

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 16-031

LASHONDA STEWART
May 25, 2016

WHEREAS, LaShonda Stewart ("Stewart"), requested a hearing to contest the proposed disciplinary action initiated against her on December 18, 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 Stewart'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 DC-16-010; 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: LaShonda Stewart)
)
) Case No. 16-010
Applicant.)

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 an undated letter received December 28, 2015 making a request for a hearing by LaShonda Stewart (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Disposition of Occupational Gaming License dated December 18, 2015. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on March 15, 2016. Although duly notified of the time and place for the hearing, Petitioner did not appear and no one on her behalf appeared. The Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On February 8, 2016, the Commission sent a letter to Petitioner by certified mail, return receipt requested, to her address at 8405 East 111th Street, Kansas City, Missouri 64134. The United States Post Office confirmed its date of delivery to the Petitioner as February 11, 2016, when Petitioner signed the Return Receipt. The letter notified the Petitioner that his hearing before the Commission's hearing officer was scheduled for Tuesday, March 15, 2016 at 9:00 a.m. at the Commission's office located at 1321 Burlington Street, Suite 100, Kansas City, Missouri 64116. The Letter also provided the Commission's telephone number at its principal office at (573) 526-4080 and the Commission's telephone number at its Kansas City office at (816) 482-5700.
2. Hearing Officer Wolford waited until 09:45 a.m. on Tuesday, April 5, 2016 to start the hearing after first calling the halls of the Commission's Kansas City office and central office to determine if Petitioner was present or had telephoned.
3. On September 4, 2015, Petitioner made an application with the Commission in order to obtain a Level II Occupational License for employment in the gaming industry.
4. In response to Petitioner's application, the Commission conducted an investigation in order to determine Petitioner's suitability for employment in the gaming industry.

5. The application for a Level II Occupational License contained the following question numbered 15: "Have you ever been barred or otherwise excluded (Disassociated Person, (DAP) Voluntary Exclusion), for any reason . . . from any . . . casino or gambling/gaming related operation in any jurisdiction?" The chart asked for details.
6. Petitioner listed three instances. First, she listed "Isle of Capri" on July 21, 2005 for the reason "want to save money." Second, she listed "AmeriStar" on June 14, 2006 for the reason "need time off the boat." Finally, she listed "7 Street" on December 15, 2012 for the reason "got mad that I lose." Petitioner did not list any further details.
7. The Commission's investigation revealed that Petitioner failed to disclose in her application that she had been a Disassociated Person (DAP) at the time of her application with the Commission for a Level II license, and had been on the DAP list since February 9, 2005.
8. On October 28, 2015, while Petitioner had a Temporary License with the Commission, Petitioner was issued a citation by the Commission for Trespassing 1st Degree/DAP at Harrah's North Kansas City. The Commission subsequently withdrew Petitioner's Temporary License.

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. 2010.
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. 2010.
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. "The commission may refuse an occupational license to any person ... who fails to disclose or states falsely information called for in the application process." Regulation 11 CSR 45-4.260(4)(D).

DISCUSSION

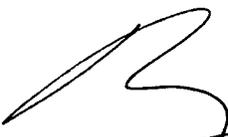
The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. Petitioner had the burden to show by clear and convincing evidence that the Commission should grant her a license. Petitioner failed to disclose that she was a DAP at the time of her application. Further, while holding a Temporary License with the Commission, Petitioner committed a trespass by being a DAP on the gaming floor of Harrah's Casino. Such lack of disclosure and the subsequent trespass does not show by clear and convincing evidence that Petitioner has proven her suitability to be licensed.

The application process by written documents and by a personal interview provided clear instruction of the duty to disclose and to correctly state information called for in the application process. Petitioner's testimony did not overcome the legal authority that rests with the Commission to deny Petitioner her license based upon her failure to disclose and to correctly state information needed for the application process, and based upon her subsequent violation of Missouri law. The law grants discretion to the Commission to deny a license for such failures. Petitioner did not meet her burden of proof by clear and convincing evidence that would necessitate a reversal of the Commission's decision to find Petitioner unsuitable for licensure.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner did not meet her burden of proof to show that she is suitable for a Level II Occupational license in that Petitioner failed to provide the information needed on her application for a Level II Occupational License. The decision of the Commission dated December 18, 2015 is affirmed as a proper denial of a license for Petitioner.

DATED: April 29, 2016



BRYAN W. WOLFORD
Hearing Officer