

MISSOURI GAMING COMMISSION

COMMISSION RESOLUTION NO. 17-006
APPROVING SETTLEMENT AGREEMENT AND FINAL ORDER

TROPICANA ST. LOUIS, LLC

January 11, 2017

WHEREAS, the Missouri Gaming Commission conducted an investigation of Tropicana St. Louis, LLC (“Tropicana”) in response to allegations that its agents or employees failed to award prizes in promotions according to its rules, conducted promotions in a manner that reflected negatively on the licensee, and failed to promptly notify the Missouri Gaming Commission when it experienced problems with its promotions, a violation of law, minimum control standard requirements, or commission rules; and

WHEREAS, Tropicana and the Commission have come to an agreement concerning the issues presented in the Preliminary Order of Discipline against Tropicana, a copy of which is attached.

NOW, THEREFORE, BE IT RESOLVED, that the Commission hereby approves and adopts the Settlement Agreement and Final Order concerning Tropicana, DC 16-228.

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.

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MISSOURI GAMING COMMISSION
ENFORCEMENT

IN THE MISSOURI GAMING COMMISSION

In Re:)
) DC 16-228
Tropicana St. Louis, LLC)

SETTLEMENT AGREEMENT AND FINAL ORDER

This SETTLEMENT AGREEMENT (“Settlement Agreement”) is made subject to approval of the Missouri Gaming Commission (“Commission”) pursuant to 11 CSR 45-13.065, and is entered into between the Enforcement Division of the Commission (“Staff”) and Tropicana St. Louis, LLC (“the Company”) as authorized by 11 CSR 45-13.065 and will become a FINAL ORDER of the Commission effective upon approval by the Commission.

GENERAL MATTERS

WHEREAS, the Commission is a state commission created under Chapter 313, RSMo,¹ with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri; and

WHEREAS, the Staff is charged with the review and investigation of the activities of holders of Missouri Gaming Licenses (“Licensees”) and the investigation of individuals and entities seeking to receive a Missouri Gaming License; and

WHEREAS, the Commission has, pursuant to § 313.004.4, RSMo, and 11 CSR 45-4.260(1), delegated and authorized the Executive Director to carry out its duties as set forth in Chapter 313, RSMo, including the supervision, regulation, and making the initial determination of discipline for Level I and II Occupational Licensees; and

¹ All statutory references are to RSMo 2000, unless otherwise specified.

WHEREAS, the Commission issued Tropicana Entertainment, Inc., a Class A gaming license to develop and operate Class B gaming licenses in the State of Missouri; and

WHEREAS, Tropicana Entertainment, Inc. is the parent organization or controlling entity of the Tropicana St. Louis, LLC (the "Company"); and

WHEREAS, the Commission issued a Class B riverboat gambling license to the Company to conduct games on and operate the excursion gambling boat known as *Lumiere Place Casino & Hotels* ("*Lumiere Place*"); and

WHEREAS, the Executive Director issued Level I or II Occupational Licenses to Tricia Allen ("Allen"), Gino Palumbo ("Palumbo"), Jacqueline Woody ("Woody"), and other employees at *Lumiere Place* (collectively, "Employees") for employment on an excursion gambling boat licensed by the Commission; and

WHEREAS, Tropicana St. Louis, LLC, as the holder of a Class B License, and the Employees, as the holders of various levels of Occupational Licenses are subject to the provisions of §§ 313.800 to 313.850, RSMo, and the regulations promulgated thereunder by the Commission; and

NOW, THEREFORE, Tropicana St. Louis, LLC, and the Staff enter into the following Agreement:

FACTS

1. On April 9, 2015, Bally Technologies ("Bally") sent Palumbo, Lumiere Place Director of IT, Field Advisory ACSC 2015-002 via email notifying the Casino that it had identified certain issues in the ACSC sweepstakes program which caused entries into the

Casino's sweepstakes to be deleted if the Casino manually adjusted the player's table rating and notified the Casino that ACSC 11.5SP6 would correct the issue.

2. On April 10, 2015, Palumbo forwarded the Field Advisory email to Special Events and Promotions Supervisor Allen, Marketing Manager Woody, and Director of Marketing James Baker ("Baker").

3. Allen and Woody failed to notify the MGC of the Field Advisory, alerting the Casino staff of potential problems in the ACSC sweepstakes program.

4. After a software update designed to fix the sweepstakes issues identified by Bally's April 9, 2015 Field Advisory was installed, the Casino conducted drawings for the \$60K Convertible Giveaway beginning at 2 p.m. on June 20, 2015.

5. When conducting the 2:30 p.m. drawing on June 20, 2015, Allen and Woody noticed there were no active entries showing in the system, alerting them to potential problems with the manner in which the promotion was being conducted, they notified Bally, but neither one notified the MGC of those same problems.

6. On June 22, 2015, Bally sent Woody's June 20 email to Palumbo, along with its April Field Advisory, confirming that the problem with the drawing was related to the information described in that Field Advisory. Palumbo forwarded that email to Allen, Baker, Woody, Data Marketing Specialist Daryl Hood, Players' Club Supervisor Joseph Knaeble, and Slot Performance Manager Michael Babinski on the same day.

7. Woody sent an email on June 23, 2015, to Palumbo, among others, advising them that the sweepstakes entries were still not corrected. However, neither Allen nor Woody sent any notification to the MGC regarding the Casino problems with the promotion and the sweepstakes' entries after receiving that email.

8. On June 26, 2015, Compliance Officer Ryan Miller notified the MGC that the Casino was having problems with its table games promotion.

9. Palumbo received another email on July 1, 2015, from Director of Casino Operations Michael Bechard asking if incorrect table game patron's ratings could be corrected. Instead of answering that email, Palumbo forwarded it to Allen and Woody, asking them if table game employees could start to manually adjust player ratings again.

10. Bally informed Palumbo, Allen, Woody, and Baker that the modification to the utility may not be ready to be used for the July 4, 2015 drawing, but Allen and Woody failed to notify the MGC of the information received from Bally.

11. The issues affecting the Casino affected at least 11 promotions between April and July 2015.

12. The total value of those promotions was estimated to be \$434,874, affecting an unknown number of patrons who should have received entries into sweepstakes, but failed to earn them because of the ratings reversal issue first brought to the attention of Lumiere Place staff in April 2015.

LAW

13. Under § 313.805(6), RSMo, the Commission may assess any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, or penalties in an amount determined by the Commission. Further, "forfeitures pursuant to this section shall be enforced as provided in sections 513.600 to 513.645."

14. Section 313.812.14, RSMo, states, in pertinent part, as follows:

A holder of any license shall be subject to imposition of penalties, suspension or revocation of such license ... 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 commission shall take appropriate action against any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of this subsection, 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 or regulation;
- (2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to gaming;

* * *

- (9) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties regulated by sections 313.800 to 313.850.

15. Under 11 CSR 45-4.260(4)(E), (F), and (Q), the Commission may suspend or revoke an occupational license of any person if any of the following occur:

- a. The Licensee fails “to comply with or make provisions to comply with Chapter 313, RSMo, the rules of this commission, or any federal, state, or local law or regulation,” under 11 CSR 45-4.260(4)(E);
- b. The Licensee “fails to comply with any rule, order or ruling of the commission or its agents,” under 11 CSR 45-4.260(4)(F); and/or
- c. The Licensee’s actions demonstrate “incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties regulated by sections 313.800 to 313.850, RSMo,” under 11 CSR 45-4.260(4)(Q).

16. Title 11 CSR 45-5.053 states, in pertinent part, as follows:

- (3) The holder of a Class A license is expressly prohibited from the following activities:

* * *

- (J) Failing to conduct gaming operations in accordance with proper standards of custom, decorum and decency; or to permit any type of conduct on the riverboat which reflects negatively on the reputé of the state of Missouri or acts as a detriment to the gaming industry;

* * *

- (M) Failing to report to the commission known or suspected violations of commission rules and applicable law.

17. Title 11 CSR 45-5.181 states, in pertinent part, as follows:

- (2) Class B licensees may provide promotional activities such as promotional giveaways, promotional coupons, promotional games, player reward programs or similar activities for patrons without the prior approval of the commission, provided the promotional activity is not structured or conducted in a manner that reflects negatively on the licensee, the commission, or the integrity of gaming in Missouri and complies with the following:

* * *

- (D) All prizes offered in the promotional activity shall be awarded according to the Class B licensee's rules governing the event[.]

18. Title 11 CSR 45-10.030 states, in pertinent part, as follows:

- (1) Licensees shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations), minimum internal control standard requirements or commission rule committed by licensees, their employees or others, including, without limitation, the performance of licensed activities different from those permitted under their license.

* * *

- (7) All occupational licensees shall have a working knowledge of Chapter 313.800, RSMo et seq., *Code of State Regulations*, Title 11 Division 45, and the internal controls of the Class A or B licensees for whom they are currently employed by as they pertain to the responsibilities and limitations of their job.

SETTLEMENT

19. Nothing contained in this Settlement Agreement and Final Order (“Settlement Agreement”) shall be deemed to be or construed as an admission of liability or guilt by Tropicana St. Louis, LLC, with respect to any of the claims set forth in the Preliminary Order for Disciplinary Action No. DC 16-228, which is attached hereto and incorporated herein as Exhibit 1. Rather, this Settlement Agreement is made by the parties in order to reasonably and conclusively resolve the disputed claims without incurring the uncertainty, burden, and expense of continued contested proceedings in this matter.

20. Without admitting liability or guilt with respect to any claim in the Preliminary Order filed against it, Tropicana St. Louis, LLC, agrees that the facts set forth above constitute the grounds for discipline that is the subject matter of this Settlement Agreement, and agrees to pay a fine of forty thousand dollars (\$40,000.00). In consideration of said payment being received by the date set forth in Paragraph 21, below, the Commission will withdraw the Preliminary Order in DC 16-228, and will not file or refile any further Preliminary Orders relating to the facts set forth in DC 16-228, except as provided in Paragraphs 22 and 23 below.

21. Tropicana St. Louis, LLC, agrees to pay said fine within 10 days of the entry of the Commission’s Resolution approving and adopting this Settlement Agreement.

22. Tropicana St. Louis, LLC, agrees that if said fine is not paid within 10 days of the Commission’s Resolution in this matter, Tropicana St. Louis, LLC, agrees and acknowledges that the Commission may pursue its legal remedies, as necessary and without limitation, as authorized by Chapter 313, RSMo, and Title 11, Chapter 45 of the Code of State Regulations,

including, but not limited to, filing or refiling any further Preliminary Orders, including refiling the Preliminary Order in DC 16-228, if it deems appropriate.

23. Said fine as set forth above is paid in full satisfaction of all pending and potential disciplinary actions relating to the activities, actions, and/or inactions described in the Preliminary Order and the Commission's investigation report. Tropicana St. Louis, LLC, agrees to waive its rights to pursue an appeal of the Preliminary Order. The Commission agrees not to initiate any further disciplinary actions with respect to the activities, actions, and/or inactions described the Preliminary Order and the Commission's investigation report.

24. Each signatory to this Settlement Agreement certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Settlement Agreement in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Settlement Agreement.

25. In consideration of the foregoing, the parties agree to the termination of any further proceedings related to this matter.

26. The terms in this Settlement Agreement are an appropriate disposition of this matter and entry of this Settlement Agreement is in the public interest.

27. This Agreement shall be effective and binding as of the date it is approved by majority vote of the Commission, as a body, as is evidenced by the certification of approval contained at the end of this document.

28. Should the Commission for any reason fail to approve this Agreement by majority vote, Tropicana St. Louis, LLC, shall have the right to pursue its timely filed Request for Hearing and continue with its appeal of the Preliminary Order, and the Commission shall have the right to re-file the Preliminary Order of Discipline in DC 16-228, if it deems appropriate.

NOW, THEREFORE, the undersigned submit this Settlement Agreement and Final Order to the Commission for its approval.



Brian Marsh
General Manager
Tropicana St. Louis, LLC



William K. Seibert, Jr.
Executive Director
Missouri Gaming Commission

FINAL ORDER

NOW, THEREFORE, pursuant to the authority granted by §§ 313.805 and 313.812 RSMo, and 11 CSR 45-13.065 the above Settlement Agreement becomes a FINAL ORDER of the Commission.

THEREFORE, the Commission fines Tropicana St. Louis, LLC, the amount of \$40,000.00 for the violations set forth in the Settlement Agreement and Final Order.

Herbert M. Kohn
Chairman
Missouri Gaming Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing Settlement Agreement and Final Order to be mailed, postage prepaid, this ____ day of _____, 2017, to:

Robert D. Cantwell
Lathrop & Gage LLP
Pierre Laclede Center
7701 Forsythe Blvd., Ste. 500
Clayton, MO 63105

and

Brian Marsh
General Manager
Lumière Place Casino & Hotels
999 North Second
St. Louis, MO 63102

Herbert M. Kohn
Chairman
Missouri Gaming Commission

IN THE MISSOURI GAMING COMMISSION

In Re:)
) DC 16- 228
Tropicana St. Louis, LLC)

PRELIMINARY ORDER FOR DISCIPLINARY ACTION

Comes now the Missouri Gaming Commission acting in its official capacity pursuant to 11 CSR 45-13.050, and states as follows:

1. The Missouri Gaming Commission (the "Commission" or "MGC") is a state commission created under Chapter 313, RSMo 2000,¹ with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.

2. The Commission issued Tropicana Entertainment, Inc., a Class A gaming license to develop and operate Class B gaming licenses in the State of Missouri.

3. Tropicana Entertainment, Inc., is the parent organization or controlling entity of Tropicana St. Louis, LLC ("Company").

4. The Commission issued a Class B riverboat gambling license to the Company to conduct games on and operate the excursion gambling boat known as *Lumiere Place Casino & Hotels* ("Casino").

5. As the holder of a Class B license, the Company is subject to the provisions of §§ 313.800 to 313.850, RSMo, and the regulations promulgated thereunder by the Commission.

STATEMENT OF FACTS²

6. On April 9, 2015, Bally Technologies ("Bally") sent Palumbo, Lumiere Place Director of IT, Field Advisory ACSC 2015-002 via email notifying the Casino that it had identified certain issues in the ACSC sweepstakes program which caused entries into the Casino's sweepstakes to be deleted if the Casino manually adjusted the player's table rating and notified the Casino that ACSC 11.5SP6 would correct the issue.

7. On April 10, 2015, Palumbo forwarded the Field Advisory email to Special Events and Promotions Supervisor Allen, Marketing Manager Woody, and Director of Marketing James Baker ("Baker").

8. Allen and Woody failed to notify the MGC of the Field Advisory, alerting the Casino staff of potential problems in the ACSC sweepstakes program.

¹ All statutory references are to RSMo 2000, unless otherwise specified

² 20151125001

9. After a software update designed to fix the sweepstakes issues identified by Bally's April 9, 2015 Field Advisory was installed, the Casino conducted drawings for the \$60K Convertible Giveaway beginning at 2 p.m. on June 20, 2015.

10. When conducting the 2:30 p.m. drawing on June 20, 2015, Allen and Woody noticed there were no active entries showing in the system, alerting them to potential problems with the manner in which the promotion was being conducted, but neither one notified the MGC of those same problems. Although Woody notified Bally of the problem, neither Allen nor Woody notified the MGC of those same problems.

11. On June 22, 2015, Bally sent Woody's June 20 email to Palumbo, along with its April Field Advisory, confirming that the problem with the drawing was related to the information described in that Field Advisory. Palumbo forwarded that email to Allen, Data Marketing Specialist Daryl Hood, Players' Club Supervisor Joseph Knaeble, Slot Performance Manager Michael Babinski, Baker, and Woody on the same day.

12. Woody sent an email on June 23, 2015, to Palumbo, among others, advising them that the sweepstakes entries were still not corrected. However, neither Allen nor Woody sent any notification to the MGC regarding the Casino problems with the promotion and the sweepstakes' entries after receiving that email.

13. On June 26, 2015, Compliance Officer Ryan Miller notified the MGC that the Casino was having problems with its table games promotion.

14. Palumbo received another email on July 1, 2015, from Director of Casino Operations Michael Bechard asking if incorrect table game patron's ratings could be corrected. Instead of answering that email, Palumbo forwarded it to Allen and Woody, asking them if table game employees could start to manually adjust player ratings again.

15. Bally informed Palumbo, Allen, Woody, and Baker that the modification to the utility may not be ready to be used for the July 4, 2015 drawing, but Allen and Woody failed to notify the MGC of the information received from Bally.

16. The issues affecting the Casino affected at least 11 promotions between April and July 2015.

17. The total value of those promotions was estimated to be \$434,874, affecting an unknown number of patrons who should have received entries into sweepstakes, but failed to earn them because of the ratings reversal issue first brought to the attention of Lumiere Place staff in April 2015.

LAW

18. Under § 313.805(6), RSMo, the Commission may assess any appropriate administrative penalty against a licensee, including but not limited to, suspension, revocation or penalties of an amount determined by the Commission.

19. Section 313.812.14, RSMo, states, in pertinent part, as follows:

A holder of any license shall be 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 commission shall take appropriate action against any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of this subsection, 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 or regulations;
- (2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to gaming;

* * *

- (9) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties regulated by sections 313.800 to 313.850.

20. Title 11 CSR 45-5.053, states, in pertinent part as follows:

- (3) The holder of a Class A license is expressly prohibited from the following activities:

* * *

- (J) Failing to conduct gaming operations in accordance with proper standards of custom, decorum and decency; or to permit any type of conduct on the riverboat which reflects negatively on the repute of the state of Missouri or acts as a detriment to the gaming industry;

* * *

- (M) Failing to report to the commission known or suspected violations of commission rules and applicable law[.]

21. Title 11 CSR 45.10.030 states, in pertinent part, as follows:

- (1) Licensees shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations), minimum internal control standard requirements or commission rule committed by licensees, their employees or others, including, without limitation, the performance of licensed activities different from those permitted under their license.

* * *

- (7) All occupational licensees shall have a working knowledge of Chapter 313.800, RSMo et seq., *Code of State Regulations*, Title 11 Division 45, and the internal controls of the Class A or B licensees for whom they are currently employed by as they pertain to the responsibilities and limitations of their job.

VIOLATIONS

22. The actions or omissions of employees or agents of the Company as described above constitute failure of the Casino employees to promptly notify the MGC when they experienced problems with their promotions, thereby violating § 313.812.14, RSMo, 11 CSR 45-5.053(3), and 11 CSR 45.10.030(1), (3), and (7).

23. The Company is therefore subject to discipline for such violations pursuant to §§ 313.805(6) and 314.812.14(1) and (2), RSMo.

PENALTY PROPOSED

24. Under § 313.805(6), RSMo, the Commission has the power to assess any appropriate administrative penalty against the Company, as the holder of a Class B license.

25. THEREFORE, it is proposed that the Commission fine Tropicana St. Louis, LLC, the amount of \$40,000 for the violations set forth herein.

Herbert M. Kohn
Chairman
Missouri Gaming Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing to be mailed, postage prepaid, this ____ day of _____, 2017, to:

Robert D. Cantwell
Lathrop & Gage LLP
Pierre Laclede Center
7701 Forsythe Blvd., Ste. 500
Clayton, MO 63105

and

Brian Marsh
General Manager
Lumière Place Casino & Hotels
999 North Second
St. Louis, MO 63102

Herbert M. Kohn
Chairman
Missouri Gaming Commission