

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 16-056

RICHARD THOMPSON
December 7, 2016

WHEREAS, Richard Thompson ("Thompson"), requested a hearing to contest the proposed disciplinary action initiated against him on April 7, 2016, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-16-057; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Thompson'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 issues to Thompson a ten (10) calendar day suspension of his occupational license in the above-referenced case in the matter of DC-16-057; 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: Richard Thompson

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Case No. 16-057

License Number: 161372

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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 receipt of a letter dated April 27, 2016, making a request for a hearing by Richard Thompson (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated April 7, 2016. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on September 20, 2016 where the Petitioner and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On February 6, 2016 and at all times relevant hereto, Petitioner was employed by HGI – Mark Twain, LLC ("Company") as a Senior Operator aboard the *Mark Twain Casino* ("Casino").
2. On February 6, 2016, Sergeant Christopher Turner ("Sgt. Turner") of the Missouri State Highway Patrol was informed that Cashier/Shift Manager Tiffany Wainwright's ("Wainwright") cage drawer came up short at the end of her shift.
3. On February 6, 2016, Sgt. Turner was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Sgt. Turner initiated an investigation to determine the location of the missing funds and revealed the following:
 - a) At approximately 9:15 a.m. on February 6, 2016, Sgt. Turner asked Petitioner to review Wainwright's movement and activity in order to establish where the money was lost. Petitioner indicated that he would review surveillance footage and update Sgt. Turner when he learned something.
 - b) At approximately 2:40 p.m. on February 6, 2016, Sgt. Turner returned to Petitioner after having received no update on the status of the Wainwright review, and asked him for information.

- c) Petitioner stated that he did not conduct the review because it would take up too much time that needed to be devoted to other duties, namely table fills.
 - d) Table fills, which occurred two or three times on February 6, 2016, took up a total of twenty-one minutes of the Petitioner's shift that day.
 - e) Instead of reviewing the surveillance records as requested by Sgt. Turner, the Petitioner contacted the cage and asked personnel there to count down the drawers to try to locate the funds.
5. At hearing, Petitioner testified that he did start the surveillance video review as requested by Sgt. Turner. He testified that he reviewed as much of the surveillance as he could within the time frame, but that he could not complete the review in his shift. Petitioner also testified that he did not call the cage and request that they count the drawers, but that the cage called him. Petitioner testified that Sgt. Turner has an issue with the Security Department at the Casino, and accuses them of "passing the buck."
6. Sgt. Turner testified that the security log from February 6, 2016 does not show that Petitioner performed the requested surveillance review. He testified that the daily log shows that Petitioner's review started at 9:17 a.m. and ended at 9:19 a.m. He testified that it is Petitioner's responsibility to accurately log information. Sgt. Turner said that he offered Petitioner ample time in which to conduct the review.
7. Petitioner's actions in failing to comply with the request from a member of the Commission on February 6, 2016 to review the surveillance records 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, and violates 11 CSR 45-10.010 and 11 CSR 45-10.030(1) and (7).

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. 2015.
- 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 11 CSR 45-9.060(3), violations of the Commission's Minimum Internal Control Standards ("MICS") by a Class A licensee or an agent or employee of the Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6) RSMo. (2015) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
7. Under 11 CSR 45-9.060(4), violations of the Class A licensee's internal control system ("ICS") by a Class A licensee or an agent or employee of the Class A licensee shall be prima facie evidence of unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to discipline pursuant to Section 313.805(6) RSMo. (2015) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
8. 11 CSR 45-10.010 states" All licensees shall provide all information requested by the commission. . ."
9. "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

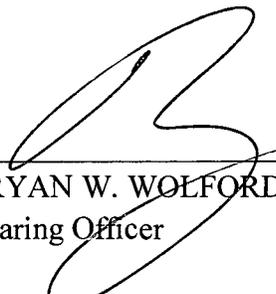
The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner is a Senior Surveillance Supervisor at the Casino, and is aware of his obligations as a Level II licensee. Licensees are required to comply with requests from the Commission and its agents. Sgt. Turner, an agent of the Commission, made a request of Petitioner to review surveillance video of Wainwright's shift and gave Petitioner ample time in which to do so. At the end of Petitioner's shift, Sgt. Turner discovered that Petitioner had not complied with his request. Petitioner's testimony that he did perform some review is not supported by the evidence contained in the daily security log. It was Petitioner's responsibility to ensure that the daily activity is properly logged. Therefore, the Hearing Officer finds Petitioner's testimony to be not credible.

Petitioner's actions in failing to comply with the request from a member of the Commission on February 6, 2016 to review the surveillance records 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. Petitioner did not meet his high burden of proof of clear and convincing evidence in showing that no violation occurred. The Hearing Officer also notes that the Petitioner did not present any evidence that the discipline proposed by the Commission was unreasonable.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner is found to have violated Missouri law and is subject to discipline at the discretion of the Commission. The decision of the Commission dated April 7, 2016 to impose a **ten (10) calendar day suspension** is affirmed as a proper and appropriate discipline.

DATED: November 3, 2016



BRYAN W. WOLFORD
Hearing Officer