

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 18-004

JOHN TERMINI
January 10, 2018

WHEREAS, the Missouri Gaming Commission (hereafter, "Commission") placed John Termini ("Termini") on the Exclusion List by Commission Resolution No. 95-036, dated July 26, 1995, excluding him from Excursion Gambling Boats and Facilities in Missouri; and

WHEREAS, on February 14, 2017, Termini filed a Reinstatement Request from Involuntary Exclusion List pursuant to 11 CSR 45-15.040 and 11 CSR 45-15.050; and

WHEREAS, pursuant to 11 CSR 45-13.010, et seq., and 11 CSR 45-15.010, et seq., an administrative hearing was held on Termini'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 approves and adopts the attached Final Order in the matter of DC-17-087, removing John Termini from the Exclusion List; 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:

JOHN TERMINI

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Case No. DC-17-087

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "MGC" "Commission") upon receipt of a request for a Hearing by John Termini (hereinafter referred to as "Termini"). Said request for Hearing was in the form of correspondence styled Re: Reinstatement Request from Involuntary Exclusion List of John R. Termini, under date of February 14, 2017, authored by Salvatore J. Mirabile, Attorney and Counselor at Law. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a Hearing on September 14, 2017. The Commission's attorney, Mrs. Carolyn Kerr, appeared to present evidence and arguments of law. Licensee appeared in person and was represented by Salvatore J. Mirabile, Esq.

FINDINGS OF FACT

1. Prior to 1991, Termini was an employee of Be Amused Vending and Amusement Company ("Be Amused") (Tr.p.9, l.13).
2. Be Amused placed cigarette machines; jukeboxes; pool tables; and electronic machines in bars and restaurants (MGC Ex.6, p.000009).
3. Be Amused's machines included video poker and slot machines (MGC Ex.6, p.000009).
4. As part of his job, Termini traveled to bars and restaurants to perform services on Be Amused's machines including collecting proceeds from the machines, restocking cigarette machines, and reimbursing bar owners for illegal payouts to video machine players (MGC Ex.6, p.000009).
5. On July 24, 1991, a two (2) count indictment was returned against Termini and five (5) defendants: Count I – Conducting an Illegal Gambling Business in Violation of Missouri State Law; and Count II – Aiding and Abetting a Money Laundering Scheme (MGC Ex.6, p.000010).
6. At age 52, Termini was convicted on both Counts and sentenced to a term of twenty-seven (27) months incarceration (91-00118-03-CR-W-3).
7. On Appeal to the United States Court of Appeals for the Eighth District, Termini did not contest his conviction on the gambling offense in Count I and so, said conviction remained in place. However, the Court of Appeals, reversed Termini's conviction on Count II (sic Aiding and Abetting a money laundering scheme) (*United States of America vs. John Termini*, No. 92-2262 WMKC).
8. On October 7, 1994, Termini was notified that the Missouri Gaming Commission was placing him on the Exclusion List because of his 1992 Class D felony conviction for conducting an illegal gambling business (MGC Ex.5, p.2).

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9. Termini petitioned the MGC requesting a Hearing regarding the placing of his name on the Exclusion List and a Hearing was held March 29, 1995 (MGC Ex.1).

10. Based upon the Hearing held March 29, 1995, the Hearing Officer recommended and the Missouri Gaming Commission adopted an Order denying Termini's request for removal of his name from the List of Excluded Persons (MGC Ex.1).

11. Termini appealed the Order of the Missouri Gaming Commission and in an Opinion filed May 7, 1996, the Missouri Court of Appeals, Western District, affirmed the Order of the Missouri Gaming Commission (*Termini vs. Missouri Gaming Commission*, WD 51451).

12. Termini is now seventy-seven (77) years old and for the past twenty-five (25) years has been employed at American Health Care Alliance, a managed health care marketing entity dealing with Preferred Provider Organizations (Tr.p.11, 1.6-9).

13. Since March 1, 1995, Termini has been the Controller of American Health Care Alliance where he is responsible for all accounts receivable, all accounts payable, and payroll (Tr.p.12, 1.9-11).

14. Termini has been an exemplary employee of American Health Care Alliance. He has been honest and straightforward (Testimony of Edwin L. Cosler, Jr., President of American Health Care Alliance, Tr.p.15, 1.14).

15. MGC Exhibit 1 (MGC Business Record Affidavit); Exhibit 2 (Notice of October 7, 1994, to Termini); Exhibit 3 (Opinion of Missouri Court of Appeals, Case No. 51451); Exhibit 4 (Request for Hearing dated February 14, 2017); Exhibit 5 (Opinion of Missouri Court of Appeals); Exhibit 6 (Record of *United States vs. John Termini*, No. 91-00118-03-CR-W-3); and Exhibit 7 (FBI Fingerprint Search Request and Record of John Termini) were admitted into the Record.

CONCLUSIONS OF LAW

1. 11 CSR 45-15.010 Duty of Exclude states in part:

(1) No excluded person shall be permitted entry into any portion of a riverboat gaming operation. When a person is placed on the exclusion list by the commission, this person shall be prohibited from contact of any kind with any Missouri riverboat gaming operation unless and until a determination is made by the commission or a court to the contrary (emphasis added).

2. 11 CSR 45-15.020 Distribution and Availability of Exclusion List states in part:

(1) The commission shall maintain a list of persons to be ejected or excluded from a riverboat gaming operation. The list shall be distributed to each riverboat gaming operation which shall acknowledge receipt of the list in writing.

3. 11 CSR 45-15.030 Criteria for Exclusion or Election and Placement on an Exclusion List states in part:

(1) The commission may place a person on the exclusion list or eject that person from a riverboat gaming operation pending a hearing if the person has -

(A) Been convicted of a felony in any jurisdiction of any crime of moral turpitude or of a crime involving gaming;

4. 11 CSR 45-15.040 Procedure for Entry of Names states in part:

(3) If the commission or a subsequent judicial review finds in favor of the candidate or excluded person, then his/her name shall be removed from the exclusion list and his/her exclusion shall be terminated as of the date of the action by the commission or the court.

5. "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.

6. 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).

7. "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).

DISCUSSION

Although Termini was appropriately placed on the Exclusion List in October, 1994, and his challenge appropriately denied by the Missouri Court of Appeals in 1996, some twenty-two (22) years have passed. During that time Termini has occupied a position of fiscal trust with American Health Care Alliance, has had no contact with a Missouri riverboat gaming operation and had no constabulary contact which would warrant continued placement on the Missouri Gaming Commission List of Excluded Persons. Termini has demonstrated by clear and convincing evidence that his name should be removed from the Exclusion List.

FINAL ORDER

WHEREFORE, THE PREMISES CONSIDERED, IT IS ORDERED AND ADJUDGED that based upon the evidence adduced and admitted, the credible testimony adduced and the Record In Toto Termini has demonstrated by clear and convincing evidence that the name of John Termini should be removed from the Missouri Gaming Commission List of Excluded Persons and John Termini's Request for same is hereby granted.

Dated: October 25 2017

Chas H Steib
Chas. H. Steib, Hearing Officer