

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 17-047

PHUNG PHAM  
September 27, 2017

WHEREAS, Phung Pham ("Pham"), requested a hearing to contest the proposed disciplinary action initiated against him on November 10, 2016, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-16-170; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Pham'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 Pham a revocation of his occupational license in the above-referenced case in the matter of DC-16-170; 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:

PHUNG PHAM

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Case No. DC-16-170

**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 receipt of a request for a Hearing by Phung Pham (hereinafter referred to as "Licensee" "Petitioner"). Said request for Hearing was in response to the Commission's Preliminary Order for Disciplinary Action of February 9, 2017, to Revoke the Licensee's Level II Occupational License. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a Hearing on July 18, 2017. The Commission's attorney, Mrs. Carolyn Kerr, appeared to represent evidence and arguments of law. Licensee appeared, testified and was represented by Legal Counsel, Jennifer T. Doung.

**FINDINGS OF FACT**

- 1. On January 4, 2011, Licensee was employed as a Chef at River City Casino (MGC Ex.6).
- 2. On January 4, 2011, Licensee executed a Missouri Gaming Commission Application for Missouri Voluntary Exclusion Program for Problem Gamblers (the DAP List) by which he agreed to refrain from visiting all Missouri Casinos **for the rest of your life** (bold print) (MGC Ex. 6).

3. MGC Exhibit 6 states:

Have you read 11 CSR 45-17 (Voluntary Exclusions – the Disassociated Persons List) and do you understand its contents?

to which Licensee responded in writing in the affirmative (MGC Ex.6, p.3)

4. MGC Exhibit 6 states:

Do you understand that, if you complete this Application, the **consequences** (bold print) of your being discovered on a Missouri excursion gambling boat is that you **will** (bold print) be subject to criminal charges?

to which Licensee responded in the affirmative (MGC Ex.6, p.3).

5. MGC Exhibit 6 states:

Is it clear to you that you are agreeing to stay off all Missouri excursion boats for the rest of your life and the consequence of you violating this agreement is that you **will** (bold print) be arrested for trespassing . . . (MGC Ex.6, p.3).

6. On June 9, 2016, Licensee was employed at River City Casino and the holder of a Level II Occupational License.

7. On June 9, 2016, Licensee entered the gambling floor at the Hollywood Casino and attempted to obtain a cash advance from the Cage (MGC Ex.1, p.1 of 1).

8. Licensee admitted under oath at the Hearing July 18, 2017, that he was at the Hollywood Casino June 9, 2017, and that at that time he “understood that being on the DAP List I could not be on Casino grounds” and that he was placed on the DAP List January 4, 2011 (Tr.p.27, 1.9-21).

9. Licensee, as the holder of an Occupational License is subject to the provisions of RsMO 313.800, *et seq.*, which provides:

The commission may promulgate rules allowing a person that is a problem gambler to voluntarily exclude him / herself from an excursion gambling boat. Any person that has been self-excluded is (emphasis added) guilty of trespassing in the first degree pursuant to Section 569.140 RsMO, if such person enters an excursion gambling boat (§ 313.813).

10. Licensee was placed on June 9, 2016, under arrest for Trespass 1<sup>st</sup> Degree by Sgt. Matthew LoPane of the Missouri Highway Patrol (MGC Ex.3).

11. On August 16, 2016, some sixty-eight (68) days after Licensee was arrested for Trespass, he submitted a Request to the Missouri Gaming Commission that his name be removed from the Disassociated Persons List (MGC Ex.7).

12. On February 2, 2017, the Office of the Prosecuting Attorney of St. Louis County refused to prosecute Licensee for Trespass – violation of RsMO 313.813 (Licensee Ex.A, Licensee Ex.B).

13. MGC Exhibits 1 (Preliminary Order for Disciplinary Action); Ex. 2 (Licensee’s Hearing Request); Ex. 3 (Gaming Incident / Investigation Reports); Ex. 4 (DAP Information Sheet); Ex. 4 (Arrest picture); Ex. 6 (Application for Missouri Voluntary Exclusion Program for Problem Gamblers); Ex. 7 (August 16, 2016, letter and request for Removal from DAP List); and Licensee Ex. A (Missouri State Highway Patrol Uniform Citation); and Licensee Ex. B (Letter from St. Louis Prosecuting Attorney Office) were adduced and all admitted into evidence without objection.

## CONCLUSIONS OF LAW

1. “The Commission 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 Licensee 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 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 regulation; . . . "Section 313.812.14, MO. REV. STAT. 2000.

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 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).

### DISCUSSION

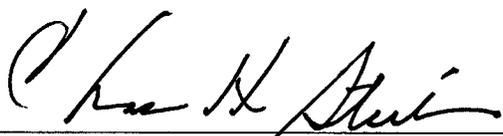
The evidence in this matter clearly established that Licensee had placed himself on the DAP List on January 4, 2011, and that Licensee acknowledged that he would be arrested for trespass if he entered a Missouri excursion gambling boat in violation of the DAP agreement. Licensee further acknowledged on his DAP Application his understanding of 11 CSR 45-17 regarding the DAP List which is promulgated pursuant to RsMO 313.813. As per RsMO 313.813, any person that has been self-excluded is guilty of trespassing in the first degree (emphasis added) if such person enters an excursion gambling boat. Therefore, prosecution by a local prosecuting attorney is irrelevant. Upon entering the Hollywood Casino, Licensee was guilty of Trespass and he had been so apprised beforehand.

### FINAL ORDER

WHEREFORE, THE PREMISES CONSIDERED, IT IS ORDERED AND ADJUDGED that Licensee did not meet his burden of proof to show by clear and convincing evidence that his Level II Occupational License should not be revoked and, therefore, Licensee's Level II Occupational License should be Revoked.

Dated:

*August 7, 2017*

  
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Chas. H. Steib, Hearing Officer