

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 16-054

KATHLEEN A. MULFORD
December 7, 2016

WHEREAS, Kathleen A. Mulford ("Mulford"), requested a hearing to contest the proposed disciplinary action initiated against her on March 29, 2016, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-16-035; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Mulford'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 Mulford a one (1) day suspension of his occupational license in the above-referenced case in the matter of DC-16-035; 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: Kathleen Mulford

)

)

)

Case No. 16-035

License Number: 155005

)

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 receipt of a letter dated April 1, 2016 making a request for a hearing by Kathleen Mulford (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated March 29, 2016. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on September 20, 2016 where the Petitioner and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On November 30, 2015 and all times relevant hereto, Petitioner was employed by Ameristar Casino Kansas City, Inc. ("Company") as a Shift Manager aboard the *Ameristar Casino Kansas City* ("Casino").
2. On January 25, 2016 Corporal Christine McClaran ("Cpl. McClaran") of the Missouri State Highway Patrol was contacted by surveillance at the Casino about a patron being asked to leave the premises upon refusing to present identification.
3. On January 25, 2016, Cpl. McClaran was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Cpl. McClaran' investigation and review of surveillance video recordings revealed the following:
 - a) On November 29, 2015, the Casino identified a patron, D.C., age 35, as an advantage player.
 - b) Table Games Supervisor Ken Long ("Long") notified Lead Casino Supervisor Frank Bailey ("Bailey") that D.C., an advantage player, was in Petitioner's section of the Casino.
 - c) Bailey called Petitioner, who instructed Bailey to ask the player to show identification.

- d) D.C. refused to present the identification to Bailey and was asked to leave the casino floor.
 - e) Petitioner knew D.C. was over 21 years of age and that he was an advantage player when she instructed Bailey to ask D.C. for his identification.
5. Petitioner testified at hearing that when she asked Bailey to obtain identification from D.C., D.C. was fifty feet away from her and she could not see his face. She testified that she determined that D.C. looked to be under 35 years of age, and that she wanted to make sure that he was of legal age to be on the gaming floor.
 6. Cpl. McClaran testified that the Petitioner specifically stated that Petitioner asked for D.C. to be identified. She testified that the facts at the time of the incident indicated that D.C. was asked for his identification to determine if he was the advantage player, not for a legitimate statutory reason.
 7. Petitioner's actions in asking a patron known to be over 21 years of age to show identification for the purpose of identifying him is injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and discredits the Missouri gaming industry and the State of Missouri, and violates Section 313.817.5 RSMo. (2016); Section 313.812.14 RSMo. (2016), 11 CSR 45-4.260(4)(E), (F), & (Q); and 11 CSR 45-10.030(1) & (7).

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. Section 313.817.5 RSMo. (2016) states "In order to help protect patrons from invasion of privacy and the possibility of identity theft, patrons shall not be required to provide fingerprints, retinal scans, biometric forms of identification, any type of patron-tracking cards, or other types of identification prior to being permitted to enter the area where gambling is being conducted on an excursion gambling boat or to make a wager, except that, for purposes of establishing that a patron is at least twenty-one years of age..."
7. 11 CSR 45-10.030(1) states "Licensees shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations), minimum internal control standard requirements or commission of rule committed by licensees, their employees or others..."
8. "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 is a Shift Manager at the Casino, and is aware of her obligations as a Level II licensee. The Casino suspected that D.C. was an advantage player, and Petitioner requested his identification to confirm the suspicion. Petitioner had no

other valid purpose for requesting D.C. to produce identification other than confirming to the Casino that he was the advantage player the Casino believed him to be.

Petitioner's actions in asking a patron known to be over 21 years of age to show identification for the purpose of identifying him is injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and discredits the Missouri gaming industry. Petitioner did not meet 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 violated Missouri law and is subject to discipline at the discretion of the Commission. The decision of the Commission dated March 29, 2016 to impose a one (1) calendar day suspension against Petitioner is affirmed as a proper and appropriate discipline.

DATED: November 3, 2016



BRYAN W. WOLFORD
Hearing Officer