

IN THE SUPREME COURT OF PENNSYLVANIA

Consolidated filing in 207 EM 207 and 208 EM 208

SENATOR VINCENT J. FUMO, ET AL	: 207 EM 2007
Petitioners,	:
	:
v.	:
	:
CITY OF PHILADELPHIA,	:
Respondent.	:

CITY COUNCIL OF THE CITY OF PHILADELPHIA	: 208 EM 2007
AND COUNCILMEMBER FRANK DICICCIO	:
Petitioners,	:
v.	:
CITY OF PHILADELPHIA, STEPHANIE W. NAIDOFF,	:
Respondent.	:

CONSOLIDATED MOTION TO DISMISS APPEALS FOR MOOTNESS

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January 24, 2008

Attorneys for the City of Philadelphia

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CITY SOLICITOR

Respondent, the City of Philadelphia (the “City”) hereby moves this Court to dismiss these appeals as moot.

Today, January 24, 2008, the Acting Commerce Director of the City of Philadelphia revoked the license at issue in this case as issued in error. Consequently, the appeals that have been taken to this Court from the granting of that very license are moot because the license no longer exists.¹

I. Facts And Procedural History

The appeals to this Court have been taken from the issuance of a license, dated November 27, 2007, to HSP Gaming, L.P. (SugarHouse), by the City of Philadelphia, Director of Commerce and the Commissioner of Licenses and Inspections, to encroach upon the waterway of the Delaware River and to construct upon submerged lands the SugarHouse Casino Project.

That license was revoked today, and the revocation was served on Counsel for the license applicant today. A copy of the revocation is attached hereto as Exhibit “A” together with a Declaration from James Leonard, Chief Deputy City Solicitor, that the revocation was served today.

The revocation is not based upon any lack of authority by the City to issue the license. The revocation discusses the reasons supporting the revocation and makes it clear that, regardless of any future ruling by this Court on the legal authority available to the City to issue this license, the Commerce Director believes

¹ Consequently, unless directed otherwise, the City also will not be briefing these case on the merits tomorrow, January 25, 2008.

that it should be revoked.

II. The Appeal Must Be Dismissed Because The Appeal Became Moot When The License At Issue Here Was Revoked.

The appeals before this Court were taken from the issuance of the license to the SugarHouse Casino. The Petitioners challenged that decision to issue the license and claimed that the City did not have legal authority to issue it and that the City improperly exercised any authority it had. The Petitioners sought an Order from this Court effectively rescinding the license.

These appeals, attacking the Commerce Director's issuance, have become moot because the license no longer exists and the City no longer desires to issue it.

The Petitioners asked this Court to eliminate the license. That elimination has already been accomplished.

A decision by this Court as to whether the license was properly issued in the past would be a hypothetical and advisory opinion as to whether the Commerce Director in the future could decide to issue such a license in his discretion. Further, regardless of this Court's resolution of the question of whether the Commerce Director does have the authority to issue the license, or exercised it properly in the past, the Commerce Director has decided that he does not believe it appropriate to issue this license, so any decision of this Court with respect to the prior issuance would not lead to issuance of this license. *See Exhibit A, License Revocation.*

The Supreme Court has repeatedly stated that it will not decide moot questions. *See Pap's A.M. v. City of Erie*, 571 Pa. 375, 389, 812 A.2d 591, 599-

600 (2002); *see also In re Cain*, 527 Pa. 260, 590 A.2d 291 (Pa. 1991); *In re Gross*, 476 Pa. 203, 382 A.2d 116 (Pa. 1978). In *Pap's A.M.*, the Supreme Court summarized the mootness doctrine as follows:

The cases presenting mootness problems involve litigants who clearly had standing to sue at the outset of the litigation. The problems arise from events occurring after the lawsuit has gotten under way -- changes in the facts or in the law -- which allegedly deprive the litigant of the necessary stake in the outcome. The mootness doctrine requires that "an actual case or controversy must be extant at all stages of review, not merely at the time the complaint is filed."

571 Pa. at 389, 812 A.2d at 599-600 (citations omitted).

Therefore, an actual claim or controversy must be present at all stages of the judicial process, including during appellate review, for the case to be actionable or reviewable. If events occur to eliminate the claim or controversy at any stage in the process, the case becomes moot. *Id.*; *see also Taylor v. Pennsylvania Bd. of Probation and Parole*, 746 A.2d 671, 674 (2000).

Here, we have the quintessential example of the mootness. The matter in controversy has ceased to exist.

Thus, while Petitioners "clearly had standing to sue at the outset of the litigation," the revocation has "deprive[d] [Petitioners] of the necessary stake in the outcome" of the appeal. *Pap's A.M.*, 571 Pa. at 389, 812 A.2d at 599-600.

Petitioners are no longer aggrieved by any decision of the Commerce Director, because the Director has affirmatively revoked the decision which was appealed.

If, and when, the Commerce Director were to issue any similar license to a

casino, then and only then will a live controversy re-materialize, albeit under a set of new facts, including a new application and a new decision. Any such decision would not evade appellate review at that time.

Given that this case has been mooted in all respects by the revocation of the submerged lands license, this Court should dismiss the appeal for mootness.

WHEREFORE, for the forgoing reasons, the City of Philadelphia hereby moves this Court to dismiss this appeal for mootness.

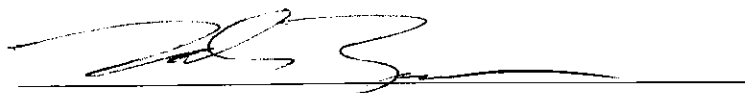
Respectfully submitted,

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Dated: January 24, 2008

EXHIBIT A