

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 20-020

JAMES CRAVEN
August 26, 2020

WHEREAS, James Craven (“Craven”), residing at 232 Spring Oaks Drive, Ballwin, Missouri, was found to be unsuitable for a Level II Occupational License; and

WHEREAS, pursuant to 11 CSR 45-13.050, Craven requested a hearing to contest the commission’s finding of unsuitability for a Level II Occupational License; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Craven’s application for a Level II Occupational License, and the Hearing Officer has submitted the proposed Findings of Fact, Conclusions of Law and Final Order attached hereto (collectively, the “Order”) for approval by the Commission;

NOW, THEREFORE, BE IT RESOLVED, that the Commission has reviewed the Order and the record of the hearing and hereby approves and adopts the attached Findings of Fact, Conclusions of Law and Final Order in the matter of Craven’s request for a Level II Occupational License and by so doing, denies Craven a Level II Occupational License.

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

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BEFORE THE MISSOURI GAMING COMMISSION APR 20 2020

In Re:

MISSOURI GAMING COMMISSION

JAMES CRAVEN

Case No. DC-20-001

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 James Craven (hereinafter referred to as "Applicant"), dated December 17, 2019. Said request for Hearing was in response to the Commission's denial to issue Applicant an Occupational Gaming License, dated on or about November 21, 2019 (MGC Exhibit 1). The designated Hearing Officer, Mr. Chas. H. Steib, conducted a Hearing on February 11, 2020. The Commission's attorney, Mrs. Carolyn Kerr, appeared to represent evidence and arguments of law. Applicant appeared to testify.

FINDINGS OF FACT

1. At the Hearing of February 11, 2020, MGC Exhibit 1 (Disposition of Occupational Gaming License Application); MGC Exhibit 2 (Correspondence of Applicant requesting Hearing); MGC Exhibit 3 (MGC Applicant Review Form); MGC Exhibit 4 (Level II Occupational License Application Personal Disclosure Form 2); MGC Exhibit 5 (Missouri State Highway Patrol Applicant Fingerprint Response); Applicant Exhibit A (Nolle Prosequi Memorandum of Jennifer Joyce, Circuit Attorney); Applicant Exhibit B (22nd Judicial Court Case Party Fee Report); Applicant Exhibit C (22nd Judicial Circuit Docket Sheet); and Applicant Exhibit D (22nd Judicial Circuit Dismissal Sheet) were all Admitted Into Evidence Without Objection.

2. On October 22, 2019, Applicant completed an Application with the Commission in order to obtain a Level II Occupational License for employment in the gaming industry.

3. The Application in question for a Level II Occupational License contained the following question numbered 10.a. and 10.b. "Have you ever been arrested, detained, charged, indicted, convicted, pleaded guilty or nolo contendere (no contest), or forfeited bail concerning any crime or offense, in any federal, state, or local jurisdiction, including any findings or pleas in a suspended imposition of sentence? If yes, complete the following chart." The chart asks for details (MGC Exhibit 1).

4. Page 15 of said Application, initialed by Applicant contains the following language:

CIVIL, CRIMINAL AND INVESTIGATORY PROCEEDINGS

The next question asks about any arrests, charges or offenses you have committed, prior to answering this question, carefully review the definitions and instructions which follow.

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DEFINITIONS: For purposes of this question:

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A. "Arrest" includes any detaining, holding, or taking into custody by any police or other law enforcement

authorities to answer for the alleged performance of any "offense".

- B. "Charge" means any indictment, complaint, information, summons (emphasis added), ticket, or other notice of the alleged commission of any "offense".
- C. "Offense" means all felonies, crimes, misdemeanors, municipal ordinance violations, military court-martials, and violations of probation or other court order. An "offense" does not include traffic or parking violations, except for driving while revoked / suspended, alcohol / drug-related traffic violations, and leaving the scene of an accident.

5. On said Application, Applicant disclosed a charge or offense of *DUI* in Kirkwood, Missouri, in November, 2009, and a charge of offense of *Leaving Scene of Accident* in April, 2010, and a charge of *Drug Possession* in the City of St. Louis in November, 2012 (MGC Exhibit 4, p.16).

6. Applicant's fingerprints were taken and forwarded to the Missouri State Highway Patrol following which an Applicant Fingerprint Response was received revealing not only those charges or arrests listed in paragraph 5 above, but these additional charges:

- (a) 05/09/2006 Kirkwood – Possession of up to 35 grams of Marijuana; Possession of Drug Paraphernalia; Littering
- (b) 11/14/2009 St. Louis County – DWI – Alcohol
- (c) 11/20/2011 Kirkwood – Leaving Scene of Motor Vehicle Accident; Possession of Controlled Substance
- (d) 12/20/2011 Chesterfield – Possession of Drug Paraphernalia; Possession of Controlled Substance – Felony
Chesterfield – Shoplifting
- (e) 01/19/2013 City of St. Louis – Possession of Controlled Substance – Felony
- (f) 05/25/2013 City of St. Louis – Resisting Arrest; Attempted Assault 3rd Degree; Unlawful Use of Drug Paraphernalia; Possession of Controlled Substance – Felony

None of which Applicant revealed on his Application for a Level II License (Tr.p.22, 1.17-25).

7. At the Hearing of February 11, 2020, Applicant made multiple Admissions Against Interest of his failure to disclose his legal history in his application (Tr.p.27, 1.5-7; p.29, 1.21-17; p.36, 1.10; p.40, 1.6-7).

Page 1 of the aforesaid MGC Application, initialed by Applicant on October 22 (MGC Exhibit 4) states:

You must make accurate statements and include all material facts. Any misrepresentation, or the failure to provide requested information, may result in the denial of your application . . .

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 (emphasis added), 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 burden of proof is at all times on the Applicant. The Applicant 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 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).

DISCUSSION

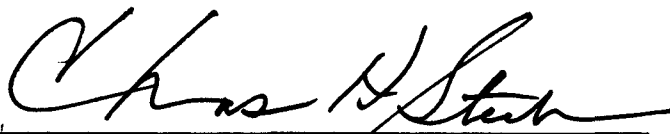
Applicant's wholesale failure to reveal multiple arrests involving multiple counts in multiple jurisdictions is clear and convincing evidence of Applicant's failure to comply with the requirements of the mandates of the Level II Occupational License Application Personal Disclosure Form 2.

FINAL ORDER

WHEREFORE, THE PREMISES CONSIDERED, IT IS ORDERED AND ADJUDGED that Applicant did not meet his burden of proof to show by clear and convincing evidence that he should be issued a Level II Occupational License and same therefore should be DENIED to Applicant.

Dated:

April 13, 2020



Chas. H. Steib, Hearing Officer