

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 13-096

ELIZABETH SMITH  
September 30, 2013

WHEREAS, Elizabeth Smith ("Smith"), requested a hearing to contest the proposed disciplinary action initiated against her on February 5, 2013, by the Commission's issuance of a Disposition of Occupational Gaming License Application; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Smith's request and the Hearing Officer has submitted the proposed Findings of Fact, Conclusions of Law and Final Order attached hereto (collectively the "Final Order") for approval by the Commission; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission has reviewed the Final Order and hereby approves and adopts the attached Final Order in the matter of DC-13-173; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.



6. The Commission's investigation revealed that Petitioner failed to disclose in her application that she had been arrested on December 6, 2012 for two charges of Hot Check/Personal Services \$200-\$2500 in Jonesboro, Arkansas.
7. Petitioner testified at the hearing on August 27, 2013 that she failed to disclose the arrests for Hot Check/ Personal Services \$200-\$2500 in her application. Petitioner testified that she had a memory oversight, and that she did not remember the incident as an arrest because she was not detained, she voluntarily appeared at the police station and subsequent court hearing, and did not have to post a bond.
8. Petitioner further testified that the charges were later dismissed after she satisfied the court that the checks were stolen from her.

### CONCLUSIONS OF LAW

1. "The Commission shall have full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805 MO. REV. STAT. 2010.
2. "A holder of any license shall be subject to the imposition of penalties, suspension, or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order, and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit the Missouri gaming industry of the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts may be grounds for such discipline: (1) Failing to comply with or make provision for compliance with Sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state, or local law or regulation." Section 313.812.14 MO. REV. STAT. 2010.
3. "The burden of proof is at all times on the petitioner. The petitioner shall have the affirmative responsibility of establishing the facts of his/her case by clear and convincing evidence . . ." Regulation 11 CSR 45-13.060(2).
4. "Clear and convincing evidence" is evidence that "instantly tilts the scales in the affirmative when weighed against the opposing evidence, leaving the fact finder with an abiding conviction that the evidence is true." *State ex. rel. Department of Social Services v. Stone*, 71 S.W.3d 643, 646 (Mo. App. 2002).

5. "The state has a legitimate concern in strictly regulating and monitoring riverboat gaming operations. As such, any doubt as to the legislative objective or intent as to the Commission's power to regulate riverboat gaming operations in the state must be resolved in favor of strict regulation." *Pen-Yan Investment, Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 307 (Mo. App. 1997).
6. "The commission may refuse an occupational license to any person ... who fails to disclose or states falsely information called for in the application process." Regulation 11 CSR 45-4.260(4)(D).

### **DISCUSSION**

The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. Petitioner had the burden to show by clear and convincing evidence that the Commission should grant him a license. Petitioner admitted that she had failed to disclose the prior arrests for Hot Check/Personal Services \$200-\$2500. Such lack of disclosure does not show by clear and convincing evidence that Petitioner has proven her suitability to be licensed.

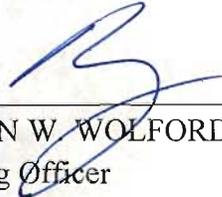
The application process by written documents and by a personal interview provided clear instruction of the duty to disclose and to correctly state information called for in the application process. Petitioner's testimony did not overcome the legal authority that rests with the Commission to deny Petitioner her license based upon her failure to disclose and to correctly state information needed for the application process. The law grants discretion to the Commission to deny a license for such failures. Petitioner did not meet her burden of proof by clear and convincing evidence that would necessitate a reversal of the Commission's decision to find Petitioner unsuitable for licensure.

### **FINAL ORDER**

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner did not meet her burden of proof to show that he is suitable for a Level II Occupational license in that Petitioner failed to provide the information needed on her application for a Level II Occupational License. The decision of the Commission dated February 5, 2013 is affirmed as a proper denial of a license for Petitioner.

DATED: \_\_\_\_\_

September 11, 2013

  
\_\_\_\_\_  
BRYAN W. WOLFORD  
Hearing Officer