THE VIRGIN ISLANDS CASINO CONTROL COMMISSION

DIVISION OF GAMING ENFORCEMENT,	)	
	)	**CASE NO. 2020—MISC-0001**
Petitioner	)	
	)	
v.	)	**PETITION TO SHOW CAUSE**
	)	
GRAPETREE SHORES, INC. and TREASURE BAY VI,	)	
	)	
Respondents.	)	
	)	

ORDER

THIS MATTER is before the Virgin Islands Casino Control Commission (the "Commission") on the Grapetree Shores, Inc., and Treasure Bay VI's (collectively "Respondents") Motion for Reconsideration and to Vacate or Alternatively for an Extension of Time. For the following reasons, the Respondents' motion is denied.

Factual Background:

The Division of Gaming Enforcement's (the "DGE") petitioned the Commission to order Grapetree Shores, Inc. and Treasure Bay VI to show cause why their casino licenses should not be revoked or suspended and why the Commission should not impose monetary sanctions for violations of the Commission's Resolution 19-10-21-TCL dated October 22, 2019 (the "Resolution").

A review of the record revealed that Respondent had failed to fully comply with certain conditions set forth in the Resolution. Specifically, section I of the Resolution requires "[t]hat the issuance of the temporary license to Grapetree Shores, Inc. and Treasure Bay V.I. Corp authorizes the commencement of casino gaming, **once the documents requested by the Commission [have] been submitted, reviewed, and accepted in accordance with the laws, rules and regulations**

of the Virgin Islands Control Commission." Section J of the Resolution requires that "Grapetree Shores, Inc. and Treasure Bay V. I. Corp. **shall complete all repairs, renovations and construction necessary to the Villas, East Wing and West Wing sections of the hotel to ensure room are available for occupancy by May 1, 2020**."[1] To date Respondents have failed to comply.

The Commission ordered Respondents to show cause why they should not be sanctioned and scheduled the show cause hearing for October 13, 2020. The Commission further ordered the Respondents to file a written response no later than October 8, 2020. It must be noted that Respondents knew of the Commission's concerns regarding compliance with Resolution No. 19-10-21-TCL and specifically knew at the July 14, 2020 regular meeting that a show cause order was imminent.[2]

Respondents filed the instant motion and then on the day of the show cause hearing, filed a letter advising the Commission that they were not going to attend the show cause hearing. Respondents asserted, *inter alia*, that they believed the Commission's order was not proper and that they were not given sufficient time to prepare. Despite the Respondents' decision to boycott the show cause hearing, the Commission proceeded with the regular meeting scheduled and which included the show cause hearing as an agenda item. The Commission took testimony from the DGE and at the conclusion of the hearing, took the matter under advisement. On November 10, 2020, the Commission filed its Order granting the DGE's petition and sanctioning Respondents' for their failure to comply with Resolution No. 19-10-21-TCL.

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[1] Prior to placing certain conditions on the Respondents, the Commission had granted Respondents several extensions of time to complete certain projects. However, after it became apparent that Respondents requests for extensions were consistently similar in nature, the Commission then set a final date for completion of May 1, 2020.
[2] It must be noted that on October 22, 2019, the Commission issued a calendar for Regular Quarterly Meetings for the 2020 year.

Discussion:

Respondents' arguments can be summed up as their disagreement with the manner in which the Commission scheduled the show cause hearing and the that the Respondents do not deserve the treatment they are receiving "at the hands of the Commission and the DGE." See, Respondents' Motion at p. 15. Their arguments lack legal merit.

"A party may file a motion asking a judge or magistrate judge to reconsider an order or decision made by that judge or magistrate judge. A motion to reconsider shall be based on the need to correct clear error or prevent manifest injustice." V.I. R. Civ. P. 6-4.

"[A] motion to reconsider shall be based on (1) intervening change in controlling law, (2) availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice." Id; see also, *Nicholas v. Wyndham Int'l, Inc.*, 2002 U.S. Dist. LEXIS 27111 at 1 (D.V.I.2002); A motion for reconsideration must be filed within fourteen (14) days of the date of entry of the contested order. See, V.I. R. Civ. P. 6-4.

The granting of a motion to reconsider is "an extraordinary remedy and should be used sparingly." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir.2004) (*citing Clancy v. Employers Health Ins. Co.*, 101 F.Supp.2d 463, 465 (E.D.La.2000), *citing* 11 Charles A. Wright, Arthur R. Miller and Mary K. Kane, Federal Practice & Procedure § 2810.1, at 124 (2d ed.1995)). The purpose of such motions is to allow a [court] to correct its own errors, sparing parties and appellate courts the burden of unnecessary proceedings. *Charles v. Daley*, 799 F.2d 343, 348 (7th Cir.1986); *see United States v. Dieter*, 429 U.S. 6, 8 (1976). The moving party has a heavy burden to establish an error sufficiently serious to merit amendment. The moving party must demonstrate that the court failed to consider controlling decisions or factual matters that were put before it on

the underlying motion and which, had they been considered, might reasonably have led to a different result. *Ansoumana v. Gristede's Operating Corp.*, 255 F.Supp.2d 197, 198 (S.D.N.Y.2003); *see also Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir.1995) (holding that standards for granting motion for reconsideration are strict, and reconsideration will generally be denied unless moving party can point to controlling decisions or data that court overlooked, which might reasonably be expected to alter conclusion reached by court.).

Motions for reconsideration should not be used as "a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not." *Bostic v. AT & T*, 312 F.Supp.2d 731, 733 (D.V.I.2004) (*citing Slater v. KFC Corp.*, 621 F.2d 932, 939 (8th Cir.1980); *see also Fein v. Peltier*, 36 V.I. 197, 198 (D.V.I.1997) ("Motions for reconsideration should not be used as a vehicle for rehashing and expanding upon arguments previously presented or merely as an opportunity for getting in one last shot at an issue that has been decided."); *FDIC v. World Univ., Inc.*, 978 F.3d 10, 16 (1st Cir.1992) (motions for reconsideration "are aimed at reconsideration, not initial consideration.")

Respondents' motion for reconsideration is nothing more than a vehicle for registering disagreement with the Commission's decision and for raising arguments that could have been raised before but were not. The fact remains, Respondents affirmatively chose to not show up for the show cause hearing. Therefore, they cannot now argue that they were in any precluded by the Commission from submitting a defense to the DGE's petition. Additionally, Respondents spend considerable time making a distinction between the use of the terms "complaint" and "petition" as if somehow they have different meanings under the circumstances. In many respects, the terms "complaint" and "petition" are interchangeable; both are pleadings that initiate legal proceedings.

Respondents' also rely heavily on 3 V.I.C. § 468 and argue that the Commission did not follow the process thereby denying Respondents a fair opportunity to be heard. Specifically, Respondents' assert that they were denied their due process rights because they "cannot not be expected to defend themselves if they do not know what they are specifically accused of, so they can present evidence rebutting the elements of those specific charges." See, Respondents' Motion for Reconsideration at p. 11. Respondents also seem to think that 3 V.I.C. § 468(c) prohibits the Commission from scheduling a show cause hearing once a petition or complaint is filed. That is simply not the case. 3 V.I.C. § 468(c) provides that "[w]ithin 15 days after service of the complaint, the licensee or registrant **may** file with the Commission a notice of defense, in which he **may**:

(1) Request a hearing;

(2) Admit the accusation in whole or in part;

(3) Present new matters or explanations by way of defense; or

(4) State any legal objections **to the complaint.**

See, 3 V.I.C. § 468(c).

First, the DGE's petition was detailed enough to specifically put the Respondents on notice of what violations were alleged. Moreover, the Commission's show cause order scheduling the show cause hearing also detailed what the asserted violations were. Therefore, Respondents' assertion that their due process was violated is false. Second, Respondents seem to believe that the Commission is prohibited from acting for 15 days when a complaint or petition is filed and therefore, had no legal authority to schedule the October 13, 2020 hearing. This assertion is also misplaced. Once a complaint or petition is filed, it is the Respondent who has **within** 15 days after service to file a notice of defense. The Commission, in its order, gave the Respondents the

opportunity to do just that. The DGE filed its petition and served Respondents on September 29, 2020; the Commission issued its show cause order on October 5, 2020 and directed the Respondents to file a written response no later than October 8, 2020. Rather than take that time to respond substantively to the contents of DGE's petition, the Respondents chose to lodge disagreement with the way a show cause hearing was scheduled. Further, then chose to not attend the hearing to present a defense. That was a choice solely made by the Respondents.

Conclusion:

The Respondents have failed to establish any error on the part of the Commission herein justifying the Commission to reconsider or vacate its October 5, 2020 Order. Accordingly, the premises considered, and the Commission otherwise being duly advised, it is hereby

ORDERED that the Respondents' motion for reconsideration and to vacate is **DENIED** and Respondents' additional request for an extension of time is **DENIED AS MOOT**. It is further

ORDERED that a copy of this Order be served on Respondents and the Division of Gaming Enforcement.

Done and So ORDERED this 10th day of November 2020.

FOR THE COMMISSION:

Honorable Usie R. Richards
Acting Chairman

ATTEST:

Henry E. Schjang
VICCC—Special Assistant for Licensing and Compliance