

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 14-015

SARA BOOTH  
April 30, 2014

WHEREAS, Sara Booth ("Booth"), requested a hearing to contest the proposed disciplinary action initiated against her on December 4, 2012, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-12-374; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Booth'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 adopts the Hearing Officer's recommendation and vacates and sets aside the one calendar day suspension of Booth's occupational license in the above-referenced case in the matter of DC-12-374; and

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



- b) Shortly after leaving the turnstiles for his hotel room, the intoxicated patron returned and was allowed to enter upon the gaming floor. The events surrounding his admission and activities on the gaming floor are as follows:
- i. At 2:05 a.m. the intoxicated patron approached King Boarding and handed his Missouri Driver's License to Security Officer Pamela Marlow. The two engaged in conversation for approximately thirty seconds before Marlow allowed him access to the casino floor.
  - ii. At 2:09 a.m. the intoxicated patron entered the poker room and spoke to the Licensee and Poker Floor Supervisor Jon Kanter for approximately forty seconds. Shortly thereafter, the intoxicated patron left the poker room.
  - iii. At 2:11 a.m. the intoxicated patron returned to the poker room and spoke to the Licensee and Kanter. He wanted to buy cheques; however, the poker bank was closed because the Poker Brush Tara Chavez was conducting a buy.
  - iv. At 2:15 a.m. Chavez returned with the poker buy escorted by Security Guard Lucas Pilgram. The intoxicated patron waited at the poker podium with Kanter until Chavez returned.
  - v. At 2:16 a.m. Chavez sold the intoxicated patron \$100 worth of cheques and he was seated at table four, seat number ten, which is to the immediate right of dealer Ashley Creager. Creager dealt the intoxicated patron three hands.
  - vi. At 2:21 a.m. Beverage Server Christa Blank served the intoxicated patron a bottle of Bud Light at poker table four, seat ten.
  - vii. At 2:22 a.m. Kanter walked up behind table four and observed the intoxicated patron for signs of impairment.
  - viii. At 2:23 a.m. Kanter walked to the poker podium and instructed the Licensee to call food and beverage to determine if the intoxicated patron was intoxicated.
  - ix. At 2:25 a.m. Creager was relieved by Poker Dealer Batung Dieg. Dieg dealt the intoxicated patron three hands.
  - x. At 2:27 a.m. Food and Beverage Manager Vincent DelPercio arrived in the poker room and watched the intoxicated patron.
  - xi. At 2:29 a.m. DelPercio contacted the intoxicated patron to evaluate Starr's determination that he was intoxicated. Security Supervisor Lisa King contacted the Commission and began to escort the intoxicated patron from the gaming floor.

- c) At 2:33 a.m. Cpl. McTheeney responded to the poker room and observed the intoxicated patron who had been denied access to the gaming floor earlier in the evening. The intoxicated patron was immediately placed under arrest for Trespassing in the First Degree and was escorted to the Missouri Gaming Commission office for processing.
5. Cpl. McTheeney noted during his initial contact with the intoxicated patron at 1:41 a.m. that the patron had slurred speech and was loud and aggressive.
6. Cpl. McTheeney admitted that he had extensive training during the course of his career to identify intoxicated persons and had, in fact, encountered "a lot" of intoxicated persons in his career.
7. Cpl. McTheeney admitted that Licensee did not know and would not have known that the patron had been previously denied admittance to the gaming floor due to being intoxicated.
8. Licensee admitted that she only noticed that the patron had glassy and bloodshot eyes during her encounter with the patron, and that Licensee did not notice any additional signs of intoxication. Licensee further admitted that, because there can be other causes of glassy and bloodshot eyes, and absent any further signs of intoxication, she did not believe that the patron was intoxicated.
9. Licensee continued to monitor the patron, and upon observing additional signs of intoxication, she directed Kanter to observe the patron. Following observations by Kanter and DelPercio, the patron was determined to be intoxicated and the Commission was notified.

#### **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. 2012.

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. Under 11 CSR 45-9.060(3), violations of the Commission's Minimum Internal Control Standards ("MICS") by a Class A licensee or an agent or employee of the Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
7. Under 11 CSR 45-9.060(4), violations of the Class A licensee's internal control system ("ICS") by a Class A licensee or an agent or employee of the Class A licensee shall be prima facie evidence of unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to discipline pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
8. 11 CSR 45-5.053(3)(B) states, "The holder of a Class A license is expressly prohibited from . . . permitting persons who are visibly intoxicated to participate in gaming activity."
9. The Commission's Minimum Internal Control Standards, Chapter N, § 4.02 states, "Persons who are visibly intoxicated shall not be permitted access to or allowed to remain on the casino floor."

10. "The commission may . . . revoke or suspend an occupational license of any person . . . who has failed to comply with or make provision for complying with Chapter 313, RSMo, the rules of this commission, or any federal, state, or local law or regulation." Regulation 11 CSR 45-4.260(4)(E).

### **DISCUSSION**

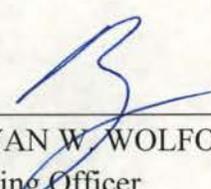
The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner first observed the intoxicated patron after he entered the poker room on the gaming floor. Petitioner did not know, nor could she have known, that the patron was previously denied entrance onto the gaming floor. Petitioner's testimony that she only observed one potential sign of intoxication in the patron was not rebutted. Petitioner's testimony that she continued to observe the patron to see if the patron demonstrated additional signs of intoxication was also not rebutted. Once Petitioner observed additional signs of intoxication in the patron, she contacted Kanter to corroborate the observation, and the Commission was immediately notified once the Casino staff determined that the patron was intoxicated.

At the time Petitioner encountered the intoxicated patron, her observation did not lead her to believe that the patron was visibly intoxicated. Petitioner's actions were not in violation of Missouri law. Petitioner has met her high burden of proof of clear and convincing evidence in showing that no violation occurred.

### **FINAL ORDER**

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner is found to have not violated Missouri law and is therefore not subject to discipline. The decision of the Commission dated November 15, 2012 to impose a one (1) calendar day suspension against Petitioner is hereby vacated and set aside.

DATED: March 25, 2014

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