

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 15-054

JIMMY CATON  
September 23, 2015

WHEREAS, Jimmy Caton ("Caton"), requested a hearing to contest the proposed disciplinary action initiated against him on April 2, 2015, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-15-067; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Caton'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 Caton a revocation of his occupational license in the above-referenced case in the matter of DC-15-067; 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: )  
 )  
 JIMMY CATON ) Case No. DC 15-067  
 )  
 )

**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 an updated but received by the Commission April 24, 2015, request for hearing submitted by Mr. Jimmy Caton (hereinafter referred to as "Licensee"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated April 2, 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 May 5, 2015, Licensee was employed as a Food and Beverage Busser at the Isle of Capri Casino in Kansas City, Missouri.

3. a. The incident herein occurred at Harrah's North Kansas City Casino.
- b. On the following dates and times the Canal restroom at Harrah's North Kansas City Casino was damaged:

February 20, 2014	3:40 a.m. – 7:21 a.m.	
April 28, 2104	12:08 a.m. – 1:36 a.m.	
May 1, 2014	3:53 a.m. – 5:50 a.m.	
May 5, 2014	11:52 a.m. – 12:23 a.m.	(Exhibit 4)

c. Licensee Caton was observed on surveillance video entering the Canal restroom on the following dates:

February 20, 2014	5:21 a.m. – 5:22 a.m.	
April 28, 2104	12:32 a.m. – 12:33 a.m.	
May 1, 2014	4:31 a.m. – 4:32 a.m.	
May 5, 2014	12:13 a.m. – 12:14 a.m.	(Exhibit 4)

d. Due to the similarity of the dates/times of the damage occurring and the dates/times of Licensee's proximity to the Canal restroom, a procedure was established by the Security personnel at Harrah's to examine the Canal restroom immediately prior to

Licensee Caton entering the Canal restroom and Licensee's Caton exiting the Canal restroom (Tr.p.12).

e. On May 22, 2014, at 4:16 a.m. surveillance video showed Licensee moving toward the Canal restroom, whereupon Emmanuel Presquit, Security Officer at Harrah's inspected the Canal restroom, finding it undamaged (Tr.p.12).

f. Security Officer Presquit observed no other person in or entering the Canal restroom other than Licensee Canton (Tr.p.12).

g. Upon Licensee Caton exiting the Canal restroom, John Valluzzi, Shift Manager Security entered Canal restroom at 4:17 a.m. to find the walls of the Canal restroom "all messed up" (Tr.p.15), scratching across the wall similar to damage in the past (Tr.p.15).

h. On the above date and time, Corporal Jay A. Shirley, Missouri Highway Patrol, had occasion to contact Licensee Caton and take Licensee to the Commission Office at Harrah's whereupon a search of Licensee Caton located a key on Licensee's keychain which had fresh drywall dust on it consistent with the color and texture of the drywall in the damaged Canal restroom (Tr.p.32).

i. Licensee Caton was then arrested on a charge of Property Damage 2<sup>nd</sup> Degree (Exhibit 3).

j. Subsequently the charge of Property Damage 2<sup>nd</sup> Degree was dismissed by *Nolle Pros* in the 7<sup>th</sup> Judicial Circuit Court of Missouri (Clay County) (Exhibit 5) following Licensee Caton paying damages of \$1,200.00 and agreeing "not to get into trouble for a year" (Tr.p.41).

4. Sworn testimony was received July 22, 2014, from Emmanuel Presquit, Harrah's Casino Security ; John Valluzzi, Harrah's Casino Security; Corporal Jay Shirley, Missouri Highway Patrol and Licensee Jimmy Canton.

5. Commission Exhibit No. 1 – April 2, 2014, letter from William K. Seibert, Jr., to Jimmy Canton, along with a Preliminary Order for Disciplinary Action; Exhibit No. 2 – Licensee Canton's Request for a Hearing; Exhibit No. 3 – Commission Gaming Incident Report No. 20140522001; Exhibit No. 4 – Commission Gaming Incident Report No. 20140429003 were all admitted into evidence without objection. Commission requested and received permission, without objection from Licensee Caton, to later introduce a Certified Copy of the transcript of Cause No. 14CY-CR03309, State of Missouri v. Jimmy Canton in file in the Circuit Court of Clay County, Missouri.

### **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

Surveillance video and actual observation by the Security Personnel at Harrah’s North Kansas City Casino established that Licensee Caton was the perpetrator of certain acts of damage to the walls of the Canal restroom at said Casino.

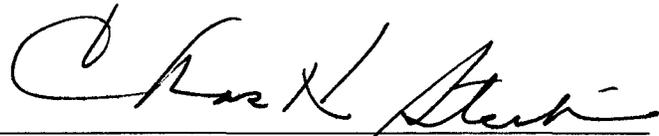
Licensee Caton in fact entered a plea agreement pursuant to advice of Legal Counsel to pay damages in return for a Dismissal of a misdemeanor charge of Property Damage 2<sup>nd</sup> Degree.

**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 inflicting property damage to the walls at Harrah's North Kansas City Casino and the Revocation of Licensee Jimmy Caton's Level II License is affirmed.

Dated:

August 21, 2015



Chas. H. Steib, Hearing Officer