

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 15-051

KEVIN J. MEYER
September 23, 2015

WHEREAS, Kevin J. Meyer (“Meyer”), requested a hearing to contest the proposed disciplinary action initiated against him on January 22, 2015, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-14-441; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Meyer’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 issues to Meyer a two day suspension of his occupational license in the above-referenced case in the matter of DC-14-441; and

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

BEFORE THE MISSOURI GAMING COMMISSION

In Re:)
)
 KEVIN J. MEYER) Case No. DC 14-441
)
)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission") upon a request for hearing undated and received by the Commission February 23, 2015, submitted by Mr. Kevin J. Meyer (hereinafter referred to as "Licensee"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated January 22, 2015. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a hearing on July 22, 2015, where the Licensee and the Commission's attorney, Ms. Carolyn H. Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. Licensee holds a Level II Occupational License granted by the Commission for employment on an excursion gambling boat licensed by Commission.
2. On August 21, 2014, Licensee was employed as a Slot Performance Manager at the Hollywood Casino, St. Louis, Missouri.
3.
 - a. Electronic Gaming Devices (EGD) can be set to lockup and become unplayable at certain jackpot limits, thereby requiring a casino attendant to physically come out to the EGD and physically hand the casino patron a WG-2 statement (Tr.p.11, 1.8-12) for withholding tax purposes pursuant to RsMO 143, *et seq* (Exhibit 3).
 - b. On EGD B004/5605 that jackpot lockup number was set at \$1,299.99 and EGD B004/5605 was placed in storage July 7, 2013 (Exhibit 3, p.1).
 - c. EGD, such as EGD B004/5605 are normally set at \$1,199.99, so that any amount \$1,200.00 and above will lock the game (Tr.p.12, 1.4-5).
 - d. On June 15, 2013, Licensee Meyer received a Compliance Directive (CD, ID 8930) from the Commission as follows:

YOU ARE DIRECTED TO COMPLY WITH GAMING REGULATIONS OR CONTROLS BY TAKING THE FOLLOWING CORRECTIVE ACTION

Due to incident at EZ03; a patron was dealt a \$4000 win which did not lockup the EGD for a W-2G, the MGC is requesting that all EGD's at Hollywood casino on the floor and as they come in from storage, have their jackpot limit option checked.

(Exhibit 4)

e. On November 5, 2013, EGD B004/5605 was brought back to the floor of the Hollywood Casino from storage, but the lockup jackpot number had not been checked as per the Compliance Directive (Exhibit 3, p.2).

f. On August 21, 2014, verification was made that the lockup jackpot number on EGD B004/5605 was incorrectly set at \$1,299.00 rather than \$1,199.99 (Exhibit 3, p.6).

g. Although Licensee Meyer, as Slot Performance Manager, is not charged with the actual setting of the correct lockup jackpot number, he is responsible for making sure that it is done (Tr.p.18, l.3-4).

h. Licensee admitted under oath that on August 21, 2014, the lockup jackpot limit on EGD B004/5605, which had been put on the floor at the Hollywood Casino “was set incorrectly” (Tr.p.21, l.20).

i. Licensee Meyer admitted under oath that ultimately it is his responsibility to make sure that all of the EGDs that came on to the floor are set up correctly (Tr.p.26, l.16-19).

4. Sworn testimony was received at the Hearing July 22, 2015, from Rick Reynolds, Commission EGD Specialist and Licensee Kevin J. Meyer.

5. Commission Exhibit 1 – January 22, 2015, letter from Roger D. Sottelmyre to Kevin J. Meyer and Preliminary Order for Disciplinary Action; Exhibit 2 – Undated letter, received by the Commission February 23, 2015, from Kevin J. Meyer requesting a Hearing; Exhibit 3 – Gaming Incident Report for Incident No. 20140822002; and Exhibit No. 4 – two Compliance Directives, dated June 15, 2013, and August 21, 2014, directed to Kevin J. Meyer were adduced and received into evidence without objection.

CONCLUSIONS OF LAW

1. “The Commission shall have the full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850.” Section 313.805, MO. REV. STAT. 2000.

2. “A holder of any license shall be the subject to 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 or the State of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts or omissions 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 regulation; . . . “Section 313.812.14, MO. REV. STAT. 2000.

3. “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 this 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).

4. The burden of proof is at all times on the Licensee. The Licensee 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).

5. “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).

6. “The Commission shall have the following powers . . . to access any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, and penalties of an amount as determined by the Commission . . .” Section 313.805(6), MO. REV. STAT. 2000.

7. Section 313.812.14(1), RSMO (2000), states that a Licensee may be disciplined for failing to comply with or make provisions for compliance with Section 313.800 to 313.850, the rules and regulations of the Commission of any federal, state or local law or regulation.

8. Section 313.812.14(2), RSMO (2000), states that a Licensee may be disciplined for failing to comply with any rule, order of ruling of the Commission or its agents pertaining to gaming.

9. Section 313.812.14(9), RSMO (2000), states that a Licensee may be disciplined for incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties by Sections 313.800 to 313.850.

DISCUSSION

The facts adduced reflect that an Electronic Gaming Device (EGD) with an incorrect setting was placed on the floor at the Hollywood Casino. This occurred after Licensee Meyer was directed to check the setting on all EGDs on the floor and as the EGDs come out of storage. Licensee Meyer does not contest that the limit on EGD B004/5605 was set incorrectly but contends that neither his personal actions and/or inactions led to the incorrect settings. As Slot Performance Manager, Licensee was not responsible for the actual settings on the EGDs, but the ultimate responsibility for making sure the settings were correct, both on the floor and coming from storage was his, a responsibility Licensee did not meet.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Licensee did not meet his burden of proof to show clearly and convincingly that he should not be subject to discipline for failing to meet his responsibility of ascertaining the correct settings of all EGD on the floor and coming from storage. The Preliminary Order For Disciplinary Action of a two (2) calendar day suspension is affirmed.

Dated:

August 21, 2015


Chas. H. Steib, Hearing Officer