

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

IN THE MATTER OF:

UTGR, Inc.,

Applicant.

:
:
:
:
:
:
:

DBR No.: 09-L-0150

DECISION

Hearing Officer: Catherine R. Warren, Esquire

Hearing Held: September 29, 2010

Appearances:

For UTGR, Inc., Applicant:

Mark Hichar, Esquire
Patricia Sullivan, Esquire
Peter Friedman, Esquire
(by *pro hac vice* order)
Scott Greenberg, Esquire
(by *pro hac vice* order)

For Department of Business Regulation:

Louis DeQuattro, Esquire
Neena Sinha Savage, Esquire
Justin Shay, Esquire
Sally McDonald, Esquire
Adam Turtleaub, Esquire
(by *pro hac vice* order)
Mie Lin Kwan-Gett, Esquire
(by *pro hac vice* order)

For the Division of Lotteries:

Marilyn S. McConaghy, Esquire

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation ("Department") as the result of UTGR, Inc.'s ("UTGR") facility permit application

("Application") filed with the Department on December 14, 2009 and amended June 23 and August 24, 2010 and which seeks approval from the Department for a change in ownership of UTGR. See UTGR's Exhibits 1A (unredacted application)¹ and 1B (redacted application). A prehearing conference was held on September 21, 2010 at which procedural issues for the hearing were discussed. A hearing was held on September 29, 2010. All parties were represented by counsel. On October 5, 2010, the parties jointly submitted proposed findings of facts, conclusions of law, and recommendations ("Joint Filing").

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 41-3.1-1 *et seq.*, R.I. Gen. Laws § 41-9-1 *et seq.*, R. I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUE

Whether UTGR's application for approval of its change in ownership as licenseholder of the facility permit should be granted.

IV. STANDARD OF REVIEW

The issue of what standard of review to apply to this type of Application was previously addressed in *In the Matter of BLB Investors, L.L.C.*, DBR No.: 04-R&A-0091 (5/27/05). For this matter, the Department's counsel further reviewed the issue to ascertain if any new Rhode Island statutes or regulations regarding the standard of review had been effectuated. It found none. See Department's Exhibit One (1) (investigatory report). Therefore, the question before the undersigned is whether UTGR possesses the requisite

¹ The unredacted application is subject to a confidentiality order.

good character, honesty, integrity, sufficient financial resources, and experience to obtain the License. See *BLB Investors*.

V. MATERIAL FACTS AND TESTIMONY

UTGR's counsel made a presentation on its behalf including entering as exhibits the affidavits from the following individuals: George Papanier ("Papanier"), President and Chief Operating Officer of UTGR, Craig Eaton ("Eaton"), Senior Vice President, General Counsel, and Secretary of UTGR, and John E. Taylor ("Taylor"), proposed Chair of the Board of Directors for UTGR. See UTGR Exhibits Two (2) ("Papanier Affidavit"), Three (3) ("Eaton Affidavit"), and Four (4) ("Taylor Affidavit"). Said affidavits were submitted in lieu of live testimony but all three (3) individuals testified at hearing on behalf of UTGR and confirmed their affidavits.

Papanier testified that he has 28 years of gaming experience with the last 17 years being in executive positions. He testified that he has held a "key person" license from the Department since 2005 and is licensed in good standing in Colorado in relation to BLB Management's ownership of certain racetracks and simulcast businesses. He testified that UTGR is wholly owned by BLB Management Services, Inc. ("BLB Management") which in turn is wholly owned by BLB Worldwide Holdings, Inc. ("BLB Worldwide") and those entities make up the corporate enterprise that manages UTGR's principal asset, the pari-mutuel and video lottery terminal facility known as Twin River, located at 100 Twin River Road, Lincoln, Rhode Island ("Twin River").

Papanier testified that the Application is essentially seeking approval of a change in ownership of UTGR and its parent entities. He testified that UTGR has been operating under chapter 11 bankruptcy protection since June of 2009 and its bankruptcy case, *In re*

UTGR, Inc. d/b/a Twin River, et al., No. 09-12418 (ANV), is pending before the United States Bankruptcy Court for the District of Rhode Island. He testified that UTGR began restructuring discussions with its secured lenders in March of 2008 when an interest payment was missed on its first lien secured credit facility. He testified that in connection with those discussions, the lenders agreed to forbear from exercising remedies under the loan documents and those forbearance agreements expired in December, 2008 and January, 2009, but the lenders continued to forbear for five (5) more months without a formal forbearance agreement.

Papanier testified that shortly before the commencement of the bankruptcy case, UTGR reached an agreement with its lenders, the Department, and the Division of Lotteries (“Lottery”) within the Department of Revenue regarding the terms of a consensual restructuring of UTGR. He testified that the restructuring agreement contemplated a transfer of ownership of UTGR to its secured lenders in exchange for their forgiveness of a substantial proportion of UTGR’s debt. He testified that UTGR streamlined operations, reached agreements with all major creditor constituencies, and obtained the passage of a number of legislative initiatives that enhanced UTGR’s ability to compete and be profitable. See Exhibit A, Papanier Affidavit. He testified that the Bankruptcy Court entered an order confirming UTGR’s plan of reorganization (“Plan”) on June 24, 2010 (“Confirmation Order”). See Exhibit B, Papanier Affidavit (Confirmation Order). See UTGR’s Exhibit Seven (7) (Plan).

Papanier testified that all of the objectives that UTGR needed to accomplish in its bankruptcy case have been accomplished. He testified that obtaining approval of the

Application is the only aspect of UTGR's restructuring that must be achieved before UTGR can emerge from bankruptcy.

Papanier testified that UTGR is in a very strong financial position as a result of its excellent operational performance and its restructuring efforts. He testified that its gross gaming revenues for the last twelve (12) months ending July 31, 2010 was \$424 million, which represents a year-over-year increase of 5%. He testified that the Twin River facility was extensively renovated from 2005 until mid-2007 and is in first-rate condition so requires no substantial near-term capital expenditures, only regular maintenance which UTGR will be able to finance from ongoing revenue rather than through borrowings.

Papanier testified that UTGR's financial stability is also evidenced by the results of the bankruptcy case. He testified that to confirm the Plan, the Bankruptcy Court had to make a finding of "feasibility" with respect to UTGR's future operations. He testified that the Bankruptcy Court found that UTGR's projected future financial performance would be sufficient to support its debt load and other budgeted expenses. See Exhibits C and D, Papanier Affidavit (financial projections submitted to the Court with the Plan). He testified that when UTGR emerges from bankruptcy, it will have approximately \$45 million of available cash on hand. He testified that after making distributions of gaming revenue to the State and other parties, UTGR expects to generate upwards of \$153 million of revenue in 2011. He testified that out of that revenue, UTGR expects to generate over \$65 million in EBITDA, an accounting term that represents earnings before interest, taxes, depreciation and amortization, and is used essentially to measure a company's financial performance and is a year-over-year improvement of over 5%. He testified that going forward UTGR will have significantly lower debt service expenses

and he projected that the EBITDA will trend upward in future years. He testified that UTGR has a mechanism under its post-emergence secured credit agreement that allows it to make a request for a revolving credit line up to \$10 million from its lenders.

Papanier testified that upon the effective date of the Plan, the new owners of UTGR will be comprised of the holders of UTGR's first lien secured debt which consists of a wide range of commercial banks and financial institutions. He testified that most of the lenders will hold a very small percentage of the total equity of the reorganized company but that three (3) entities will each hold over 5% of the equity.

Papanier testified that the reorganized UTGR will be overseen by a board of directors ("Board"), who will be key decision-makers along with the senior executive team that has been in place for a number of years and guided UTGR through the reorganization. He testified that each member of the proposed Board (John E. Taylor, John J. McLaughlin and Glenn A. Carlin) has substantial gaming expertise. He testified that certain of the 5% shareholders will have important governance rights, including the ability to nominate directors to the Board and consent to certain actions by UTGR.

Eaton testified that he is the primary officer involved in the development, implementation and ongoing adherence for procedures for the general operation of UTGR's compliance program and its related activities. He testified that he is currently licensed in Rhode Island in his capacity as an officer of UTGR and is currently licensed in good standing in Colorado by the Colorado Division of Racing Events with respect to certain racetracks and simulcast businesses owned by BLB Management.

Eaton testified that UTGR employs a set of industry-leading standards in its policy and ethical practices and developed and implemented "*Management Policy*

MP103 – Code of Business Conduct & Ethics (“Code”) which serves as the “roadmap” for how UTGR conducts its business. See Exhibit A, Eaton Affidavit. He testified that the Code establishes a high standard for ethical practices for all UTGR employees and sets forth the specific policies and procedures to promote ethical conduct and to prevent illegal, unethical, or improper conduct. He testified that the Code covers topics such as legal and regulatory compliance as well as prohibited gifts and payments, conflicts of interests, treatment of confidential information, and document retention. He testified that UTGR’s employees receive a copy of the Code and sign a letter confirming receipt, and that they will read and comply with the Code. He testified that that UTGR has an anonymous tip hotline for employees to report violations of the Code. He testified that UTGR has developed and implemented “*Management Policy MP403 – Conduct Regarding Representatives of Suppliers and Clients*” which relates to business relations with vendors, supplier representatives, and clients. He testified that UTGR entered into a compliance agreement (“Compliance Agreement”) with the Department setting forth certain compliance obligations and it will be effective upon emergence from bankruptcy. See Exhibit E, Eaton Affidavit. He testified that UTGR is also required to keep current numerous licenses which it does. See Exhibit C, Eaton Affidavit.

Taylor testified that he is the proposed Chair of the Board and that he was selected for this position because of his extensive experience in the gaming industry generally and more specifically with Rhode Island’s gaming industry. He testified he worked at GTECH Corporation from 1991 to 2000. He testified that while at GTECH he was directly involved in the creation of the concept of providing video lottery terminals and systems at pari-mutuel racetracks. He testified that from 2006 to 2010 he was

president of GameLogic which developed gaming platforms for government sponsored lotteries. He testified that he is familiar with State regulatory requirements for UTGR.

Taylor testified that the new ownership group consists of a wide range of commercial banks and financial institutions. He testified that since most of these lenders hold a small percentage of the total equity of the reorganized UTGR, the new UTGR will continue to operate day-to-day under current management and be actively governed by the Board in accordance with the Compliance Agreement and a shareholders' agreement. See Department's Exhibit One (1) (Appendix A is the Compliance Agreement and Appendix B contains a summary of the shareholders' agreement). He testified that the Compliance Agreement was negotiated with the Department and certain sections of the shareholders' agreement were prepared in consultation with the Department.

The Department then made a presentation. Two (2) attorneys from Wilkie Farr & Gallagher ("Wilkie Farr") detailed 1) UTGR's restructuring agreement; and 2) Wilkie Farr's methodology of its investigation of UTGR's suitability and fitness.

The first part of the presentation contained the following information: The Plan provides for the cancellation and discharge of approximately \$142 million in debt under the first lien agreement, all outstanding obligations under the second lien agreement (approximately \$145 million), and general unsecured claims against the debtors. In return, the first lien holders receive 100% of equity in the reorganized debtors, the second lien holders receive certain contingent value rights, and the general unsecured creditors receive payment in full or 65% of amount owed. When the debtors emerge from bankruptcy, the first lenders have a right to select members of the Board and Carlin, McLaughlin, and Taylor have been proposed. New members of the Board require

approval by the Department. UTGR and the proposed Board members filed applications with the Department for licensing.

At the time of the hearing, the following conditions of the Plan had been met: 1) passage of Rhode Island legislation; 2) approval of disclosure statement by Bankruptcy Court; and 3) filing of the Plan and confirmation by the Court thereon. The significant conditions left are the Department's approval of the Application and the Lottery's approval.² The entities that will hold greater than 5% of UTGR are Bank of America/Merrill, Wells Fargo/Wachovia, and the Sankaty Credit Member Offshore Ltd. ("Sankaty Entities"). See Department's Exhibit One (1) (investigatory report, p. 27). See also Papanier Affidavit.

The second part of the presentation contained the following information: The investigation included as follows: 1) review of the shareholders' agreement and other organizational documents (e.g. new credit agreement; 2) representation of the Department in connection with negotiation of the Compliance Agreement; 3) review of the Chapter 11 filing; 4) review of the Application and multi-jurisdictional personal history disclosure forms and supplemental forms submitted by McLaughlin, Carlin, and Taylor and other materials; 5) retention of a private investigator; 6) in-person interview with McLaughlin; 7) telephone interview with Taylor; and 8) an assessment of the non-holding company, non-banking regulated company that will hold 5% or greater interest in UTGR.

Two (2) of the three (3) entities that will hold greater than 5% of UTGR, Bank of America and Wells Fargo, are wholly owned subsidiaries of registered bank holding companies so are subject to comprehensive regulation by the Board of Governors of the

² The Division of Lotteries partnered with the Department for the due diligence part for the change in ownership of UTGR but will review the licensing of the video lottery terminals at Twin River separate and apart from these proceedings which solely relate to the Department's jurisdiction over the permit.

Federal Reserve, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission (“SEC”). Thus, the Department determined that because of that extensive regulatory oversight, an independent investigation was not needed for those two (2) entities. The Sankaty Entities are registered investment advisors with the SEC but do not have the same amount of scrutiny as the other two (2) entities, so Wilkie Farr conducted an investigation of the Sankaty Entities. See Department’s Exhibit One (1).

Wilkie Farr, on behalf of the Department, found no information that would render UTGR unsuitable for licensing, or for Taylor and Carlin to be Board members, or McLaughlin to be a Board member and consultant.

The Department recommended that the Application be granted and be subject to the consummation of the following necessary conditions for the effectiveness of Plan.

1. the Filing of the Revised Certificate of Incorporation and adoption of the Amended and Restated Bylaws of BLB Worldwide, BLB Management, and UTGR;
2. the execution of the new credit agreement and shareholders agreement;
3. the cancellation of the existing equity of BLB Worldwide and debt of BLB Management;
4. the issuance of the new equity interests to the first lien holders and the second lien facility claim contingent value rights (as defined in the Plan) to the second lien holders;
5. the election of Carlin, McLaughlin, and Taylor as the sole members of the Board; and

6. approval by the Lottery of the amendment to the master video lottery terminal contract and the grant to UTGR by the Lottery of a video lottery terminal retailer license.

In addition, the Department recommended the approval be conditioned on UTGR's continued compliance with the terms of the Compliance Agreement and all applicable statutes, and the Department's and Lottery's regulations. Furthermore, the parties recommended in their Joint Filing that the Department would reserve its rights to take appropriate action should any circumstance³ arise between approval of the Application and effectuation of the Plan.⁴

After the presentation by the parties, one (1) member of the public testified. John Mongelli ("Mongelli"), Vice President of the Rhode Island Council on Problem Gambling ("Council"), testified. He testified that the Council is an all volunteer nonprofit organization that represents problems gamblers and their families in Rhode Island. He testified that Twin River has posted the required 1-800 hotline problem gambling number at its entrance and distributed some pamphlets which Twin River is required to do by law. He testified he has been unable to find out any information regarding what else Twin River has done regarding problem gambling. He testified that he would like the Application to be approved on the condition that UTGR's Board implement a responsible gaming policy and commit to addressing problem gambling.

In response, UTGR represented that it is in compliance with all statutory requirements regarding problem gambling.

³ The parties did not define this term in their Joint Filing but obviously it would refer to a material change in the facts or situation presented at hearing.

⁴ These recommendations are taken from those made at hearing and in the parties' Joint Filing.

VI. DISCUSSION

The issue before the undersigned is whether the Department should approve the new owners of UTGR to hold the License. The question of whether the new owners should be approved or not revolves around a decision of whether the proposed new owners possess the requisite good character, honesty, integrity, sufficient financial resources, and experience. This decision is solely related to that determination. The issue of problem gambling is not relevant to said issue because it is a policy decision for the legislature to decide how permit holders address such issues and there is no evidence that UTGR is not in compliance with statutory and regulatory requirements for problem gambling.

Wilkie Farr stated that in the course of its investigation, it did not uncover any information that under Rhode Island law or regulations or under the provisions of other established gaming jurisdictions would render UTGR or its key entities or its key personnel unsuitable to operate Twin River or that would warrant a denial by the Department of UTGR's Application. The Bankruptcy Court has made a financial feasibility finding for the reorganized UTGR and confirmed its Plan. The Department has no objection to UTGR's Application. There has been no evidence introduced that would contradict the investigatory findings set forth in Department's Exhibit One (1) or any of the testimony or evidence entered at hearing.⁵

VII. FINDINGS OF FACT

1. On December 14, 2009, UTGR filed its Application for approval for a changed in ownership and filed amendments thereon on June 23 and August 24, 2010,
2. A pre-hearing conference was held in this matter on September 21, 2010.

⁵ The undersigned has adopted the Joint Filing's conclusions of law and recommendations but streamlined the findings of facts as the relevant facts were discussed in the testimony portion of this decision and said testimony was undisputed at hearing.

3. A hearing in this matter was held on September 29, 2010.

4. UTGR submitted a plan of reorganization, its Plan, to the Bankruptcy Court.

The Court made a finding of financial feasibility and confirmed the Plan. Part of the Plan is that the Application is approved for the reorganized UTGR. See UTGR Exhibits Seven (Plan) and Two (2) (Exhibit 2, Confirmation Order),

5. The facts as detailed in Section V are incorporated herein by reference.

6. The Department is of the position that UTGR possesses the requisite good character, honesty and integrity, sufficient financial resources, and sufficient experience to have its Application approved. The facts, evidence, and the statements made on the record at the hearing demonstrate that UTGR is financially sound, that the proposed owners, the proposed directors, and the existing personnel identified in the Application have met all requisite regulatory requirements and, as applicable, received gaming licenses in other jurisdictions, have not been denied gaming licenses in any other jurisdictions, and have suitable experience for this undertaking.

7. The facts, evidence, and testimony presented demonstrates that the UTGR as constituted with its new owners and directors is financially sound, key entities and key personnel have met the requisite character requirements and that the key entities and key personnel have suitable experience for this undertaking.

VIII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 41-3.1-1 *et seq.*, R.I. Gen. Laws § 41-9-1 *et seq.*, R. I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. UTGR demonstrated that it has the requisite honesty, integrity, good character, financial resources, and experience to own and manage Twin River.

3. The Department and UTGR have set forth sufficient facts pursuant to the Department's statutory and regulatory mandates to support a finding that UTGR, the proposed directors, the proposed owners, and existing personnel identified in the Application meets the honesty, integrity, good character, financial resources, and experience requirements to own and manage Twin River.

IX. RECOMMENDATION

Based on the findings of fact and conclusions of law, it is recommended:

1. That the Application and the ownership and management structure of UTGR be approved and that the facility permit be maintained by UTGR consistent with the terms of the Compliance Agreement and that UTGR shall maintain compliance with all statutory requirements and all applicable rules and regulations of the Department; and

2. That UTGR may authorize Taylor to serve as Chair of its Board, and McLaughlin and Carlin as its Board members consistent with compliance with all applicable statutory and regulatory requirements, agreements, and the Compliance Agreement.

These two (2) recommendations shall be subject to the consummation of the following necessary conditions to the effectiveness of the Company's⁶ Plan:

1. the Filing of the Revised Certificate of Incorporation and adoption of the Amended and Restated Bylaws of BLB Worldwide, BLB Management, and UTGR;

2. the execution of the new credit agreement and shareholders' agreement;

⁶ Company in this context refers to UTGR, BLB Worldwide, and BLB Management that make up the corporate enterprise that manages Twin River. See Papanier Affidavit and Joint Filing.

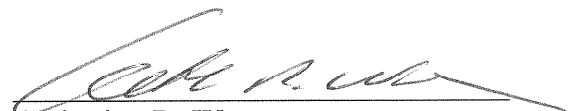
3. the cancellation of the existing equity of BLB Worldwide and debt of BLB Management;

4. the issuance of the new equity interests to the first lien holders and the second lien facility claim contingent value rights (as defined in the Plan) to the second lien holders;

5. the election of Carlin, McLaughlin, and Taylor as the sole members of the Board of UTGR; and

6. approval by Lottery of the amendment to the master video lottery terminal contract and the grant to UTGR by Lottery of a video lottery terminal retailer license; but provided that the Department reserves its right to take any appropriate action should any circumstance arise between approval of the Application and effectuation of the Plan.

Dated: 10/15/10



Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 10-18-2010


A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 18th day of October, 2010 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to

Adam Turteltaub, Esquire
Mei Lin Kwan-Gett, Esquire
Wilkie Farr and Gallagher LLP
787 Seventh Avenue
New York, NY 10019

Justin Shay, Esquire
Sally McDonald, Esquire
Cameron & Mittleman LLP
301 Promenade Street
Providence, RI 02908

Peter M. Friedman, Esquire
Cadwalader, Wickersham & Taft, LLP
700 Sixth Street, N.W.
Washington, DC 20001

Scott J. Greenberg, Esquire
Michael Cohen, Esquire
Cadwalader, Wickersham & Taft
One World Financial Center
New York, NY, 10281

Mark N.G. Hichar, Esquire
Patricia Sullivan, Esquire
Edwards Angell Palmer & Dodge, LLP
2800 Financial Plaza,
Providence, RI 02903.

and by electronic-delivery to Louis DeQuattro, Esquire; Neena Sinha Savage, Esquire; Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI and Marilyn Shannon McConaghy, Esquire, Division of Lotteries, 1425 Pontiac Avenue, Cranston, RI.

