

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 15-003

NYRA CAMPBELL
January 28, 2015

WHEREAS, Nyra Campbell ("Campbell"), requested a hearing to contest the proposed disciplinary action initiated against her on November 27, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-604; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Campbell'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 recommendations of the Hearing Officer in the above-referenced case in the matter of DC-13-604 and imposes no discipline on the licensee; and

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

- c) At 19:49 hours, the patron walked to the Fan Club booth where she encountered the Petitioner. As the patron approached the Fan Club, she walked very slowly and swayed as if her balance was unsteady. The patron engaged in a conversation with the Petitioner lasting approximately fifty seconds, and then parted from the Fan Club. Petitioner did not identify the patron as being intoxicated.
 - d) After departing the Fan Club, the intoxicated patron sat down at a closed gaming table briefly, and then moved to an electronic gaming device to begin playing. She was approached at 19:53 hours by Floor Supervisor Richard Fladung. Fladung suspected the patron was intoxicated, and immediately contacted the Pit Supervisor who, in turn, notified security.
 - e) At 20:00 hours, security personnel contacted the intoxicated patron at a different electronic gaming device. After engaging in a four-minute conversation with the patron, they escorted her from the gaming floor. The intoxicated patron walked through the lobby and exited the building through the valet area.
 - f) At 20:08 hours, Sgt. Hourihan made contact with the intoxicated patron in the parking lot and determined that she was intoxicated.
5. Sgt. Hourihan testified that the intoxicated patron exhibited glazed eyes, slurred speech, a confused demeanor, odor of intoxicants on her breath, and difficulty with balance.
 6. Petitioner testified that she observed the intoxicated patron enter onto the gaming floor and approach the Fan Club. Petitioner testified that she did notice that the patron walked slowly and shuffled her feet as she walked. Petitioner thought that the patron had diminished mobility and needed a cane. Petitioner further testified that during their brief conversation, the patron spoke softly and Petitioner had to turn her ear toward the patron to hear her. Petitioner did not notice any odor of intoxicants on the patron. Other than the off-balance walking displayed by the patron, Petitioner did not observe any additional signs of intoxication.
 7. Petitioner testified that the edge of the counter at the Fan Club is tall, and there was some distance between Petitioner and the patron as they spoke.

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 as the patron entered on to the gaming floor and approached Petitioner at the Fan Club counter. Petitioner saw the patron walking off-balance, but thought that the patron had diminished mobility due to age or disability. Petitioner's testimony that she only observed one potential sign of intoxication in the patron was not rebutted. Petitioner's testimony that the Fan Club counter placed distance between Petitioner and the patron was not rebutted.

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 27, 2014 to impose a one (1) calendar day suspension against Petitioner is hereby vacated and set aside.

DATED: November 26, 2014



BRYAN W. WOLFORD
Hearing Officer