

**THE STATE OF NEW HAMPSHIRE**

**LOTTERY COMMISSION**

**IN THE MATTER OF:**

**WIN WIN WIN, LLC, d/b/a “CONCORD CASINO”**

**(FAC-00074 and GOE-00079)**

**Docket No. Lot 23-018**

**REPORT OF HEARINGS EXAMINER**

**HEARING DATES:** December 11 and 12, 2023

**HEARING LOCATION:** NH Department of Safety

33 Hazen Drive

Concord, NH

**DATE OF REPORT:** December 27, 2023

**RESPONDENT REPRESENTATIVES:** Zachary R. Hafer, Esq.

Adam M. Katz, Esq.

Mark T. Knights, Esq.

**STATE REPRESENTATIVES:** Mark W. Dell’Orfano, Esq.

Jessica A. King, Esq.

**EXHIBITS:**

The exhibits submitted by the state and by the respondent are contained in two black binders (one from each party) which list each exhibit by number and shall herein be referred to as the “State Exhibit \_\_\_\_” and “Respondent Exhibit \_\_\_\_”. Each exhibit is a part of the record in this case. Each party also submitted all exhibits electronically. A review of each party’s submissions reflects the fact that, while there are inserts indicating exhibits numbered 24, 25, 32, 33 and 48 in the State’s submissions, there are no corresponding documents. Several of the exhibits appear in both the Respondent’s submission and the State’s submission, in whole or in part. The exhibits were submitted prior to the hearing and any objections are resolved within the body of this report.

**BACKGROUND:**

This hearing was initiated by an action taken against the Win Win Win, LLC (herein "Respondent") by the New Hampshire Lottery Commission (herein "State"). The matter was initially referred to the office of the New Hampshire Attorney General after a summary of findings made by the State dated March 13, 2023 (State's Exhibit 1 and Respondent's Exhibit 49). That was followed by a Five-Year Suitability Determination dated August 30, 2023, by John Formella, Attorney General of the State of New Hampshire addressed to Charlie McIntyre, Executive Director of New Hampshire Lottery Commission.

There were prehearing conferences held before the Lottery Commission after which the Respondent requested Superior Court intervention. By Superior Court order, it was determined that the Lottery Commissioners would not hold the hearing and that it should be held by an impartial hearings examiner. The Lottery designated the hearing be conducted by the undersigned hearings examiner at the Department of Safety where he is employed on a part time basis. The location of the hearing also provided a "neutral" site.

A prehearing conference took place via video on December 1, 2023. Decisions on the issues of "adverse inference" and "scope of hearing" were deferred by the hearings examiner and will be addressed herein. The rest of the order related to deadlines pertaining to exhibits and any prehearing motions.

**STATUTORY AUTHORITY:**

As set forth in the hearing notice of November 9, 2023, the "legal authority" for the hearing is:

RSA 287-D: 23 III

*III. The lottery commission may suspend or revoke the license of any licensee who violates any provision of this chapter or for just cause shown. Any licensee whose license is revoked shall not be eligible for licensure for a period from the date of revocation as determined by the commission.*

and Administrative Rules Lot 7209.03 (a) (1), (3), (5), (10), (12) and (14)

*(a) Except as provided in (f) below, the following violations shall be considered grounds for revocation of a license:*

*(1) Failure to comply with the conditions of the license or this chapter, such as a charitable organization's failure to maintain federal tax exempt status;*

*(3) An inability or unwillingness to comply with RSA 287-D or this chapter, as demonstrated by a pattern of violations;*

*(5) Providing false information to the commission, including willfully and knowingly making false statements or making false entries in any books or records with respect to any transaction connected with the holding, operating, and conducting of any games of chance event;*

*(10) Any conduct by the licensee that undermines the public confidence in charitable gaming or serves the interest of organized gambling or crime and criminals in any manner;*

*(12) Participating in illegal activities including possessing illegal gambling equipment, or permitting illegal gambling in the premises;*

*(14) Any material violation of RSA 287-D, as it applies to games of chance, or this chapter;*

**PRELIMINARY MATTERS:**

**Adverse inference:** At the pre-hearing conference, it was revealed by counsel for the Respondent that neither Anthony Sanborn (sole member of Respondent) nor Rep. Laurie Sanborn (spouse of Anthony Sanborn and occasional employee of Respondent) would testify at the hearing “on advice of counsel.” The Respondent asked that the hearings examiner take no adverse inference from that decision. The State asked that an adverse inference be taken. Each side briefed the issue.

It should first be noted that neither Mr. Sanborn nor Rep. Sanborn physically attended the hearing. The absence was explained by reference to a medical appointment at “Dana Farber” in Boston. There was no request from Respondent’s counsel to reschedule the hearing.

Both sides briefed the issue of “adverse inference”. They both cited the New Hampshire case of In re: C.O., 171 N.H. 748 (2019). That case involved a Petition for Termination of Parental Rights. The essence of the Court’s decision is that the court could make an adverse inference into the lack of testimony from the parent as the focus of the statute was on the child and not the parent. Thus, the Court’s reasoning is inapplicable here. The focus of this case is on the Respondent of which Mr. Sanborn is the sole member. The State argues that, due to the Respondent’s lack of cooperation throughout the investigation, his failure to testify should result in an adverse inference. In response, the Respondent submitted a new exhibit containing over 150 pages of financial information. This was a rebuttal to the “lack of cooperation” argument. Much of that information is contained in other exhibits and much is new. The State objected to that submission, but it will be evaluated for whatever weight is appropriate and not for its admissibility. While Mr. Sanborn was not physically present at the hearing, counsel had indicated at the prehearing conference that neither Mr. Sanborn nor Rep. Sanborn would testify based on the public announcement by the NH Attorney General of a referral of the EIDL application issue to the US Attorney. After reviewing the nearly one hundred distinct exhibits submitted by both sides, there is ample evidence upon which to make a reasoned decision in this case without live testimony from Mr. Sanborn or Rep. Sanborn. Thus, no negative inference will be taken.

**Scope of hearing:** The revised notice of hearing dated November 9, 2023, had two references to statutes and rules. The first appeared in II. Legal Authority. That referenced RSA 287-D:23 III and Lot 7209. Later in the same notice, at IV. Statutes and Rules it referenced RSA 287-D:22 and 23 and Lot 7204, 7206 and 7209. Respondent filed an objection prior to the prehearing conference to the scope of hearing, arguing that Judge Ignatius had specifically ruled on the scope of hearing and the State was barred from adding new issues. They specifically objected to the listing of RSA 287-D:22 and Lot 7206 in the notice of hearing. RSA 287-D:22 is titled “Financial Reports, inspections and other records”. Lot 7206 is titled “Required Documentation.” The action by the State is based, in the first instance, on an inspection done by a representative of the State. Inasmuch as that inspection is based largely on both RSA 287-D:22 and Lot 7206, reference can be made to either that statute or rule. However, the final decision and any sanction in the case will be based on the provisions of RSA 287-D:23 III and Lot 7209 (a) (1), (3), (5), (10), (12) and (14).

### **SUMMARY OF THE TESTIMONY:**

In addition to the exhibits listed, two witnesses testified. On behalf of the State was Leila McDonough (herein "Witness 1") (summary of education and experience at Respondent Exhibit 57). On behalf of the Respondent was Richard Maloney (herein "Witness 2") (Curriculum Vitae at Respondent Exhibit 2, pages 10-14).

Witness 1 testified extensively about her interactions with Respondent, including a 2021 audit and a 2022 audit. It was during the 2022 audit that she noticed issues surrounding the application for and use of Economic Injury Disaster Loan (herein "EIDL") monies through the US Small Business Administration (herein "SBA"). She testified about the 2021 and 2022 audits. An additional issue noted during the 2022 audit was the substantial increase in payments indicated as "rent" payable to "The Best Revenge LLC" (TBR), the owner of the building within which the Respondent does business. She pointed out some discrepancies in the amount of proceeds payable to the various charities. She indicated that when she asked for additional records, it took the Respondent weeks to get back to her. She noted that some of the Respondent's internal controls were inadequate during both the 2021 and 2022 audits.

During cross examination, audits of other gaming rooms in NH were reviewed. Extensive cross examination was conducted touching on her two audits of the Respondent, multiple exhibits were reviewed including the expert witness report, and she was asked about the Respondent's cash position. The State conducted a brief re-direct of the witness.

Witness 2 testified. The primary focus of the direct examination was his report submitted as Respondent 2. He indicated that the Respondent uses a "One-Write" system for check writing and the information is then transferred to QuickBooks. He addressed the receipt and use of EIDL funds. He referred to the tax filings for 2021 and 2022 which were recently completed. The State noted their objection to the late filing and submission of these tax filings. The examiner ruled that, while the State had little time to analyze the returns (Respondent Exhibits 3 and 47), they were disclosed within the timeframe set at the pre-hearing conference and will be considered as evidence. The hearing examiner will determine what weight, if any, to accord these returns.

On cross examination, the State focused on several areas including the rent paid, a Certificate of Deposit, the purchase of automobiles and component parts, and the cash position of the Respondent.

### **DISCUSSION:**

The burden of proof is on the state to prove, by a preponderance of the evidence, that the Respondent has violated statutes and rules justifying the suspension or revocation of the gaming license. In State 1, the grounds for the recommendation to the New Hampshire Attorney General were set forth as follows:

There was an allegation that the respondent had made misrepresentations in his application to the Small Business Administration for EIDL funds. The total funds obtained from EIDL is \$844,000.

Once the EIDL funds were obtained, the following expenditures were made from the Respondent's operating account:

- (i) Purchase three (3) race cars totaling \$181,250, including two Porsche 987 Cayman S race cars for Mr. Sanborn 's personal use and an \$80,000 2008 F430 Ferrari as a gift for his spouse, Rep. Laurie Sanborn.
- (ii) make purchases of various automotive parts and services for Mr. Sanborn 's race cars, totaling \$45,000.
- (iii) make cash distributions to Mr. Sanborn totaling \$183,500, disguised as rent payments to two other Licensees affiliates, which, themselves are wholly owned and controlled by Mr. Sanborn.
- (iv) purchase engineering and geotechnical services totaling \$28,800 for Mr. Sanborn's proposed new casino and entertainment complex on Break O Day Drive in Concord, New Hampshire.

The EIDL application is State Exhibit 3. In that application, the Respondent listed the Legal Name of the applicant as Win Win Win, LLC. It listed the trade name of the applicant as Win Win Win, LLC. The actual trade name is Concord Casino (See Respondent Exhibit 1, page 16-18 listing trade name as "Concord Casino" effective 6/14/19). It lists the business activity as "Miscellaneous Services." This is different than is listed on the tax returns in evidence. It listed "Rental Properties" for 2019 and 2020 with actual rents received in the amount of \$395,000 for 2019 and \$466,300 for 2020. The lease for the premises signed 9/17/18 lists the "Lessor" or "Landlord" as TBR, so there appears to be no valid reason for listing the "rental properties" on an application for a loan by the Respondent. There is also State Exhibit 13 dated 3/22/22 which provides further contradictory evidence about the ownership of the rental properties where Mr. Sanborn states that the "13 commercial/rental properties" are owned by Anthony Sanborn and Laurie Sanborn. Also, on State Exhibit 12, page 2, Anthony and Laurie Sanborn applied for an EIDL loan as sole proprietors. Under "rental properties", they listed rental income of \$401,622 for 2019 and \$466,300 for 2020.

In the Loan Authorization and Agreement pertaining to the EIDL funds (State Exhibit 39), the following language appears:

USE OF LOAN PROCEEDS

- Borrower will use all the proceeds of this loan solely as working capital to alleviate economic injury caused by disaster occurring in the month of January 31st, 2020 and continuing thereafter and for loans of more than \$25,000 to pay uniform Commercial Code lien filing fees and a third party Uniform Commercial Code (UCC) handling charge of \$100 which will be deducted from the loan amount stated above.

REQUIREMENTS FOR USE OF LOAN PROCEEDS AND RECEIPTS

- Borrower will obtain and itemize receipts (paid receipts, paid invoices, or canceled checks) and contracts for all loan funds spent and retain these receipts for three years from the date of final establishment period prior to each subsequent disbursement (if any) and whenever requested by SBA, borrower will submit to SBA such itemization together with copies of the receipts.

- Borrower will not use, directly or indirectly, any portion of the proceeds of this loan to relocate without the prior written permission of SBA. The law prohibits the use of any portion of the proceeds of this loan for voluntary relocation from the business area in which the disaster occurred. To request SBA's prior written permission to relocate, borrower will present to SBA the reasons therefore and a description or address of the relocation site. Determinations of ( 1 ) whether a relocation is voluntary or otherwise, and ( 2 ) whether any site other than the disaster affected location is within the business area in which the disaster occurred, will be made solely by the SBA.
- Borrower will, to the extent feasible, purchase only American made equipment and products with the proceeds of this loan.

It is not within the purview of this hearing process to determine if the application to the SBA was fraudulent. What is relevant to this proceeding is a determination of the veracity of the information provided to the SBA in the application and the use of the funds after disbursement. The filing of this application with clearly false and/or misleading information "undermines the public confidence in charitable gaming". The affidavit of Michael Evans (Respondent Exhibit 6) indicates that Mr. Evans was skeptical that the Respondent was eligible to apply for this assistance. The Respondent informed him that "Win Win Win is structured as a 'charity gaming' facility". This information led Mr. Evans to conclude that the Respondent is a "charity consulting company". But the registered trade name for the business (Concord Casino) was omitted from the application and the business activity was listed as "Miscellaneous Services". The preponderance of the evidence leads to the conclusion that the Respondent and the consultant determined that putting the actual trade name of "Concord Casino" on the application would have a negative impact on the chances of obtaining the funding and that it was intentionally omitted. The same logic applies to the listing of "Miscellaneous Services" rather than any reference to a "charity gaming facility".

Respondent argues that the purchase of the automobiles did not come out of EIDL funds. Their expert contends that there was enough other "cash" available to cover expenses that were not considered allowable under the terms of the loan. His position is that "cash is fungible." However, a straightforward look at the general operating account shows otherwise. When the first EIDL Loan was deposited into the general operating account on 1/4/22 in the amount of \$499,900, there was a prior balance in that account of \$917.56. On 1/18/22, the first "equipment" charge relating to the automobiles was taken in an amount of \$48,750. Notwithstanding the deposit of "net gaming revenue" of approximately \$50,000 after 1/4/22 and including 1/18/22, the account had a balance of \$448,335, which is less than the amount of the EIDL deposit minus the "equipment" charge.

The Respondent attempts to explain that since there were other funds in other accounts, that the expenditure was not "from" the EIDL money. But there is a straight line from the receipt of the EIDL money on 1/4/22 to the first purchase of the "equipment" on 1/18/22 (\$48,750) (State Exhibit 22, page 9). The same reasoning applies to the other "equipment" purchases on 2/2/22 (\$52,500) and 4/26/22 (\$80,600). There was a second EIDL deposit on 2/15/22 in the amount of \$344,000. After the \$839,900 of EIDL money deposited into the operating account, and following the "equipment" purchases, the operating account had a balance of \$508,836.69 on 4/26/22 (State Exhibit 22, Pag 11). That is a reduction in the operating account balance of approximately \$336,000, \$181,250 of which was spent on "equipment". It should be noted that when the 2022 tax return was filed, these "equipment" purchases had been either recategorized or his accountant recommended that they were not deductible expenses

(see exchange between Respondent and accountant Respondent Exhibit 19). That same exchange also clearly indicates that Respondent intended to declare these expenses as reasonable and necessary for the operation of the Respondent. It is an inescapable conclusion that, but for the EIDL funds, the "equipment" purchases would not have been made. It is also noted that none of these three vehicles were "American made equipment and products."

The issue of rent is another area that the audit found suspicious activity. Respondent Exhibit 23 is the lease agreement between Respondent and TBR for a 5-year period beginning 9/17/18 with renewal options. The annual rent was listed as \$6000. A superseding lease agreement is dated 9/17/22. This date is after the 2022 audit performed by the State and was initiated by the Respondent after the State questioned the variable rents that were wildly disparate from the existing lease. The superseding lease agreement lists the annual rent as \$240,000. Witness 2 admitted that this is not an "arm's length" transaction as TBR is an LLC wholly owned and controlled by Anthony Sanborn as is the Respondent. But the Respondent contends that the amount of the rent is not at issue as the net effect of the rent payments was to take money from the Respondent and put it into TBR, having no net effect on his personal income as it is a "wash" transaction. Another finding of the audit is that there were no rental payments for several months in 2021, then there were rental payments in the amount of \$15,000 on 11/1/21, \$10,000 on 12/17/21, \$5,000 on 12/20/21 and \$22,500 on 12/21/21. The State found these payments to be wildly excessive based on the existing lease. These increased rent payments continued into 2022 when the EIDL money was received. The increased rent payments coincided with the increased floor space rented by the Respondent. While that does not necessarily justify the 40-fold increase in rent (the increase in floor space was a factor of about 6 ½), there is insufficient evidence to support a finding that this was an attempt to divert EIDL money to Mr. Sanborn through TBR as the increased payments began 2 ½ months prior to the receipt of the EIDL money and the month before the application for the money was completed.

The State also took issue with payments made in furtherance of a new facility for the Respondent (see loan terms above). These involved payments to TF Moran and Geotechnical Services. It was never addressed during the hearing why the Respondent would have paid these bills through the Respondent LLC when another LLC (Concord Commitment, LLC) was established for the purpose of developing the new site in East Concord. However, while these expenses may not have been properly attributed to the Respondent, it is much more difficult to trace the origin of these funds to the EIDL money.

An issue was raised by the Respondent regarding the 2022 audit. One copy of the audit showed that it was a draft copy. Another copy of the audit does not carry that designation. There was no indication in testimony that there were any differences in the documents. However, the Respondent wanted to emphasize that no version of the report, draft or final, was shared with them in 2022 despite assurances that it was forthcoming.

There was evidence that the respondent's bookkeeping practices were substandard in both the 2021 and 2022 audit. For instance, the EIDL funds were originally listed as "PPP" funds. It was a bookkeeping error which was later corrected. Another issue was payments payable to TBR with the memo line "The Draft". Witness 2 clarified that this was a bookkeeping error, and it was an attempt to avoid writing multiple checks. It was not a rent payment on behalf of The Draft to TBR but was an attempt to streamline bookkeeping. However, bookkeeping practices were not cited as a basis for revocation in State 1, that issue will not be explored further.

It should be noted that there was no evidence that any of the practices found to be substandard resulted in underpayments to charities. While the state noted that the payouts varied, Witness 2 explained that it was an attempt to ensure the charities received more than they would have if the full rental payment had been enforced.

**REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Both sides submitted requested findings of fact and conclusions of law. The hearings examiner had set a deadline for submission at 8:00 AM on 12/18/23. At that time, the Respondent's submission had been received. That State's submission was not sent by email until 12/19/23. By email of 12/20/23, Respondent objected to the late submission, requesting that the submission be "rejected as untimely". The late submission and objection are noted for the record, but the submission is accepted as the hearings examiner was still in the process of preparing this report when the submission was received.

Inasmuch as the submission by the Respondent resembles more of a proposed order than statements of fact or law, no action will be taken regarding that submission. However, it has been reviewed and considered in this decision.

**State's Findings of Fact:**

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 and 107 are granted.

28 is denied as it fails to indicate to whom the income in that amount was reported to as it is consistent with the Respondent's 2020 Tax Return (State Exhibit 34, Page 3, Respondent Exhibit 9 Page 31, as filed 10/6/21)

32 is denied as State 15 shows a success fee of 2% and not 10%

76 is denied as State 24 shows a term of lease beginning and ending on different dates from the prior lease, otherwise granted.

**State's Conclusions of Law:**

1, 2, 3, 4, 5, 6, 14, 15, 17, 19, 20, 21, 46 are granted.

22, 23, 24, 28, 40, 43, 45, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59 are denied.

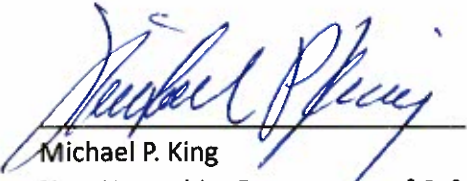
As found herein, it is not within the purview of this hearing to decide as to whether the Respondent was eligible to apply for the EIDL loan. As such, 8, 9, 10, 11, 12, 13, 16, 18, 26, 27, 28, 31, 32, 35, 36, 37, 42, 44, 47 are denied in that they are not relevant to this proceeding and better left for determination by another agency.



**DISPOSITION:**

As indicated in RSA 287-D:23 III, any violation of this chapter may result in suspension or revocation of any licenses issued by the Commission. The misrepresentations on the EIDL application and the subsequent use of the proceeds for expenditures not allowed by that loan constitute "conduct by the licensee that undermines the public confidence in charitable gaming". Accordingly, the Respondent's facilities license and game operator employer license are both suspended effective January 1, 2024 (the date of expiration of both). Revocation is not an appropriate remedy in this case as there was testimony that there has not been a prior revocation of these licenses by the Commission and that other license holders had been given opportunities to sell their businesses prior to any suspension or revocation actions being taken.

The suspension is for a period of 6 months pending a forced sale to an NHLC-approved buyer. If no sale has been accomplished within that period, the suspension will be converted to a revocation. If a revocation takes effect, it will be for a period of 2 years. If, at the end of the 6-month suspension, a sale is pending, the Respondent may make a written request for an additional 3 months to complete the sale. There will be no further extensions granted.

  
Michael P. King  
New Hampshire Department of Safety  
Specially assigned Hearings Examiner

cc: Atty. King  
Atty. Dell'Orfano  
Atty. Hafer  
Atty. Knights  
Atty. Katz

**287-D:24 Rehearing and Appeal.** – Any person aggrieved by a decision of the commission issued pursuant to this chapter may apply to the commission for a rehearing within 15 business days of the decision. Rehearings and appeals shall be governed by RSA 541.