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4 **STATE OF NEVADA**
5 **BEFORE THE NEVADA GAMING COMMISSION**

6
7 STATE GAMING CONTROL BOARD,)

8 Complainant,

9 vs.

COMPLAINT

10 THE THOMAS P. BERRY
11 SPECIAL TRUST

12 and

13 THOMAS PATRICK BERRY,

Respondents.

14 The State of Nevada, on relation of its State Gaming Control Board (BOARD),
15 Complainant herein, by and through its counsel, CATHERINE CORTEZ MASTO, Attorney
16 General, and MICHAEL P. SOMPS, Senior Deputy Attorney General, hereby files this
17 Complaint for disciplinary action against Respondents pursuant to Nevada Revised Statute
18 (NRS) 463.310(2) and alleges as follows:

19 1. Complainant, BOARD, is an administrative agency of the State of Nevada duly
20 organized and existing under and by virtue of chapter 463 of NRS and is charged with the
21 administration and enforcement of the gaming laws of this state as set forth in Title 41 of NRS
22 and the Regulations of the Nevada Gaming Commission.

23 2. Respondent, THE THOMAS P. BERRY SPECIAL TRUST (BERRY TRUST) is
24 licensed as 1) A shareholder of Berry Properties, Inc., dba Carson Plains Market and dba
25 Jakes Gas, both restricted gaming licenses; 2) A shareholder of Winner's Gaming, Inc., which
26 is licensed as a slot route operator; 3) The sole shareholder of Berry's Casino, Inc., dba
27 Silverado Casino, which holds a non restricted gaming license; 4) As a member of Carson
28 Plains Casino, LLC, dba Carson Plains Casino, which holds a non restricted gaming license;

1 and 5) As a member of the Silver Strike Casino, LLC, dba Silver Strike Casino, which holds a
2 non restricted gaming license.

3 3. Respondent, THOMAS PATRICK BERRY, is licensed or found suitable as 1) A
4 director and as the secretary of Berry Properties, Inc. and of Berry's Casino, Inc.; 2) As the
5 manager of the Silver Strike Casino, LLC, dba Silver Strike Casino; and 3) The trustee and
6 beneficiary of the BERRY TRUST.

7 **RELEVANT LAW**

8 4. The Nevada Legislature has declared under NRS 463.0129(1) that:

9 (a) The gaming industry is vitally important to the economy
10 of the State and the general welfare of the inhabitants.

11 (b) The continued growth and success of gaming is
12 dependent upon public confidence and trust that licensed gaming
13 and the manufacture, sale and distribution of gaming devices and
14 associated equipment are conducted honestly and competitively,
15 that establishments which hold restricted and nonrestricted
16 licenses where gaming is conducted and where gambling devices
17 are operated do not unduly impact the quality of life enjoyed by
18 residents of the surrounding neighborhoods, that the rights of the
19 creditors of licensees are protected and that gaming is free from
20 criminal and corruptive elements.

21 (c) Public confidence and trust can only be maintained by
22 strict regulation of all persons, locations, practices, associations
23 and activities related to the operation of licensed gaming
24 establishments, the manufacture, sale or distribution of gaming
25 devices and associated equipment and the operation of inter-
26 casino linked systems.

27 NRS 463.0129(1)(a), (b) and (c).

28 5. The Nevada Gaming Commission has full and absolute power and authority to limit,
condition, restrict, revoke or suspend any license, or fine any person licensed, for any cause
deemed reasonable. See NRS 463.1405(4).

6. The BOARD is authorized to observe the conduct of licensees in order to ensure
that the gaming operations are not being conducted in an unsuitable manner. See NRS
463.1405(1).

7. This continuing obligation is repeated in Nevada Gaming Commission Regulation
5.040, which provides as follows:

A gaming license is a revocable privilege, and no holder
thereof shall be deemed to have acquired any vested rights therein

1 or thereunder. The burden of proving his qualifications to hold any
2 license rests at all times on the licensee. The board is charged by
3 law with the duty of observing the conduct of all licensees to the
4 end that licenses shall not be held by unqualified or disqualified
5 persons or unsuitable persons or persons whose operations are
6 conducted in an unsuitable manner.

5 Nev. Gaming Comm'n Reg. 5.040.

6 8. Nevada Gaming Commission Regulation 5.010(2) further provides that
7 "[r]esponsibility for the employment and maintenance of suitable methods of operation rests
8 with the licensee, and willful or persistent use or toleration of methods of operation deemed
9 unsuitable will constitute grounds for license revocation or other disciplinary action."

10 9. Nevada Gaming Commission Regulation 3.020(4) states as follows:

11 Every licensee shall furnish to the board complete
12 information pertaining to any change of ownership of the premises
13 or of any change of any interest in the premises wherein or
14 whereon the licensed gaming is operated at least 30 days before
15 the date of such change; or, if the licensee is not a party to the
16 transaction effecting such change of ownership, immediately upon
17 acquiring knowledge of such change of ownership or any
18 contemplated change of ownership.

17 Nev. Gaming Comm'n Reg. 3.020(4).

18 10. Nevada Gaming Commission Regulation 5.011 states, in relevant part, as follows:

19 The board and the commission deem any activity on the
20 part of any licensee, his agents or employees, that is inimical to the
21 public health, safety, morals, good order and general welfare of the
22 people of the State of Nevada, or that would reflect or tend to
23 reflect discredit upon the State of Nevada or the gaming industry,
24 to be an unsuitable method of operation and shall be grounds for
25 disciplinary action by the board and the commission in accordance
26 with the Nevada Gaming Control Act and the regulations of the
27 board and the commission. Without limiting the generality of the
28 foregoing, the following acts or omissions may be determined to be
unsuitable methods of operation:

.....
.....
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.....

1 8. Failure to comply with or make provision for compliance
2 with all federal, state and local laws and regulations pertaining to
3 the operations of a licensed establishment . . .

4
5 Nev. Gaming Comm'n Regs. 5.011(8).

6 11. Nevada Gaming Commission Regulation 5.030 provides as follows:

7 **Violation of any provision of the Nevada Gaming**
8 **Control Act or of these regulations by a licensee**, his agent or
9 employee **shall be deemed** contrary to the public health, safety,
10 morals, good order and general welfare of the inhabitants of the
11 State of Nevada and **grounds for suspension or revocation of a**
12 **license**. Acceptance of a state gaming license or renewal thereof
13 by a licensee constitutes an agreement on the part of the licensee
14 to be bound by all of the regulations of the commission as the
15 same now are or may hereafter be amended or promulgated. **It is**
16 **the responsibility of the licensee to keep himself informed of**
17 **the content of all such regulations, and ignorance thereof will**
18 **not excuse violations.**

19 Nev. Gaming Comm'n Reg. 5.030 (emphasis added).

20
21 12. NRS 463.310(4)(d)(2) states in relevant part that the Commission may:

22 (d) Fine each person or entity or both, who was licensed,
23 registered or found suitable pursuant to this chapter or chapter 464
24 of NRS or who previously obtained approval for any act or
25 transaction for which Commission approval was required or
26 permitted under the provisions of this chapter or chapter 464 of
27 NRS:

28 (2) Except as otherwise provided in subparagraph (1) of
this paragraph, not more than \$100,000 for each separate violation
of the provisions of this chapter or chapter 464 or 465 of NRS or of
the regulations of the Commission which is the subject of an initial
complaint and not more than \$250,000 for each separate violation
of the provisions of this chapter or chapter 464 or 465 of NRS or of
the regulations of the Commission which is the subject of any
subsequent complaint.

NRS 463.310(4)(d)(2).

1 **BACKGROUND**

2 13. On June 5, 2009, an application was filed with the BOARD and Nevada Gaming
3 Commission to transfer 100% of the ownership interest in Ballpark Market, LLC, dba Ballpark
4 Market (Ballpark Market), holding a restricted gaming license issued by the Nevada Gaming
5 Commission, from the BERRY TRUST to James Earl Day and Elizabeth Rose Day. In
6 addition, applications were filed to license James Earl Day and Elizabeth Rose Day as
7 members (100% joint tenancy) and managers of the Ballpark Market.

8 14. During the BOARD'S investigation of the applications, the BOARD discovered that,
9 on or about January 30, 2009, Day Investments, LLC had purchased the real property upon
10 which the Ballpark Market is located from Moana M & V, LLC.

11 15. Mr. BERRY had knowledge of the sale of the real property upon which the Ballpark
12 Market is located upon consummation of the sale on or about January 30, 2009.

13 16. The BOARD previously sent, in October 2008, a violation letter to Mr. BERRY
14 regarding a prior failure on the part of Mr. BERRY to notify the BOARD that the real property
15 upon which the Ballpark Market is located was sold to Moana M & V, LLC.

16 **COUNT ONE**

17 **NEV. GAMING COMM'N REGS. 3.020(4) and 5.011(8)**

18 17. Complainant BOARD realleges and incorporates by reference as though set forth
19 in full herein paragraphs 1 through 16 above.

20 18. Respondents failed to immediately notify the BOARD that ownership of the
21 premises upon which the Ballpark Market is located changed upon acquiring knowledge of
22 such change of ownership or any contemplated change of ownership in violation of Nev.
23 Gaming Comm'n Reg. 3.020(4).

24 19. Respondents' failure to comply with Nev. Gaming Comm'n Reg. 3.020(4)
25 constitutes a failure to comply with or make provision for compliance with all federal, state and
26 local laws and regulations pertaining to the operations of a licensed establishment in violation
27 of Nev. Gaming Comm'n Reg. 5.011(8).

28

1 20. Respondents' failure to comply with Nev. Gaming Comm'n Regs. 3.020(4) and
2 5.011(8) is an unsuitable method of operation and is grounds for disciplinary action. See Nev.
3 Gaming Comm'n Regs. 5.010(2) and 5.030.

4 WHEREFORE, based upon the allegations contained herein which constitute
5 reasonable cause for disciplinary action against Respondents, pursuant to NRS 463.310, and
6 Nevada Gaming Commission Regulations 5.010, 5.011 and 5.030 the STATE GAMING
7 CONTROL BOARD prays for the relief as follows:

8 1. That the Nevada Gaming Commission serve a copy of this Complaint on the
9 Respondents pursuant to NRS 463.312(2);

10 2. That the Nevada Gaming Commission fine Respondents a monetary sum pursuant
11 to the parameters defined at NRS 463.310(4) for each separate violation of the provisions of
12 the Nevada Gaming Control Act or the Regulations of the Nevada Gaming Commission;

13 3. That the Nevada Gaming Commission take action against Respondents' license or
14 licenses pursuant to the parameters defined in NRS 463.310(4); and

15 4. For such other and further relief as the Nevada Gaming Commission may deem just
16 and proper.

17 DATED this 29TH day of JANUARY, 2010.

18 STATE GAMING CONTROL BOARD

19 
20 DENNIS K. NEILANDER, Chairman

21 
22 RANDALL E. SAYRE, Member

23 
24 MARK A. LIPPARELLI, Member

25 Submitted by:

26 CATHERINE CORTEZ MASTO
Attorney General

27 By: 
28 MICHAEL P. SOMPS
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