Board or its designee may issue protective orders sua sponte or by request of a party or may establish standards governing the protection of proprietary or confidential information for a given proceeding. All parties to a proceeding shall mark documents in accordance with the directives of the Board or its designee and in accordance with § 493a.10a (relating to motions to protect confidential information).

Authority

The provisions of this § 407a.1 amended under 4 Pa.C.S. § 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 407a.1 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (339573).

§ 407a.2. Minutes of public meeting and annual report.

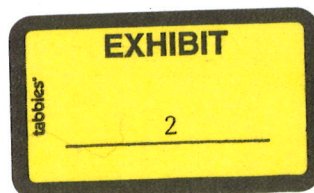
Minutes of the public meeting and annual reports will be available for public inspection upon request to the Secretary during normal Board business hours. Copies will be provided upon request and payment of the cost for copying as the Board may establish through a schedule published in the *Pennsylvania Bulletin*.

§ 407a.3. Confidential information.

- (a) Confidential information may include background investigation information, including information provided under section 1310(a) of the act (relating to slot machine license application character requirements), submitted in connection with an application required for the issuance of any license, permit, certification or registration under this part, discovery procedures, or cross-examination or that

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is provided as a courtesy to a party in a formal proceeding received by the Board or the Department as well as records obtained or developed by the Board or the Department as part of an investigation related to an applicant for or holder of a license, permit, certification or registration containing any of the following:

- (1) Personal information, including home addresses, telephone numbers, Social Security numbers, educational records, memberships, medical records, tax returns and declarations, actual or proposed compensation, financial account records, credit-worthiness or financial condition relating to an applicant, licensee or permittee or the immediate family thereof.
 - (2) Documents and information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies which may include customer-identifying information or customer prospects for services subject to competition.
 - (3) Security information including risk prevention plans, detection and countermeasures, emergency management plans, security and surveillance plans, equipment and usage protocols and theft and fraud prevention plans and countermeasures.
 - (4) Information with respect to which there is a reasonable possibility that public release or inspection of the information would constitute an unwarranted invasion into personal privacy as determined by the Board.
 - (5) Records or information that is designated confidential by statute or the Board.
 - (6) Records of an applicant or licensee not required to be filed with the SEC by issuers that either have securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 781) or are required to file reports under section 15(d) of that act (15 U.S.C.A. § 78o(d)).
 - (7) Records considered nonpublic matters or information by the SEC as provided by 17 CFR 200.80 (relating to commission records information).
 - (8) Information obtained about an applicant for or holder of a license, permit, certification or registration as a result of a release executed by the individual at the request of the Bureau or the Board.
- (b) Confidential information may be released by the Board under the following circumstances:
- (1) To State or Federal law enforcement agencies or entities upon approval of the Attorney General or pursuant to a lawful order issued by court of competent jurisdiction.
 - (2) To the public, in whole or in part, if one of the following occurs:
 - (i) Upon written request from the applicant or holder of a license, permit, certification or registration, to the extent that the information does not contain otherwise confidential information about another person.

(ii) If the information subsequently becomes a part of the public domain by an action by the applicant or holder of a license, permit, certification or registration.

(3) To a person with the written consent of the applicant or holder of a license, permit, certification or registration.

Authority

The provisions of this § 407a.3 amended under 4 Pa.C.S. §§ 1202(b)(30), 1311, 1311.1, 1311.2, 1317, 1317.1, 1318 and 1517.

Source

The provisions of this § 407a.3 amended November 7, 2008, effective November 8, 2008, 38 Pa.B. 6150. Immediately preceding text appears at serial pages (328472) to (328473).

Cross References

This section cited in 58 Pa. Code § 491a.8 (relating to hearings generally); and 58 Pa. Code § 493a.10a (relating to motions to protect confidential information).

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Defendants.

ORDER

AND NOW, this _____ day of _____, 2014, upon consideration of Defendants' Motion to Amend Discovery Order, any response thereto, and the arguments of counsel, it is hereby ORDERED that this Court's February 27, 2014 Order granting Plaintiffs' Motion to Compel is AMENDED to exclude responses to Interrogatories Nos. 1 and 14 and Request for Production of Documents No. 1. Moreover, Defendants shall not be required to respond to any future discovery requests seeking information or documents relating to the investigation, negotiation, and/or resolution of the complaint underlying Washington Trotting

Association's Consent Agreement and Stipulation of Settlement with the Pennsylvania Gaming Control Board at Docket No. 3071-2013.

BY THE COURT:

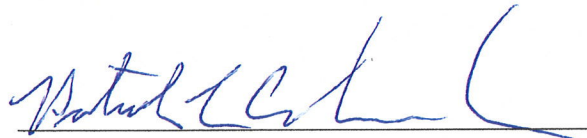
_____ J.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2014, a true and correct copy of Defendants' Motion to Amend Discovery Order was served upon the following counsel of record via facsimile, e-mail and United States mail, First Class, postage prepaid:

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