

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 18-015

CHRISTOPHER LE
March 28, 2018

WHEREAS, Christopher Le ("Le"), requested a hearing to contest the proposed disciplinary action initiated against him on July 13, 2017, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-17-061; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Le'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. The Commission hereby MODIFIES the Hearing Officer's proposed Final Order and suspends Le's occupational license for ten (10) days in the above-referenced case in the matter of DC-17-061; and

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

- d) Supervisors Francisco Santiago (“Santiago”), Jason Cook (“Cook”), and Donald Bills (“Bills”) responded to the table to investigate the issue; Santiago arrived first, and declared that the hand would be played out. The patron continued to complain, and Cook and Bills arrived. Santiago left the table, and Cook and Bills stated that the hand would be played out.
 - e) The patron then requested a higher supervisor to intervene, and the Licensee was called over to the table. Cook left the table and the Licensee arrived to investigate the incident;
 - f) Licensee declared that the hand would be a dummy hand, which means that the hand plays out and nothing wins and nothing loses. At the end of the hand, the players received their wagers back. The wagers amounted to approximately \$1,500.00. Had the hand counted, the players would have lost their wagers;
 - g) Licensee was not aware that the patron had viewed his face-down card. Licensee failed to contact surveillance to see whether or not the patron had looked at the card;
 - h) The following day, Santiago notified the Commission that he believed Licensee’s conduct was wrongful, and that Licensee did not declare the hand to be a dummy hand until the hand played out; and
 - i) Based upon Santiago’s statement, the Commission conducted an investigation into the incident and determined that Licensee had improperly paid losing wagers back to the patrons in violation of Missouri law.
5. At hearing, Petitioner testified that he called the hand a dummy hand before the hand was played out. He said he announced it to the table by stating “nothing wins, nothing loses” and waived his hands over the table. Petitioner also admitted that he was unaware that the patron had looked at his other face-down card, and that if he had known that fact, he would have let the hand play out and not call it a dummy hand. Petitioner admitted that he did not contact surveillance, and that he should have done so. Petitioner also testified that his subordinates were not happy with his decision to call the hand a dummy hand.
6. MSgt. Fitzgerald testified that the Licensee did not call the hand a dummy hand until after it was finished. He stated that Bills’ statement most accurately matched the surveillance video. He testified that the Licensee took losing wagers and paid them back to the patrons, thus negatively impacting the Casino’s adjusted gross revenue. He further testified that he did not believe that Scott’s statement that “nothing wins, nothing loses”

meant that the hand was a push. He stated that he was concerned that the Licensee did not contact surveillance or the Commission to report the incident, and that Licensee had a duty to do so.

7. The surveillance video was properly entered into evidence without objection. The surveillance video at time stamp 00:41:58 shows Scott having a conversation with someone off-camera in the area where the Licensee is standing. Scott reveals the patron's face-down card in that direction. When Licensee arrives on camera at time stamp 00:42:10, he gestures toward Scott with his hands. The only other casino employees at the table were Scott and Bills. The patrons were not in their seats at this time. At time stamp 00:42:15, Scott makes a waiving gesture with both of his hands over the playing surface and begins to complete the dealing of the hand. At time stamp 00:42:23, Licensee makes the same hand gesture. The hand concludes at 00:42:43 with the patrons receiving their wagers back from the table.
8. The statements of Scott and Bills were properly entered into evidence without objection. Scott stated that the Licensee did indeed call a dummy hand, but he was not one hundred percent sure whether this occurred before or after the hand played out. Bills stated that the Licensee called the dummy hand after the hand had played out. Neither Scott nor Bills testified at hearing.

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. 2017.
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. 2015.
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 the Commission's Minimum Internal Control Standards ("MICS"), Chapter D, §2.01, chips may only be added or removed from the table inventory under the circumstances expressly stated in the eight subsections of this specific internal control.
7. "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 is a Shift Manager – Casino Operations at the Casino, and is aware of his obligations as a Level II licensee. Petitioner is familiar with table games rules and procedures. Petitioner became involved in the incident at Table DB-304 when a patron had requested the opinion of a higher-ranking supervisor after three other supervisors had not resolved his issue to his satisfaction.

The party who reported the incident to the Commission, Supervisor Santiago, was not present at the time that the Petitioner made the decision to call the hand a dummy hand, and was not presented at hearing for examination by the parties. Supervisors Cook and Bills, and Dealer Scott were also not presented at hearing for examination. The Hearing Officer considers these factors when determining the weight and credibility assessed to their written statements contained in the investigation report.

Petitioner testified that he called the hand a dummy hand before it was played out, and declared to the table "nothing wins, nothing loses" by making a sweeping motion with his hands.

The surveillance video shows the Petitioner making a hand gesture to Dealer Scott before the hand is played out, and then Dealer Scott making a sweeping hand gesture over the table before playing out the hand. It is worth noting on the video that Dealer Scott plays the hand with the player's cards face-up after making the hand gesture. Dummy hands in baccarat may be played with the cards face-down or face-up. The surveillance video corroborates Petitioner's testimony at hearing. Petitioner's testimony was consistent with his written statement and his video-recorded interview with MSgt. Fitzgerald. The Hearing Officer finds the Petitioner's testimony credible and consistent with the surveillance video.

Ultimately, the Petitioner made the incorrect decision in calling the hand a dummy hand because the player had looked at his face-down card. The Hearing Officer finds that Petitioner was unaware of this fact, and also notes that the Petitioner did not follow proper procedure in that Petitioner failed to review surveillance video of the hand prior to rendering his decision. However, the central issue is whether the Petitioner improperly paid losing wagers back to patrons from the table inventory – wagers that should have been calculated in the casino's adjusted gross revenue and taxed accordingly. Because the hand was called a dummy hand before it was played out, the wagers were not losing wagers and the dummy hand was a push. As Petitioner and Dealer Scott stated at the table, nothing wins, nothing loses, and the wagers on the table were not considered to be a part of the table inventory when they were returned to the patrons. There was no adverse impact to the Casino's adjusted gross revenue in this instance, and Petitioner did not violate the minimum internal controls.

Petitioner's actions are not injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and do not discredit the Missouri gaming industry. Petitioner has met 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 has not violated Missouri law and is not subject to discipline at the discretion of the Commission. The decision of the Commission dated July 13, 2017 to impose a **thirty (30) calendar day suspension** is vacated and set aside.

DATED: _____

February 5, 2018



BRYAN W. WOLFORD
Hearing Officer