

IN THE MISSOURI GAMING COMMISSION

In Re:)
) DC-17-112
Ameristar Casino Kansas City, Inc.)

PRELIMINARY ORDER FOR DISCIPLINARY ACTION

Comes now the Missouri Gaming Commission acting in its official capacity pursuant to 11 CSR 45-13.050, and states as follows:

1. The Missouri Gaming Commission (the "Commission") or ("MGC") is a state commission created under Chapter 313, RSMo 2000,¹ with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.
2. The Commission issued Pinnacle Entertainment, Inc., a Class A gaming license to develop and operate Class B gaming licenses in the State of Missouri.
3. Pinnacle Entertainment Inc. is the parent organization or controlling entity of Ameristar Casino Kansas City, Inc. (the "Company").
4. The Commission issued a Class B riverboat gambling license to the Company to conduct games on and operate the excursion gambling boat known as the *Ameristar Casino Kansas City* (the "Casino").
5. As the holder of a Class B license, the Company is subject to the provisions of §§ 313.800 to 313.850, RSMo, and the regulations promulgated thereunder by the Commission.

STATEMENT OF FACTS²

6. On December 3, 2016, MGC initiated a regulatory investigation in which multiple patrons' losing wagers at the Dragon Bonus and Commission Free Dragon Bonus Mini Baccarat tables were being refunded from the table chip bank.
7. The MGC noted 13 incidents where there was such a refund between October 27, 2016 and February 10, 2017.
8. The amount of uncollected wagers from those tables during that timeframe totaled \$135,045.00, representing untaxed gaming revenue to the Casino, due to decisions to either refund patron bets from the table chip bank or to not collect losing wagers from the patrons.
9. These refunds led to incorrect adjusted gross revenue calculations, which caused a shortage to the amount of tax revenue that was collected by the MGC from the Casino.

¹ All statutory references are to RSMo 2000, unless otherwise specified

² 20161212006

10. The refunds occurred after patrons alleged procedural errors in the dealing of current or past hands or incorrect readings or incorrect displays on the reader board and subsequently lost the hand.
11. The alleged procedural errors did not affect the games' integrity or the outcome of the games.
12. The refunds were not authorized by the rules of the game, the Commission's minimum internal control standards ("MICS"), or the Casino's internal control system ("ICS").
13. The Casino's ICS did not authorize the refund of wagers to be paid from the chip bank.

LAW

14. Under § 313.805(6), RSMo, the Commission may assess any appropriate administrative penalty against a licensee, including but not limited to, suspension, revocation or penalties of an amount determined by the Commission.
15. Section 313.812.14, RSMo, states, in pertinent part, as follows:

A holder of any license shall be 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 commission shall take appropriate action against any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of this subsection, 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 or regulations;
 - (2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to gaming.
16. Title 11 CSR 45-9.060 states, in pertinent part, as follows:
 - (3) Violations of the minimum internal control standards by a Class A or Class B licensee or an agent or employee of a Class A or Class B licensee are deemed to be unsuitable conduct for which the Class A or Class B licensee and/or its agent or employee is subject to administrative penalty pursuant to section 313.805(6), RSMo and 11 CSR 45-1 et seq., as amended from time-to-time. Any agent or employee of a Class A or Class B licensee that is involved in a

violation of the minimum internal control standards may be subject to fine, discipline, or license revocation.

- (4) Violations of the Class A licensee’s internal control system by the Class A or Class B licensee or an agent or employee of the Class A or Class B licensee shall be *prima facie* evidence of unsuitable conduct for which the Class A or Class B licensee and/or its agents or employees may be subject to discipline pursuant to section 313.805(6), RSMo and 11 CSR 45-1 et seq., as amended from time-to-time.

17. Title 11 CSR 45-10.030, states in pertinent part, as follows:

- (1) 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 rule committed by licensees, their employees or others, including, without limitation, the performance of licensed activities different from those permitted under their license.

* * *

- (4) Licensees shall take reasonable actions to safeguard from loss all tokens, tickets, chips, checks, funds, and other gaming assets.

* * *

- (7) All occupational licensees shall have a working knowledge of Chapter 313.800, RSMo et seq., *Code of State Regulations*, Title 11 Division 45, and the internal controls of the Class A or B licensees for whom they are currently employed by as they pertain to the responsibilities and limitations of their job.

18. Title 11 CSR 45-11.020, states, in pertinent part, as follows:

- (1) As authorized in section 313.822, RSMo, a tax is imposed on the adjusted gross receipts received from gambling games at the rate of twenty-one percent (21%) (the “gaming tax”).
- (2) The gaming taxes imposed shall be returned and remitted through the commission to the Missouri Department of Revenue.

* * *

- (7) Licensees. Beginning in the first month, second day of operation, each licensee, as a condition of its license, shall deposit daily into the operating account an amount sufficient to cover the estimated tax and fee liabilities for the previous day. The licensee then shall timely remit from the operating account to the commission the gaming tax and admissions fee for each daily period that is defined as the business day for the purpose of establishing the estimated tax and fee liabilities.

19. Title 11 CSR 45-11.030, states, in pertinent part, as follows:

- (1) The licensee shall timely remit from the operating account to the commission the gaming tax for each daily period that is defined as the business day for the purpose of establishing the estimated tax and fee liabilities.

* * *

- (5) In the case of an underpayment of any weekly amount to be paid, the licensee shall be liable for interest on the delinquent amount as determined under 11 CSR 45-11.120(2) and for a penalty, which shall be five percent (5%) of the amount of the underpayment.

20. Title 11 CSR 45-11.040(1) requires the licensee to “file a tax return with the commission for each gaming day the licensee holds a Class A license and shall remit to the commission any unpaid amount shown on the return.”

21. 11 CSR 45-11.120(1), states as follows:

- (1) Any licensee required to collect, account for and pay over any gaming tax or admission fee, who willfully, with intent to defraud, fails to collect the tax or fee, or truthfully account for and pay over the tax or fee, or willfully attempts in any manner to evade or defeat the tax or fee, or the payment of it, in addition to other penalties provided by law, shall be liable for a penalty equal to the total amount of the tax or fee evaded, or not collected, or not accounted for and paid over. For purposes of this rule, the term licensee includes an individual or an officer or employee of the licensee or a member or employee of the licensee who is under a duty to perform the act in respect of which the violation occurs.

22. 11 CSR 45-11.130(2), states as follows:

- (2) In case of failure to deposit accurate estimates of the gaming tax or admission fee on or before the date prescribed for deposit to the commission (determined with regard to any extension of time for payment), unless it is shown that the failure is due to reasonable cause and not the result of willful neglect, evasion or fraudulent intent, there shall be added to the tax or fee an amount equal to five percent (5%) of the deficiency.

23. Title 11 CSR 45-11.140(1) gives the Commission the following authority:

- (1) If the commission is not satisfied with the return or payment of taxes or fees made by any licensee, the commission may make an additional assessment of tax or fees due from the licensee, based upon the facts contained in the return or upon any information within the commission's possession or that shall come into the commission's possession.

24. ICS, Chapter C/Bac 3, Commission Free Dragon Bonus Baccarat, states that the game “is a version of mini baccarat. The game play is identical to standard Mini Baccarat, with two exceptions” dealing with when the banker bets push and the fact that the winning bets are not charged commission.
25. ICS, Chapter C/Bac 6, Mini Baccarat Dragon Bonus, states that the game “is a version of mini baccarat. The game play is identical to standard Mini Baccarat but with an added Bonus wager.”
26. ICS, Chapter C/Bac 7, Mini Baccarat, states, in pertinent part, as follows:

Object of the Game

The object of the game is for the guest to place a wager on the "banker", the "player", or the tie bet. Once all bets have been set, the Dealer will deal two cards to the guest and two cards to the bank. ... In the game of Mini-Baccarat, guests make no decisions as to how the cards will be played. The player or banker hand is hit or not hit depending on their point value and the "third card rule" governing how the hands are to be played, (see table). These rules are specific and do not change. Once all hands have been hit, or drawn to, the hand with the point value closest to nine (9) will win.

* * *

Rules of the Game

- Once the first card of any hand has been exposed by the dealer, no guest will handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to the wager.
- The house will collect a 5% commission on all bank hands won by the guest.
- All losing bets will be collected before payment is made on any winning bets.
- The hand with a point value closer to nine (9) wins. If the point value of both hands after the end of play are the same, the guest will neither win nor lose. This is a tie or push hand.

* * *

Collection of Bets and Payouts

1. All losing bets will be collected first.
2. The Dealer will pay the winning bets even money one at a time from right to left. If the banker wins, all commissions will be collected as the wager is paid or clearly marked with a lammer in the commission box.

3. All winning tie bets will be paid at eight (8) to one (1) odds. Tie bets will be paid in turn, starting with the guest in the third base position.

27. Both the MICS and the Casino's ICS, Chapter D, § 2.01, state as follows:

Chips shall only be added to or removed from the table inventory:

- (A) in exchange for cash presented by a patron ...;
- (B) for payment of winning wagers;
- (C) collection of losing wagers made at the table;
- (D) through approved internal controls governing table fill and credit procedures;
- (E) in exchange with a patron for gaming chips of equal value;
- (F) in exchange for a verified automated tip receipt from a MGC approved automated table game controller;
- (G) at the roulette table in exchange with a patron for non-value chips from that roulette table; or
- (H) in exchange for a patron-signed counter check.

28. Both the MICS and the Casino's ICS, Chapter I, § 1.04, require the Casino³ to "immediately notify MGC when there are reasonable grounds to believe a violation of the rules or regulations has occurred that jeopardizes the protection of assets or the integrity of gaming."

29. Both the MICS and the Casino's ICS, Chapter I, § 5.01 require admission and gaming taxes to "be deposited daily into established accounts via an Electronic Funds Transfer (EFT) system employing an Automated Clearinghouse Debit (ACH-Debit) or wire transfer method and paid each banking day via an Electronic Funds Transfer (EFT) system employing a wire transfer method."

30. Both the MICS and the Casino's ICS, Chapter I, § 5.02 require "adjustments to AGR resulting in additional tax [to] be made when found, reported to MGC, and included in the next weekly tax payment wired to the Missouri Department of Revenue (DOR)."

31. Both the MICS and the Casino's ICS, Chapter I, § 5.05 require tax to "be paid daily on drops as they occur."

³ The MICS name the Accounting Department as the reporting agent, and the ICS name the Casinos Finance Department as the required reporting agent.

VIOLATIONS

32. The actions or omissions of employees or agents of the Company, as described above, constitute a failure by the Casino to ensure that the table games offered to its patrons followed the rules of the game, that wagers were properly paid, and that the Casino paid the correct amount of taxes based on its adjusted gross receipts, thereby violating 11 CSR 45-10.030, 11 CSR 45-11.020, 11 CSR 45-11.030, 11 CSR 45-11.040, the Commission's MICS, Chapter D, § 2.01 and Chapter I, §§ 1.04, 5.01, 5.02, and 5.05, and the Company's ICS, Chapter C/Bac 3, Commission Free Dragon Bonus Baccarat, Chapter C/Bac 6, Mini Baccarat Dragon Bonus, Chapter C/Bac 7, Mini Baccarat, Chapter D, § 2.01, and Chapter I, §§ 1.04, 5.01, 5.02, and 5.05.
33. The Company is therefore subject to discipline for such violations pursuant to §§ 313.805(6) and 314.812.14 (1) and (2), RSMo, and 11 CSR 45-9.060(3) and (4).

PENALTY PROPOSED

34. Under § 313.805(6), RSMo, and 11 CSR 45-11.120(1), the Commission has the power to assess any appropriate administrative penalty against the Company, as the holder of a Class B license.
35. Under 11 CSR 45-11.130(2) and 11 CSR 45-11.140(1) the MGC has the authority to make an additional assessment of taxes based on the facts learned during its investigation.
36. THEREFORE, it is proposed that the Commission assess the following penalties against Ameristar Casino Kansas City, Inc.:
 - a. A fine in the amount of \$30,000 for the violations set forth herein; and
 - b. A gaming tax assessment equal to 21% of the uncollected wagers (\$135,045.00), for the amount of \$28,359.45.

Herbert M. Kohn
Chairman
Missouri Gaming Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing to be mailed, postage prepaid, this ____ day of August, 2017, to:

Keith Henson
Ameristar Casino Kansas City
P.O. Box 33480
Kansas City, MO 64120-3480

Herbert M. Kohn
Chairman
Missouri Gaming Commission