

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 17-013

JOSE HERNANDEZ
March 1, 2017

WHEREAS, Jose Hernandez ("Hernandez"), requested a hearing to contest the proposed disciplinary action initiated against him on October 6, 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 Hernandez'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-16-198; 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:

JOSE HERNANDEZ

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Case No. DC-16-198

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 an undated request for Hearing submitted by Jose Hernandez (hereinafter referred to as “Applicant”). Said request for Hearing was in response to the Commission’s Disposition of Occupational Gaming License Application dated October 6, 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 and Applicant appeared via video conference.

FINDINGS OF FACT

1. Applicant executed, on September 14, 2016, a Commission Applicant Interview Form on which Applicant failed to disclose the following:

- a. An arrest in 2003 by the Houston, Texas, Sheriff’s Office for Assault; an arrest in 2008 by the Las Vegas, Nevada, Police Department for Battery; an arrest in 2009 by the Las Vegas, Nevada, Police Department for Driving While Intoxicated; and an arrest in 2010 by the Las Vegas, Nevada, Police Department for Driving While Intoxicated.

2. Upon being adduced by Mrs. Carolyn Kerr, Legal Counsel for MGC, the following MGC Exhibits were admitted into the Record, without objection: MGC Exhibit 1 – MGC Disposition Of Occupational Gaming License Application; MGC Exhibit 2 – MGC Written Statement; MGC Exhibit 3 – Request of Application of Hearing; MGC Exhibit 4 – MGC Gaming Incident/Investigation Report Details; MGC Exhibit 5 – MGC Notice of Duty to Disclose Arrests and Convictions; MGC Exhibit 6 – MGC Applicant Interview Form; MGC Exhibit 7 – MGC Level II Occupational License Application Personal Disclosure Form 2; MGC Exhibit 8 – Applicant’s Criminal History Record.

3. Legal Counsel for MGC presented the MGC Case and Applicant was afforded an opportunity to cross-examine witnesses and present his case.

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

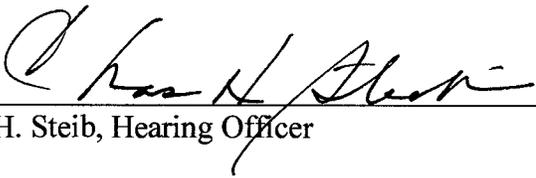
At the Hearing, December 20, 2016, the Applicant’s Criminal History Record obtained by the Missouri Highway Patrol (MGC Exhibit 8) revealed that Applicant had been arrested in 2003 for Assault, 2008 for Battery, 2009 for Driving While Intoxicated, and 2010 for Driving While Intoxicated, all of which Applicant had failed to disclose on his Level II Occupational License Application dated September 14, 2016.

FINAL ORDER

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

Dated:

January 24, 2017


Chas. H. Steib, Hearing Officer