

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 18-014

ZACHARY J. MERRIMAN
March 28, 2018

WHEREAS, Zachary J. Merriman ("Merriman"), requested a hearing to contest the proposed disciplinary action initiated against him on April 4, 2017, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-17-047; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Merriman'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 Merriman a revocation of his occupational license in the above-referenced case in the matter of DC-17-047; and

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

- c) Licensee was belligerent and uncooperative, and used profane language with casino staff and Cpl. Christensen;
 - d) When asked, Licensee refused to provide his employer information, specifically, that he had an active occupational gaming license and was employed by *Harrah's North Kansas City*; and
 - e) Cpl. Christensen arrested Licensee for First Degree Trespassing.
5. At hearing, the Licensee testified that he was not fully cooperative with Cpl. Christensen, and that Cpl. Christensen had omitted details from his official report. For example, Licensee stated that Cpl. Christensen pushed his head into a wall and strapped him down to a bench. The Licensee admitted to pleading guilty to criminal trespass as a result of the incident.
 6. Cpl. Christensen testified that casino security had tried for seven minutes to get the Licensee to leave the premises; that Licensee refused to leave even when Cpl. Christensen asked him to do so, that the Licensee was visibly intoxicated to such an extent that he could not stand upright, and that the Licensee resisted his lawful arrest.
 7. Licensee's actions toward the MGC agent and the casino staff, and his refusal to leave the casino after being requested to do so due to his intoxication is injurious to the public health, safety, morals, good order and general welfare of the people of the state of Missouri and discredits the Missouri gaming industry and the State of Missouri, and violates §§ 569.140 and 313.812.14, RSMo, and 11 CSR 45-10.030(7).

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. 2015.
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. 2016.

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. Section 569.140 RSMo. (2016) states: "A person commits the offense of trespass in the first degree if he or she knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure or upon real property."
7. 11 CSR 45-10.030 states: "(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."
8. "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 was aware of his obligations as a Level II licensee, and knew that intoxicated patrons should not be on the gaming floors at casinos. Indeed, Petitioner had the duty to prevent intoxicated patrons from being on the gaming floor. Petitioner is also aware that his duties and responsibilities as a Licensee are not limited to times that he is on the clock at his employer. Despite his knowledge of the law and his duties as a

licensee, Petitioner chose to enter the gaming floor of a casino while intoxicated. Petitioner also made the choice to ignore the requests of the casino staff and the MGC boat agent to leave the casino.

Petitioner's stubborn refusal to leave the casino and to obey the lawful requests of the casino staff and the MGC boat agent resulted in criminal trespass, for which Petitioner subsequently entered a plea of guilty in the circuit court. However, at hearing, Petitioner displayed no accountability for his conduct and instead he accused the MGC boat agent of improper conduct. The Hearing Officer did not find the Petitioner's testimony to be credible. He violated state law, and he failed to report the unlawful contact to the Commission or law enforcement as required by Missouri gaming regulations.

Petitioner's actions toward the MGC agent and the casino staff, and his refusal to leave the casino after being requested to do so due to his intoxication is injurious to the public health, safety, morals, good order and general welfare of the people of the state of Missouri and discredits the Missouri gaming industry. Petitioner did not meet his 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 April 5, 2017 to impose a **Revocation** is affirmed as a proper and appropriate discipline.

DATED: February 5, 2018


BRYAN W. WOLFORD
Hearing Officer