

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 18-058

SPAIN Q. MITCHEM  
December 5, 2018

WHEREAS, Spain Q. Mitchem (“Mitchem”), requested a hearing to contest the proposed disciplinary action initiated against him on May 10, 2018, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-18-041; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Mitchem’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 modifies the Hearing Officer’s recommendation and issues to Mitchem a fourteen (14) day suspension of his occupational license in the above-referenced case in the matter of DC-18-041; 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:

SPAIN Q. MITCHEM

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)  
) Case No. DC 18-041  
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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 a request for hearing submitted by Spain Q. Mitchem (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated May 10, 2018. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a hearing on September 11, 2018, where the Petitioner and the Commission's attorney, Mrs. Carolyn H. Kerr, appeared to present evidence and arguments of law and Applicant submitted testimony under oath regarding the proposed disciplinary action against Applicant for passing bad checks.

**FINDINGS OF FACT**

1. Petitioner holds a Level II Occupational Gaming License granted by the Commission for employment as a Security Officer on the Isle of Capri, an excursion gambling boat licensed by the Commission.
2. On June 14, 2017, Petitioner wrote a check in the amount of \$3,782.02 to the Department of Revenue for payment of the sales tax on a vehicle that he had just purchased with a woman to whom he was engaged to be married.
3. On June 14, 2017, the checking account of the Petitioner on which said check was written had insufficient funds to cover the above described check, but Petitioner's fiancée indicated to Petitioner she had sufficient funds to cover the check and would provide them the following day.
4. The above funds were never provided.
5. On January 18, 2018, Petitioner was charged in the Cole County Missouri Circuit Court with the misdemeanor of Passing Bad Checks (Misdemeanor A RSMo 570.120).
6. On March 15, 2018, Petitioner entered a Guilty Plea to the above Charge and received a Suspended Imposition of Sentence (SIS) and was sentenced to two (2) years unsupervised Probation, payment of all fines and costs and to make Damage Restitution in the sum of \$3,782.02.
7. On March 21, 2018, Petitioner's first day back at work after the March 15, 2018, Court date, Petitioner reported the above Court Proceedings via a MGC Gaming Employee Personnel Change Notice/Update Form.
8. Petitioner completed the Damage Restitution of \$3,782.02 as of July 2018.

9. MGC Exhibit 1 – MGC Preliminary Order of Discipline with Cover Letter; MGC Exhibit 2 – Petitioner’s Request for Hearing; MGC Exhibit 3 – MGC Gaming Incident Report herein; and MGC Exhibit 5 – Court Record 18AC-CR00242 from Cole County were all received into evidence without Objection.

### 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, 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 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).

4. 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).

5. “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).

6. Petitioner’s guilty plea to the Class A Misdemeanor of Passing a Bad Check 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, in that Petitioner’s acts or omissions violate § 570.120, RSMo, and 11 CSR 45-4.260(4)(A).

7. “The Commission shall have the following powers . . . to access any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, and penalties of an amount as determined by the commission . . .” Section 313.805(6), MO. REV. STAT. 2000.

### DISCUSSION

Petitioner has held a Level II Occupational License for over sixteen (16) years (since February 22, 2001). He is currently employed as a Security Officer at the Isle of Capri Casino. He self-reported this

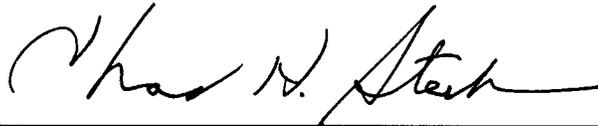
incident which occurred as a credible reliance on a forthcoming marital relationship which never materialized. Petitioner has admitted his "wrong" doing to both the Circuit Court of Cole County and at the MGC Hearing of September 11, 2018. The proposed disciplinary action of Revocation of his Level II License is the result of his writing one (emphasis added) check for which his account contained insufficient funds. Petitioner has made full Restitution of \$3,782.02, as Ordered by the Circuit Court of Cole County and has thus-far successfully completed his unsupervised probation.

### FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner did not meet his burden of proof to show by clear and convincing evidence that he should not be disciplined, and therefore, should be disciplined. Based upon the forthcoming self-admitted and self-reported wrong-doing of Petitioner, his credible testimony upon the reliance on his fiancée, his payment of full Restitution and his to date successful Probation, it is the Recommendation of the Hearing Officer that the Penalty imposed upon Petitioner be that his Level II Occupational License be Suspended for thirty (30) calendar days.

Dated:

September 29, 2018



Chas. H. Steib, Hearing Officer