

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 16-017

COLIN BARNES
April 27, 2016

WHEREAS, Colin Barnes ("Barnes"), requested a hearing to contest the proposed disciplinary action initiated against him on October 8, 2015, by the Commission's issuance of a Disposition of Occupational Gaming License Application; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Barnes' 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 DC-15-333; 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:)
)
COLIN BARNES) Case No. DC-15-333
)
)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission" "MGC") upon an undated request for hearing submitted by Colin Barnes (hereinafter referred to as "Applicant"). Said request for hearing was in response to the Commission's Disposition of Occupational Gaming License Application dated October 8, 2015. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a hearing on January 21, 2016, where the Commission's attorney, Ms. Carolyn H. Kerr, appeared to present evidence and arguments of law. However, though notice of the Hearing date and time was sent to Applicant's last stated address, Applicant appeared not.

FINDINGS OF FACT

1. Applicant executed, on October 8, 2015, a Commission Applicant Interview Form on which Applicant disclosed an arrest in 2011 for a misdemeanor stealing in Gladstone, Missouri (Exhibit 1).
2. Applicant disclosed in the Commission Applicant Interview Form a guilty plea in Kansas City, Missouri, in 2014 for possession of drug paraphernalia.
3. Applicant disclosed on the Commission Applicant Interview Form a guilty plea in Kansas City, Missouri, in 2014, for failure to yield to a police vehicle.
4. Commission Exhibits No. 1 (Missouri Commission Memo); No. 2 (Applicant Correspondence); No. 3 (Level II Occupational License Application Personal Disclosure Form 2); No. 4 (Missouri State Highway Patrol Criminal History Record of Applicant); and No. 5 (Commission Notice of December 15, 2015, addressed to Applicant regarding date and place of requested Hearing) were admitted into evidence.
5. Notification of the date and time for the Hearing requested by Applicant was sent to Applicant's last known address.
6. At the appointed time and the appointed date for said Hearing, the Applicant, although thrice called, appeared not.

CONCLUSIONS OF LAW

1. "The MGC 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 Applicant 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 MGC or any federal, state or local law or 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 MGC'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 Applicant. The Applicant 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. "The MGC shall have the following powers: . . . to access any appropriate administrative penalty against an Applicant, including, but not limited to, suspension, revocation, and penalties of an amount as determined by the MGC . . ." Section 313.805(6), MO. REV. STAT. 2000.

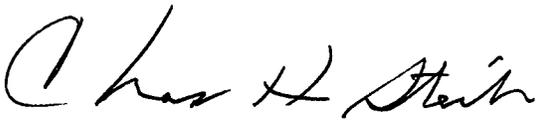
DISCUSSION

Although notification of the appointed time, date and place for the Hearing was mailed to Applicant's last known address, Applicant failed to appear.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Applicant did not appear and, hence, did not meet his burden of proof to show clearly and convincingly that he should be granted a Level II Occupational Gaming License.

Dated: February 16, 2016



Chas. H. Steib, Hearing Officer