

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 15-024

ELIZABETH BURKE
March 25, 2015

WHEREAS, Elizabeth Burke (“Burke”), requested a hearing to contest the proposed disciplinary action initiated against her on October 16, 2014, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-14-278; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Burke’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 Burke a one (1) calendar day suspension of her occupational license in the above-referenced case in the matter of DC-14-278; 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: Elizabeth A. Burke

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Case No. 14-278

License Number: 306515

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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 November 10, 2014 making a request for a hearing by Elizabeth Burke (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated October 16, 2014. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on February 10, 2015 where the Petitioner and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On May 6, 2014, Petitioner was employed by PNK (River City), LLC ("Company") as a Table Games Supervisor aboard the *River City Casino* ("Casino").
2. On May 6, 2014, Sergeant Philip Hoffman ("Sgt. Hoffman") of the Missouri State Highway Patrol responded to radio traffic indicating an intoxicated patron was on the Casino floor.
3. On May 6, 2014, Sgt. Hoffman was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Sgt. Hoffman's investigation and review of surveillance video recordings revealed the following:
 - a) On May 6, 2014 at 1:44 a.m., an intoxicated patron was permitted entry onto the Casino floor and approached Table 304.
 - b) On May 6, 2014 at the time the intoxicated patron approached Table 304, the Petitioner was training Dealer Bridget Greathouse ("Greathouse").
 - c) Greathouse greeted the intoxicated patron when he arrived at Table 304 while the Petitioner was speaking to another patron.

- d) At 1:45 a.m., as Petitioner and Greathouse walked away from Table 304, Greathouse told Petitioner that she believed the patron may be intoxicated, but Petitioner took no action.
 - e) At 1:55 a.m., Petitioner received a call from Table 304 regarding an argument, and Petitioner proceeded back to Table 304 and contacted security.
 - f) At 2:06 a.m., Sgt. Hoffman observed that the patron at Table 304 showed visible signs of intoxication including stumbling, swaying, difficulty maintaining his balance, dropping items from his hands and having difficulty picking them up, and falling out of a chair.
 - g) At 2:06 a.m., security escorted the intoxicated patron off of the Casino floor.
5. Petitioner testified that Greathouse did tell her that the patron was stumbling, and Petitioner interpreted the statement as a sign that the patron needed to be observed for additional signs of intoxication. Petitioner said that she was going to take care of a dealer reassignment in Pit 2, and then return to Pit 3 to observe the intoxicated patron.
6. Petitioner's actions or inactions in allowing a visibly intoxicated person to remain on the Casino floor and in failing to promptly notify the Commission of the intoxicated person discredits the Missouri gaming industry and the State of Missouri, and violates Section 313.812.14 RSMo. (2012), Section 313.812.14(1), (2), & (9), RSMo. (2012), 11 CSR 45-10.030(1), (3), and (7), the Commission's Minimum Internal Control Standards ("MICS") Chapter N, § 4.02, and the Company's internal control system ("ICS") Chapter N, § 4.02.

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. Under 11 CSR 45-9.060(3), violations of the Commission's Minimum Internal Control Standards ("MICS") by a Class A licensee or an agent or employee of the Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
7. Under 11 CSR 45-9.060(4), violations of the Class A licensee's internal control system ("ICS") by a Class A licensee or an agent or employee of the Class A licensee shall be prima facie evidence of unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to discipline pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
8. 11 CSR 45-5.053(3)(B) states, "The holder of a Class A license is expressly prohibited from . . . permitting persons who are visibly intoxicated to participate in gaming activity."
9. The Commission's Minimum Internal Control Standards, Chapter N, § 4.02 states, "Persons who are visibly intoxicated shall not be permitted access to or allowed to remain on the casino floor."
10. "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

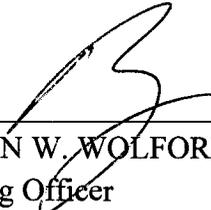
The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner, as a Table Games Supervisor, was responsible for ensuring that intoxicated patrons did not enter or remain on the gaming floor, and did not place wagers. Petitioner received information from her trainee dealer that a patron was showing signs of visible intoxication. Petitioner did not immediately observe the patron for additional signs of intoxication, nor did she contact Security or the Commission. During the ten minutes that elapsed from the time Petitioner was advised of the possible intoxicated patron until the Petitioner received the call of a disturbance involving the patron, Petitioner should have observed the patron for additional signs of intoxication and reported the patron to Security or the Commission. Because Petitioner failed to observe the patron, the patron was allowed to make wagers on a table game, and caused a disturbance on the Casino floor.

Petitioner's actions or inactions in allowing a visibly intoxicated person to remain on the Casino floor and in failing to promptly notify the Commission of the intoxicated person 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 October 16, 2014 to impose a one (1) calendar day suspension against Petitioner is affirmed as a proper and appropriate discipline.

DATED: February 11, 2015



BRYAN W. WOLFORD
Hearing Officer