



Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

2nd Circ. Flushes 'Game Of Skill' Poker Ruling

By **Kathryn Brenzel**

Law360, New York (August 06, 2013, 2:23 PM ET) -- The Second Circuit on Tuesday reversed the landmark acquittal of a man convicted of running an illegal Texas Hold 'em poker club on Staten Island, finding that the lower court had mistakenly found that the definition of a gambling business hinged on whether the game employed skill or chance.

The lower court **wrongfully granted** Lawrence DiCristina's bid to dismiss charges that he violated the federal Illegal Gambling Business Act with a poker club he operated in 2010 and 2011, according to the opinion. The court had agreed that the federal definition of gambling under the statute was ambiguous and reasonably pertained only to games of chance, meaning that poker — predominated by skill — didn't count among illegal games, according to court documents.

But a three-judge panel on Tuesday said DiCristina's operation met the central criteria for an “illegal gambling business”: It involved five or more people, violated state law, lasted more than 30 days and netted a gross revenue of \$2,000 or more in any single day.

“Had Congress intended to limit the reach of the IGBA to businesses operating games of chance, it could have done so by inserting that language,” the opinion states. “Because we find no such ambiguity, we decline to limit the statute’s reach beyond its plain terms.”

The panel ordered that the case be remanded and that the lower court reinstate DiCristina's conviction. An attorney for DiCristina could not immediately be reached for comment.

The August 2012 dismissal was a bold step for the Brooklyn district court, as the first federal opinion in the nation to pin poker as a game that can be mastered, rather than just a matter of luck. At the time, some experts surmised that the ruling could help state court challenges.

Between December 2010 and May 2011, DiCristina and his co-defendant Stefano Lomardo ran a poker club in the back room of a warehouse in Staten Island, according to court documents. DiCristina also operated a legitimate business out of the location, selling electric bicycles, according to court documents.

The poker games were held twice a week and were advertised via word of mouth and text messages, according to court documents. Prosecutors estimated players made between \$60,000 and \$100,000 a night, and that DiCristina pocketed about 5 percent.

The two men pled guilty in December 2011, and in April 2012 Lombardo was sentenced to four years of probation, according to court records. But DiCristina withdrew his guilty plea in May 2012, according to Monday's opinion. A jury ultimately found him guilty of conspiracy and gambling in July, but U.S. District Judge Jack B. Weinstein tossed the verdict in August.

Federal prosecutors [lodged an appeal](#) three weeks later, arguing that the ruling could rob authorities of an important tool used to crack down on gambling operations.

Representatives for the [U.S. Attorney's Office](#) did not immediately return requests for comment.

DiCristina is represented by Neal Katyal of [Hogan Lovells](#).

The case is U.S. v. DiCristina, case number 12-3720, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Stephen Berg.

All Content © 2003-2013, Portfolio Media, Inc.