

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 24-011

ISLE OF CAPRI – BOONVILLE, INC.
February 21, 2024

WHEREAS, the Missouri Gaming Commission (hereafter, "Commission") issued a Preliminary Order of Disciplinary Action to Isle of Capri – Boonville, Inc., by Commission Resolution DC 23-042, dated August 31, 2023, for violations of the Commission's Minimum Internal Control Standards and Casino's Internal Controls, Chapter J, § 1.04, and

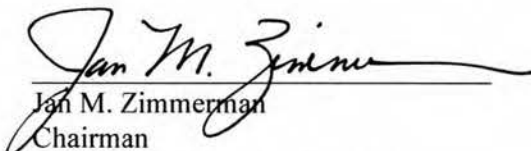
WHEREAS, on September 20, 2023, Isle of Capri – Boonville, Inc., filed a written petition with the Commission for a hearing to reconsider the penalty pursuant to 11 CSR 45-13; and

WHEREAS, on December 14, 2023, an administrative hearing was held, pursuant to 11 CSR 45-13.010, et seq., on the request of Isle of Capri – Boonville, Inc., and the Hearing Officer 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 adopts the attached Final Order in the matter of DC 23-042, upholding the \$10,000 fine against Isle of Capri – Boonville, Inc.; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission that Isle of Capri – Boonville, Inc., is fined \$10,000 for the violations set forth in the Preliminary Order of Disciplinary Action and the Proposed Findings of Fact, Conclusions of Law, and Final Order of the Hearing Officer.

SO ADOPTED.


Jan M. Zimmerman
Chairman
Missouri Gaming Commission

IN THE MISSOURI GAMING COMMISSION

In Re:)
)
Isle of Capri – Boonville, Inc.) DC 23-042

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On December 14, 2023, a hearing was conducted on a request for a hearing to review the Missouri Gaming Commission’s proposed disciplinary action against the gaming license of Isle of Capri – Boonville, Inc. After consideration of the testimony, exhibits and arguments of counsel, the undersigned contracted hearing officer submits the following findings of fact, conclusions of law and order for the consideration of the Missouri Gaming Commission:

PROCEDURAL HISTORY

By letter dated August 31, 2023, the Missouri Gaming Commission (hereinafter “MGC”) notified Isle of Capri – Boonville, Inc. (hereinafter “IOC”) of proposed disciplinary action against its gaming license. The letter set out a statement of facts in support of the proposed disciplinary action. The letter set out the rules and statutory sections IOC was charged with violating and was accompanied by a certificate of service. The MGC’s notice was compliant with 11 CSR 45-13.050.

By letter dated September 20, 2023, IOC requested a hearing to review the proposed disciplinary action and served it on MGC’s Executive Director, Peggy Richardson, on September 25, 2023. IOC’s request for hearing was compliant with 11 CSR 45-13.030.

By letter dated October 5, 2023, the undersigned contracted hearing officer, who is a licensed attorney authorized to practice law in the State of Missouri, notified the MGC and IOC of the hearing date which was to occur on December 14, 2023.

On December 14, 2023, a hearing was convened at the MGC's offices located at 3417 Knipp Drive, Jefferson City, Missouri. The MGC appeared by Deputy General Counsel, Nikki D. Evans, an attorney authorized to practice law in the State of Missouri. IOC appeared by its Director of Operations, Jamie Doss, who also is an attorney authorized to practice law in the State of Missouri.

At the hearing on December 14, 2023, there were several Exhibits admitted into the record of evidence without objection. The MGC's exhibits are described in the attached Exhibit A-1. IOC's Exhibits are described in the attached Exhibit A-2. Both Exhibits A-1 and A-2 are incorporated herein by reference as though fully set forth. Testimony was also taken and recorded. The record of evidence was, by agreement of the parties, left open for the receipt of the MGC's Exhibit 25 which consisted of IOC's total gross receipts and adjusted gross receipts for the "Gaming Days" on which the stipulated violations occurred. MGC's Exhibit 25 was subsequently received and admitted into evidence. The record was then closed.

FINDINGS OF FACT

It is undisputed that IOC failed to take turnstile readings on ten (10) occasions between September 9, 2022 and April 26, 2023 as required by applicable minimum internal controls (hereinafter "MICS"), Ch. J, Sec. 1.03 and 1.04, and IOC's internal control system (hereinafter "ICS"), Ch. J, Sec. 1.03 and 1.04. (MGC Exhibit 11, 12 and 13) As the result of these violations, the MGC proposed a combined monetary administrative penalty in the amount of ten thousand

dollars (\$10,000). (MGC Exhibit 7) IOC requested a hearing to review both the imposition of the monetary administrative penalty and/or the amount of the monetary administrative penalty. (MGC Exhibit 8)

IOC began taking remedial measures to prevent turnstile reading violations as early as June, 2022. (IOC Exhibit L) and continued taking measures to prevent the violations throughout the period in which the stipulated violations occurred. The measures included internal written and verbal warnings to employees who committed the violations. These warnings included the implementation of plans of action to correct the errors by the employees and the threat of termination in the event of future violations (IOC Exhibits A-F). IOC also referred employees the MGC for discipline which resulted in the MGC issuing non-punitive letters of concern to the offending employees but did result in formal disciplinary action being taken against the employees. (IOC Exhibits H-K). IOC management also sent emails to supervisors and employees responsible for taking the turnstile readings warning them of internal disciplinary action against not just the future offending employee, but the future offending employee's supervisor as well. (IOC Exhibits L-P). IOC also sought advice from unaffiliated auditors and on-site compliance personnel on how to prevent these violations.

Although the stipulated turnstile reading violations had in fact occurred, all taxes that would have been generated had the violations not occurred were nevertheless received by the State of Missouri. On each occasion, IOC established the correct turnstile count by reviewing surveillance video and then supplemented the turnstile count record in that way.

The applicable MICS and ICS require IOC to manually record turnstile counts at the end of each passenger excursion, which occurs every two (2) hours. When a count is missed by IOC and the record is then supplemented by reviewing security surveillance video, MGC auditors are

required to review the security surveillance video to verify IOC's record. IOC has chosen not to rely on an alternative method of turnstile recording, such as software that documents the turnstile readings electronically, as is common in the industry.

CONCLUSIONS OF LAW

IOC did not contend at the hearing nor did it present evidence at the hearing establishing that the MGC's authority to impose a monetary administrative penalty was in violation of constitutional provisions. IOC did not contend nor did it present evidence that the MGC's authority to impose monetary administrative penalties is in excess of its statutory authority or agency jurisdiction. IOC conceded by stipulation (MGC Exhibit 13) that the violations are supported by competent and substantial evidence. IOC did not contend nor did it present evidence that the MGC's authority to impose monetary administrative penalties is unauthorized by law. IOC did not contend nor did it present evidence that the MGC's proposed monetary administrative penalties were the result of unlawful procedure. IOC's sole contention was that the monetary administrative penalty was at best undeserved, or at worst excessive.

The Missouri General Assembly delegated the MGC the authority to supervise gambling operations governed by sections 313.800 to 313.850, RSMo. Section 313.805, RSMo, states, "The commission shall have full jurisdiction over and shall supervise all gambling operations governed by sections 313.800 to 313.850." The statute also authorized the MGC to "promulgate rules and regulations to implement sections 313.800 to 313.850." Specifically, the MGC was authorized by subsection (6) of the statute:

"To assess any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, and penalties of an amount as determined by the commission up to three times the highest daily amount of gross receipts derived from wagering on the gambling games, whether unauthorized or authorized,

conducted during the previous twelve months as well as confiscation and forfeiture of all gambling game equipment used in the conduct of unauthorized gambling games.”

By this statutory provision, the General Assembly imposed a “cap” on the amount of a monetary administrative penalty the MGC may impose. The monetary administrative penalty may not be more than three times the licensee’s highest daily amount of gross receipts derived from wagering during the previous twelve months. The only other limitation the statutory provision imposes on the MGC’s authority to assess a monetary administrative penalty is that the monetary administrative penalty must be “appropriate.” There is no further direction or limitation in the Revised Statutes of Missouri as to how the MGC is to calculate the amount of a monetary administrative penalty for a violation of any given rule or regulation promulgated by the MGC in the implementation of sections 313.800 to 313.850, RSMo. As such, the General Assembly left it to the MGC to determine the appropriateness of a monetary administrative penalty for a given violation, subject to the cap. Beyond that, the monetary administrative penalty simply must not be arbitrary, capricious or unreasonable, nor can it involve an abuse of discretion. Section 536.140.2, RSMo. See generally, *Grace vs. Missouri Gaming Commission*, 51 S.W.3d 891, 896 (Mo.App. W.D. 2001)

The only question here is did the MGC exceed the “cap” imposed by Section 313.805(6), and if not, was the monetary administrative penalty “appropriate,” meaning was it not arbitrary, capricious, unreasonable, or an abuse of discretion. *Id.*

The Section 313.805(6) “cap” for monetary administrative remedies was not exceeded

There were ten (10) violations here, any one of which could theoretically be subject to a monetary administrative penalty of “up to three times the highest daily amount of gross receipts derived from wagering on the gambling games... conducted during the previous twelve months.”

– provided the amount is appropriate in light of the nature of the violation, and not arbitrary, capricious, unreasonable or an abuse of discretion. While the record does not establish exactly what IOC’s highest daily amount of gross receipts derived from wagering during the twelve months preceding the violations, the record does establish IOC’s gross receipts and adjusted gross receipts from wagering on the dates of the stipulated violations. For instance, according to MGC’s Exhibit 25, same being attached hereto as Exhibit A-3 and incorporated herein by reference, on September 9, 2022, the date of the first stipulated violation, IOC’s gross receipts from wagering were \$1,906, 735.14. IOC’s adjusted gross receipts from wagering on that date were \$421,072.76. The proposed \$10,000 combined administrative penalty comes nowhere close to those figures multiplied by three. Therefore, the proposed monetary administrative penalty does not exceed the Section 313.805(6) “cap.”

The combined \$10,000 monetary administrative penalty was appropriate

From a pure “numbers” perspective, it simply cannot be genuinely argued that the proposed combined monetary administrative penalty is abusive to IOC in light of its gross receipts and adjusted gross receipts from wagering. On September 9, 2022, IOC generated \$1,906,735.14 from wagering, which was adjusted to \$421,072.76. Subtracting a \$1,000 monetary administrative penalty for the violation that occurred that day from adjusted gross receipts of \$421,076.76 amounts to less than ½ of one percent of those adjusted gross receipts. That is not financially abusive to IOC.

Further, the combined monetary administrative penalty equates to \$1,000 per stipulated violation. The violations are similar in nature in that the conduct of each violation was almost identical. Fashioning a round number of \$1,000 for each violation is not arbitrary. What would have been arbitrary is if the MGC had imposed discipline for each violation separately and

proposed randomly different monetary administrative penalties for each identical violation. The MGC did not do that.

Missing a turnstile count is likely not a capital offense in the gaming regulation world. One would surmise that intentionally hiding revenues or intentionally misreporting revenues is. Whether that is the case or not, if missing a turnstile count is a relatively minor violation, a \$1,000 monetary administrative penalty is a relatively minor penalty compared to what could theoretically be available and within the MGC's discretion considering the Section 313.805(6) "cap." Such a relative penalty is not unreasonable or capricious.

The MGC did not initiate disciplinary action after one, or two, or three, or even nine violations over the course of the roughly eight months the stipulated violation occurred. It gave IOC an opportunity, time and time again, to correct the problem. Although IOC tried, eventually accountability is required, and there is nothing arbitrary, capricious, abusive, or inappropriate in the way the MGC has considered and implemented its proposed discipline here.

IT IS THEREFORE ORDERED:

The proposed combined monetary administrative penalty of \$10,000 for the ten (10) stipulated violations is upheld.

Dated: January 5, 2024



Thomas B. Snider, MO Bar # 49971

MGC Contracted Hearing Officer



MGC Exhibit Index

1. Isle of Capri Boonville Request for Hearing, September 20, 2023.
2. Missouri Gaming Commission correspondence, August 31, 2023, and Preliminary Order for Discipline DC 23-042.
3. Gaming Incident Report 20221201004.
4. Gaming Incident Report 20230120004.
5. Gaming Incident Report 20230120003.
6. Gaming Incident Report 20230125005.
7. Missouri Gaming Commission Discipline letter, April 26, 2023.
8. Isle of Capri Boonville response to Missouri Gaming Commission, May 5, 2023.
9. Missouri Gaming Commission response to Isle of Capri Boonville, May 17, 2023.
10. Missouri Gaming Commission Notice of Hearing, October 5, 2023.
11. Minimum Internal Control Standards, Chapter J, Section 1.04.
12. Isle of Capri Boonville Internal Controls, Chapter J, Section 1.04.
13. Joint Stipulation of Material Facts DC 23-042.
14. Isle of Capri Boonville Daily Tax Transmittal, September 9, 2022.
15. Isle of Capri Boonville Daily Tax Transmittal, September 28, 2022.
16. Isle of Capri Boonville Daily Tax Transmittal, September 29, 2022.

17. Isle of Capri Boonville Daily Tax Transmittal, October 9, 2022.
18. Isle of Capri Boonville Daily Tax Transmittal, October 20, 2022.
19. Isle of Capri Boonville Daily Tax Transmittal, November 17, 2022.
20. Isle of Capri Boonville Daily Tax Transmittal, November 22, 2022.
21. Isle of Capri Boonville Daily Tax Transmittal, January 16, 2023.
22. Isle of Capri Boonville Daily Tax Transmittal, January 20, 2023.
23. Isle of Capri Boonville Daily Tax Transmittal, January 22, 2023.
24. Isle of Capri Boonville Memorandum for Missing/Malfunctioning Turnstile Count Procedures, June 6, 2022.



CASINO • HOTEL
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IOC-Boonville, Inc.
Hearing – DC-23-042

Exhibit Index

- A. Discipline - Brady, Tara 09.2022-12.2022
- B. Discipline - Branham, Harley 07.05.2022
- C. Discipline - Meloy, Isaiah 02.01.2023
- D. Discipline - Meloy, Isaiah 02.11.2023
- E. Discipline - Walters, Courtney 09.14.2022
- F. Discipline - Zoellick, Denise 01.20.2023
- G. Email Caesars Rewards Calendar Reminders for Turnstile Readings
- H. Non-Punitive Letter – Bell, Todd – NOI #20221201004
- I. Non-Punitive Letter – Meloy, Isiah – NOI #20230125005
- J. Non-Punitive Letter – Walters, Courtney – NOI #20221201004
- K. Non-Punitive Letter – Zoellick, Denise – NOI #2023012004
- L. Email from Jonathon Morten regarding Turnstile Count Memo, on June 8, 2022
- M. Email from Charles Stoops regarding Turnstile Meter Readings, on October 1, 2022
- ~~N. Email from Isaiah Meloy regarding Turnstile Numbers 1/22, on January 26, 2023~~
- ~~O. Email from Jonathon Morten regarding Tara Brady, on April 26, 2023~~
- ~~P. Email from Jonathon Morten regarding Denise Zoellick, on April 7, 2023~~



IOC – Boonville Total Gross Receipts and Adjusted Gross Receipts for Gaming Days on Which Violations Occurred¹

Date	Adjusted Gross Revenue	Total Gross Revenue
9/9/2022	\$421,072.76	\$1,906,735.14
9/28/2022	\$182,881.29	\$893,817.35
9/29/2022	\$218,794.64	\$1,298,265.00
10/9/2022	\$327,594.81	\$1,936,630.83
10/20/2022	\$210,487.89	\$1,024,155.54
11/17/2022	\$147,484.05	\$903,432.87
11/22/2022	\$144,888.07	\$954,166.66
1/16/2023	\$190,162.90	\$1,127,166.56
1/20/2023	\$296,501.59	\$1,953,772.60
1/22/2023	\$280,597.45	\$1,359,026.49
Total Revenues for 10 Dates:	\$2,420,468.45	\$13,357,169.00
Daily Average Revenues:	\$242,046.85	\$1,335,716.90
Statutory Maximum Administrative Penalty Pursuant to Section 313.805(6), RSMo:	\$726,140.54	\$4,007,150.71

NOTES: The above figures cite both the total gross revenue or receipts as well as the adjusted gross revenue or receipts (total minus deductions) from each date listed. The language of Section 313.805(6), RSMo, states that administrative penalties shall not exceed three times the daily gross receipts for a period of up to twelve months preceding the disciplinary action. To account for differences in interpretation of the statute, the figures for both total gross receipts and adjusted gross receipts have been provided. Further, to account for revenues on the dates in which violations occurred, these figures do not include a twelve-month average, but rather the average for the dates at issue in this matter.

¹ Information obtained from MGC Exhibit 14 through MGC Exhibit 23 (Daily Tax Transmittals from IOC Boonville).

