

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 19-007

JANET FRIGERIO
February 27, 2019

WHEREAS, Janet Frigerio (“Frigerio”), requested a hearing to contest the Notice of Exclusion initiated against her on June 27, 2018, by the Commission's issuance of a Resolution Excluding her from Excursion Gambling Boats and Facilities in Missouri; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Frigerio’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 approves and adopts the attached Final Order in the matter of Hearing No. 18-070; 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: Janet Frigerio)
)
) Case No. 18-070
License Number: None)

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 and written petition dated July 27, 2018 making a request for a hearing by Janet Frigerio (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Resolution of Exclusion dated June 27, 2018. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on November 7, 2018 where the Petitioner and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On June 27, 2018 the Commission enacted Resolution 18-038 regarding exclusion of Petitioner Janet Frigerio from excursion gambling boats and facilities in Missouri. The Resolution resulted in Petitioner being permanently placed on the Exclusion List.
2. On August 27, 2015, Petitioner pled guilty to one count of Federal Program Theft under 18 USC § 666(a)(1)(A), a felony involving moral turpitude, in the United States District Court Eastern District of Missouri. During her employment at the Saint Louis Activity Center between January and September 2014, Ms. Frigerio embezzled, stole, without authority knowingly converted to her own use, and intentionally misapplied benefits in excess of \$10,000 under the Older American Act. The Court sentenced Ms. Frigerio to three months home confinement followed by five years' probation and ordered her to pay restitution in the amount of \$6,136.70. Under the terms of her probation, Ms. Frigerio was ordered to participate in a gambling addiction treatment program and was prohibited from engaging in any form of gambling.
3. On July 27, 2018, Petitioner filed a written petition with the Commission pursuant to 11 CSR 45-15.050 to be removed from the Exclusion List.
4. Petitioner testified at hearing that she should not be on the Exclusion List. She testified as to the facts and circumstances that resulted in her Federal case and plea, and stated that she entered the plea upon the advice of her attorney. Petitioner stated that her attorney advised her that she could plead guilty and get probation or fight the charge and spend a lot of money in two years, and prevail. Petitioner said she took the plea deal because she did not have the time or money to fight the charge. She claimed she was not guilty of the

Federal charge, even though she entered a guilty plea. Petitioner testified that she wants off of the exclusion list because she works with senior citizens and they like to go to the casino. Petitioner said she has not told her senior citizens at her workplace why she cannot accompany them to the casino.

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. "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).
3. "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).
4. "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).
5. 18 USC § 666(a)(1)(A) states, in relevant part:
 - (a) Whoever, if the circumstance described in subsection (b) of this section exists—
 - (1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—
 - (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that—
 - (i) is valued at \$5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency;

* * *

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

6. 11 CSR 45-15.030.1 states, in relevant part, "The commission may place a person on the exclusion list or eject that person from a riverboat gaming operation pending a hearing if the person has . . . (A) Been convicted of a felony in any jurisdiction of any crime of moral turpitude or of a crime involving gaming . . ."
7. 11 CSR 45-15.050 states, "Any person who has been placed on any exclusion list may petition the commission in writing and request that his/her name be removed from this list."

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 knowingly and voluntarily pled guilty to the Federal crime of Federal Program Theft pursuant to a negotiated plea. The essential elements of that crime include that the defendant embezzles, steals, or obtains by fraud property valued at over \$5,000. Black's Law Dictionary (5th Edition) defines moral turpitude as an "act or behavior that gravely violates moral sentiments or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others." In enacting its Resolution, the Commission found the crime of Federal Program Theft to be a felony involving moral turpitude.

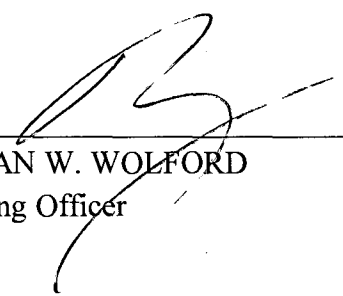
Further, a condition of the Petitioner's Federal probation is that she shall not engage in any form of gambling during her supervised probation. Petitioner voluntarily agreed to this condition when she entered her negotiated plea of guilty on August 27, 2015. Her probationary supervision period does not end until August 27, 2020. Until that date, Petitioner is forbidden from gambling in any form in any jurisdiction, including Missouri. Her placement on the Exclusion List aids in her compliance with this term of probation in the State of Missouri.

Finally, at hearing, Petitioner took little responsibility for the felony crime of Federal Program Theft, to which she pled guilty. Petitioner adduced evidence in an attempt to excuse, if not justify, her behavior. In her current position, as Petitioner testified, she has not told her employer or the senior citizen clients the reason that she cannot enter upon the gaming floor of a Missouri casino, and instead makes excuses as to why she cannot go on the premises. Petitioner did not meet her high burden of proof of clear and convincing evidence in showing that she should be removed from the Exclusion List.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner is found to be properly placed on the Exclusion List. Her Petition for Removal is DENIED.

DATED: December 27, 2018



BRYAN W. WOLFORD
Hearing Officer