

**ORDER 2023-131
IN RE SETTLEMENT AGREEMENT
NYX DIGITAL GAMING (USA) LLC
23-NYX-01**

After having reviewed the attached Settlement Agreement, the Indiana Gaming Commission hereby:

APPROVED

APPROVES OR DISAPPROVES

the proposed terms of the Settlement Agreement.

IT IS SO ORDERED THIS THE 15th DAY OF SEPTEMBER, 2023.

THE INDIANA GAMING COMMISSION:



Milton O. Thompson, Chair

ATTEST:



Jason Dudich, Secretary

**STATE OF INDIANA
INDIANA GAMING COMMISSION**

IN RE THE MATTER OF:)
) **SETTLEMENT**
NYX DIGITAL GAMING (USA) LLC) **23-NYX-01**
)

SETTLEMENT AGREEMENT

The Indiana Gaming Commission (“Commission”) by and through its Executive Director Greg Small and NYX Digital Gaming (USA) LLC (“NYX Digital”), (collectively, the “Parties”) desire to enter into this settlement agreement (“Agreement”) prior to the initiation of a disciplinary proceeding pursuant to 68 IAC 13-1-18(a). The Parties stipulate and agree that the following facts are true:

FINDINGS OF FACT

COUNT I

1. 68 IAC 2-2 provides the licensing requirements for Suppliers in Indiana.
2. 68 IAC 2-2-9(a) provides all supplier licensees have a continuing duty to maintain suitability for licensure. A supplier's license does not create a property right, but is a revocable privilege granted by the state contingent upon continuing suitability for licensure.
3. 68 IAC 13-1-1(b)(2) and (3) provides the Commission may initiate an investigation or a disciplinary action, or both, against a licensee if the Commission has reason to believe the licensee is not complying with licensure conditions or is not complying with this Act or this title.
4. On March 16, 2020, the Commission offered relief to Gaming Entities due to the Covid-19 pandemic and would not require fingerprints for applications that were critical to operations for thirty (30) days. The Commission, however, required acknowledgement that the notarized pages and fingerprints would be provided when available for each incomplete application.
5. On June 1, 2020, the Commission advised Gaming Entities if they had applications which could not be notarized or fingerprints were unavailable in their area, the Commission would still accept and process their applications. The Commission advised Gaming Entities that they must include a cover letter or e-mail communication (with an electronic copy of the application) that explained the circumstances around the incomplete application, and acknowledgement that the notarized pages and fingerprints would be provided when available.

6. On May 14, 2021, the Commission notified Gaming Entities that as of July 1, 2021, the Commission would require all pending fingerprints to be sent to the Commission, and from that date forward applications will be considered incomplete if they are submitted without fingerprints. Individuals who submitted applications without notarizations do not have to provide notarizations, unless specifically requested by the Commission.
7. On October 7, 2022, the Commission inquired with NYX Digital about the status of a number of licensees that had not submitted fingerprints, as required. The Commission required these individuals to supply prints within thirty (30) days. As a result, the due date was November 7, 2022.
8. On October 21, 2022, NYX Digital requested an extension for non-US licensees.
9. On October 24, 2022, the Commission granted an additional thirty (30) days for overseas individuals but was clear that no additional extensions would be offered.
10. Ten (10) individuals were licensed with the Commission and failed to submit fingerprints in a timely manner.

COUNT II

11. 68 IAC 2-2-1(d) provides the applicant's key persons, substantial owners, and any other persons deemed necessary to allow the commission to ensure the applicant meets the statutory criteria for licensure set forth in IC 4-33, IC 4-35, and this title must complete and submit a Personal Disclosure Form 1 (PD1) application for occupational license under 68 IAC 2-3-1.
12. 68 IAC 2-2-4(b)(3) provides an application shall be deemed filed when the completed application forms, including all required documents, all personal disclosure forms, materials, photographs, and application fee have been submitted. The commission will not begin its background investigation until the application is filed.
13. On January 8, 2021, the Commission issued a directive to all Licensed Suppliers on Supplier Occupational Licensing that outlined the requirements for occupational licensing for Licensed Suppliers.
14. On October 28, 2022, the Commission's Director of Financial Investigations requested a PD1 from NYX Digital for a key person. The Commission advised NYX Digital that the PD1 would need to be submitted within thirty (30) days unless an extension was requested and granted by the Commission. A request for extension was not submitted. As a result, the due date for the PD1 was November 28, 2022.
15. On November 23, 2022, NYX Digital submitted the PD1 information for the key person electronically.

16. On December 5, 2022, the Commission advised NYX Digital that the PD1 was missing information and payment for the PD1 had not been received.
17. On December 6, 2022, NYX Digital advised that they were working with their accounts payable and would advise when payment was sent.
18. On January 3, 2023, the Commission had communication with NYX Digital in regard to a different application also missing payment. At that time, the Commission advised that PD1 applications were not considered complete and would not be processed without payment. NYX Digital advised that they had a credit with the Commission and asked if it applied to the PD1 payment. The Commission provided that the standard procedure with credits was that credits can only be used for investigation fees and permanent license fees. NYX Digital advised they would keep the Commission posted on payment for the PD1.
19. On January 31, 2023, the Commission received payment for the PD1. The Commission was not advised of any issues making payments, nor asked for any relief due to extraordinary circumstances.
20. The PD1 was sixty-four (64) days late.

COUNT III

21. 68 IAC 2-2-1(d) provides the applicant's key persons, substantial owners, and any other persons deemed necessary to allow the commission to ensure the applicant meets the statutory criteria for licensure set forth in IC 4-33, IC 4-35, and this title must complete and submit a Personal Disclosure Form 1 (PD1) application for occupational license under 68 IAC 2-3-1.
22. 68 IAC 2-2-4(b)(3) provides an application shall be deemed filed when the completed application forms, including all required documents, all personal disclosure forms, materials, photographs, and application fee have been submitted. The commission will not begin its background investigation until the application is filed.
23. On January 8, 2021, the Commission issued a directive to all Licensed Suppliers on Supplier Occupational Licensing that outlined the requirements for occupational licensing for Licensed Suppliers.
24. On October 28, 2022, the Commission's Director of Financial Investigations advised NYX Digital Outside Counsel that an additional key person would need to file a PD1 application within thirty (30) days.
25. On November 4, 2022, NYX Digital requested an extension for the PD1 and the extension was granted by the Commission. As a result, the PD1 was due on December 27, 2022.

26. On December 27, 2022, NYX Digital uploaded the PD1 for the Commission to download.
27. On January 3, 2023, the Commission inquired with NYX Digital about the status of the fingerprints and payment for the PD1. NYX Digital advised that they were working on the payments for two (2) PD1s.
28. On January 31, 2023, the Commission received payment for the PD1. The Commission subsequently inquired about the status of the fingerprints. NYX Digital did not respond to the question about the fingerprints.
29. On February 15, 2023, the Commission inquired again with NYX Digital on the status of the fingerprints.
30. On March 8, 2023, NYX Digital advised that the Commission should be receiving the fingerprint cards any day now as they have been sent.
31. On or about March 8, 2023, and March 13, 2023, the fingerprints were received by Commission. The PD1 was not processed until the fingerprints were received, as PD1s are not considered complete until all items have been received.
32. On March 13, 2023, the Commission reached out to NYX Digital due to issues with the PD1.
33. On March 23, 2023, NYX Digital responded with updated exhibits.
34. On March 24, 2023, the key person was issued a temporary license.
35. The application was eighty-one (81) days late.

TERMS AND CONDITIONS

Commission staff alleges that the acts or omissions of NYX Digital by and through its agents as described herein constitute a breach of IC 4-38 and 68 IAC. The Commission and NYX Digital hereby agree to a monetary settlement of the alleged violations described herein in lieu of the Commission pursuing formal disciplinary action against NYX Digital.

NYX Digital shall pay to the Commission a total of \$6,000 (\$1,500 for Count I, \$1,500 for Count II and \$3,000 for Count III) in consideration for the Commission foregoing disciplinary action based on the facts specifically described in the Findings of Fact contained in this Agreement. This Agreement extends only to those violations and findings of fact specifically alleged in the findings above. If the Commission subsequently discovers facts that give rise to additional or separate violations, the Commission may pursue disciplinary action for such violations even if the subsequent violations are similar or related to an incident described in the findings above.

Upon execution and approval of this Agreement, Commission staff shall submit this Agreement to the Commission for review and final action. Upon approval of the Agreement by the Commission, NYX Digital agrees to promptly remit payment in the amount of \$6,000 and waive all rights to further administrative or judicial review.

This Agreement constitutes the entire agreement between the Parties. No prior or subsequent understandings, agreements, or representations, oral or written, not specified or referenced within this document will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all Parties.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by electronic mail, facsimile, or other electronic signature by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically as if the original had been received.

This Agreement shall be binding upon the Commission and NYX Digital.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date and year as set forth below.

Greg Small
Greg Small, Executive Director
Indiana Gaming Commission

9/7/2023
Date

Jessica Feil
Jessica Feil, VP of Regulatory Affairs &
Compliance
NYX Digital Gaming (USA) LLC

Sept. 6, 2023
Date