

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 17-012

MICHELLE McCLENDON
March 1, 2017

WHEREAS, Michelle McClendon ("McClendon"), requested a hearing to contest the proposed disciplinary action initiated against her on July 11, 2016 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 McClendon'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-16-197; 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:)
)
MICHELLE McCLENDON) Case No. DC-16-197
)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as “MGC” “Commission”) upon a request for Hearing July 11, 2016, submitted by Michelle McClendon (hereinafter referred to as “Applicant”). Said request for Hearing was in response to the Commission’s Disposition of Occupational Gaming License Application dated July 11, 2016. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a Hearing on December 20, 2016, where the Commission’s attorney, Mrs. 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 failed to disclose the following:
 - a. An arrest on December 6, 1992, by the Ferguson, Missouri, Police Department for Failure to Appear; an arrest on August 13, 1994, by the University City, Missouri, Police Department for Speeding; an arrest on December 15, 1999, by the Edmunson, Missouri, Police Department for Felony Stealing a Motor Vehicle; and a Federal Fugitive Warrant on June 16, 2005, by the St. Charles, Missouri, Police Department.
2. Upon being adduced by Mrs. Carolyn Kerr, Counsel for MGC, the following were admitted into the Record: MGC Exhibit 1 – Disposition of Occupational Gaming License dated July 11, 2016; MGC Exhibit 2 – Applicant’s Request for a Hearing dated July 11, 2016; MGC Exhibit 3 – Gaming Report Details reported by Laura Nehring dated July 11, 2016; MGC Exhibit 4 – Applicant Interview Form dated April 22, 2015; MGC Exhibit 5 – Notice of Duty to Disclose Arrests and Convictions dated April 22, 2015; MGC Exhibit 6 – MGC Level II Occupational License Application Personal Disclosure Form 2 dated April 20, 2015; MGC Exhibit 7 – Criminal Record of Applicant; MGC Exhibit 8 – MGC Level II Occupational License Application Personal Disclosure Form 2 dated March 27, 2015; and MGC Exhibit 9 – Certified Mail / Return Receipt Requested Notice of Applicant of December 20, 2016, Hearing.
3. Notification of the date, place and time for the Hearing requested by Applicant was sent to Applicant and received by Applicant.
4. 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

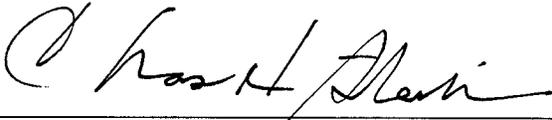
Although notification of the appointed time, date and place for the Hearing was mailed to Applicant and Applicant received same. Applicant failed to appear.

FINAL ORDER

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

Dated:

January 24, 2017


Chas. H. Steib, Hearing Officer