

IN THE MISSOURI GAMING COMMISSION

In Re:)
) DC-18-032
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 (the "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 the *Lumiere Place Casino & Hotels* (the "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 June 21, 2017, the MGC initiated a regulatory investigation after learning that a patron's losing wagers were not collected and placed in the chip tray.
7. The investigation showed two table games supervisors allowed a VIP player to circumvent the rules of the game and alter the Adjusted Gross Revenue (AGR) by allowing him to keep his losing wagers.
8. A dealer overpaid the patron on a Plus 3 wager. The patron wagered \$175 and should have been paid 9 to 1, or \$1,575, according to the approved rules of the game, but instead was paid \$1,800.
9. The same patron was also allowed by another table games supervisor to increase, or "cap," his bet on a winning wager after the outcome had been determined.

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

² 20170726003

10. This resulted in a \$2,025 reduction in table game revenue, which, in turn, caused a \$425.25 shortage in the total amount of tax revenue being collected by the state.
11. This reduction in tax revenue is due, in part, to decisions to either not collect losing wagers or to allow the patron to increase winning his wager after the outcome was determined, as well as due to an overpayment of a winning wager.

LAW

12. 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.
13. 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.

14. Title 11 CSR 45-5.050 states as follows:

No holder of a Class A license shall permit any game to be played other than those approved by the commission. For each game, the holder of a Class A license shall provide a set of game rules to the commission one hundred twenty (120) days in advance of the game's operation or within a time period as the commission may designate and these games must be approved by the commission. Changes in permissible rules must be submitted in writing and approved by the commission prior to implementation.

15. The Commission's Minimum Control Standard ("MICS"), Chapter C, §1.01 requires "detailed procedures for each game that the Class A licensee implements [to be] included in the ICS as approved by the MCG." The licensee must address the following controls:

(H) describe procedures for handling suspected cheating or irregularities and immediate notification of MGC boat agent on duty;

* * *

(K) procedures to describe irregularities of the game, such as dice off the table, soiled cards, etc.

16. Title 11 CSR 45-9.060 states, in pertinent part, as follows:

(3) Violations of the minimum internal control standards [(MICS)] by a Class A or Class B licensee or an agent or employee of a Class A or Class B licensee are deemed to be unsuitable conduct for which the Class A or Class B licensee and/or its agent or employee is subject to administrative penalty pursuant to section 313.805(6), RSMo and 11 CSR 45-1 et seq., as amended from time-to-time. Any agent or employee of a Class A or Class B licensee that is involved in a violation of the minimum internal control standards may be subject to fine, discipline, or license revocation.

(4) Violations of the Class A licensee's internal control system [(ICS)] by the Class A or Class B licensee or an agent or employee of the Class A or Class B licensee shall be *prima facie* evidence of unsuitable conduct for which the Class A or Class B licensee and/or its agents or employees may be subject to discipline pursuant to section 313.805(6), RSMo and 11 CSR 45-1 et seq., as amended from time-to-time.

17. 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.

* * *

(4) Licensees shall take reasonable actions to safeguard from loss all tokens, tickets, chips, checks, funds, and other gaming assets.

* * *

(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.

18. Title 11 CSR 45-11.020, states, in pertinent part, as follows:

- (1) As authorized in section 313.822, RSMo, a tax is imposed on the adjusted gross receipts received from gambling games at the rate of twenty-one percent (21%) (the “gaming tax”).
- (2) The gaming taxes imposed shall be returned and remitted through the commission to the Missouri Department of Revenue.

* * *

- (7) Licensees. Beginning in the first month, second day of operation, each licensee, as a condition of its license, shall deposit daily into the operating account an amount sufficient to cover the estimated tax and fee liabilities for the previous day. The licensee then shall timely remit from the operating account to the commission the gaming tax and admissions fee for each daily period that is defined as the business day for the purpose of establishing the estimated tax and fee liabilities.

19. Title 11 CSR 45-11.030, states, in pertinent part, as follows:

- (1) The licensee shall timely remit from the operating account to the commission the gaming tax for each daily period that is defined as the business day for the purpose of establishing the estimated tax and fee liabilities.

* * *

- (5) In the case of an underpayment of any weekly amount to be paid, the licensee shall be liable for interest on the delinquent amount as determined under 11 CSR 45-11.120(2) and for a penalty, which shall be five percent (5%) of the amount of the underpayment.

20. Title 11 CSR 45-11.040(1) requires the licensee to “file a tax return with the commission for each gaming day the licensee holds a Class A license and shall remit to the commission any unpaid amount shown on the return.”

21. 11 CSR 45-11.120(1), states as follows:

- (1) Any licensee required to collect, account for and pay over any gaming tax or admission fee, who willfully, with intent to defraud, fails to collect the tax or fee, or truthfully account for and pay over the tax or fee, or willfully attempts in any manner to evade or defeat the tax or fee, or the payment of it, in addition to other penalties provided by law, shall be liable for a penalty equal to the total amount of the tax or fee evaded, or not collected, or not accounted for and paid over. For purposes of this rule, the term licensee includes an individual or an officer or employee of the licensee or a member or employee of the licensee who is under a duty to perform the act in respect of which the violation occurs.

22. 11 CSR 45-11.130(2), states as follows:

- (2) In case of failure to deposit accurate estimates of the gaming tax or admission fee on or before the date prescribed for deposit to the commission (determined with regard to any extension of time for payment), unless it is shown that the failure is due to reasonable cause and not the result of willful neglect, evasion or fraudulent intent, there shall be added to the tax or fee an amount equal to five percent (5%) of the deficiency.

23. Title 11 CSR 45-11.140(1) gives the Commission the following authority:

- (1) If the commission is not satisfied with the return or payment of taxes or fees made by any licensee, the commission may make an additional assessment of tax or fees due from the licensee, based upon the facts contained in the return or upon any information within the commission's possession or that shall come into the commission's possession.

24. The Casino's ICS, Chapter C – Rules of the Game, Appendix 1: Blackjack - § BJ9 – Top 3 Twenty-One Plus Three, states, in pertinent part, as follows:

5. Card Procedures (dealing, taking and burning), Collection of Bets and Order of Payouts

All 21 bets and optional +3 bets and Top 3 bets must be placed prior to the first card being dealt from the shoe. The first card removed from the shoe is burned face down into the discard pile. *Deal as in standard Blackjack. Pay winning +3 bet at 9 to 1 and winning Top 3 bets according to the pay table. ...* After all +3 bets and Top 3 bets are resolved, the standard Blackjack procedures apply. Insurance and hole-card peek occurs after +3 bets and Top 3 bets are resolved.

(Emphasis added)

25. The Casino's ICS, Chapter C – Rules of the Game, Appendix 1: Blackjack - § BJ1 - Blackjack, states, in pertinent part, as follows:

1. Objective and Method of Game

The object of the game is to reach a total count of "21" or less while beating the dealer's total count. If in this process the player exceeds the count of "21" the player "Breaks or Busts". All ties are considered "push" (neither a win or a loss). Cards are counted at their face value. Kings, Queens and Jacks count as ten. Aces count as one or eleven. The combination of Ace and Ten when dealt as the first two cards is known as a "Natural" or "Blackjack". A blackjack beats a hand with 21 points in three or more cards.

* * *

A Dealer must draw on any point total of 16 or less and depending on the rule posted at each table, the dealer will either hit or stand on soft 17's and must stand when hard 17 or more is reached. A soft 17 is any hand containing an Ace that can be counted as 1 or 11. If a Dealer's point total exceeds 21, (BUST) all players with point total of 21 or less will win. Otherwise, the Dealer pays all hands that exceed the Dealer's point total, *takes all bets that are less*, and leaves all bets that equal the Dealer's point total (pushes).

2. Physical Characteristics

Blackjack is played on either a semi-circle table, which contains up to seven player positions or an oval or bean-shaped table, which contains up to eight player positions. Cards are dealt from a shoe from left to right.

3. Wagers and Payout Odds

Each player must place an initial wager prior to being dealt any cards. With table game management permission, patrons may be allowed to play multiple Blackjack hands. The minimum wager for multiple hands shall at least be the table minimum posted per wager unless posted otherwise. All winning bets, (except Blackjacks), are paid even money (1 to 1). If the Dealer does not have a Blackjack, the Player's Blackjack will be paid at odds of 3 to 2. A player's wager shall be lost when the dealer has a blackjack and the player has a non-blackjack total of 21.

* * *

5. Card Procedures (dealing, taking and burning), Collection of Bets and Order of Payouts

Six decks of cards are utilized in Blackjack.... Each player has an opportunity to act on their hand and may either Hit (draw a card) or Stand (refuse to take another card). *The player may draw as many cards as he/she likes, but if the count of 21 is exceeded, the player loses the hand and the Dealer removes the wager to the chip tray and sweeps the cards to the discard pile.* A qualifying player that receives a two card total of 21 or "blackjack" on the initial two cards dealt will be paid immediately; after the dealer follows all applicable rules for face up / ace up rules. If the dealer does not qualify for a blackjack upon the completion, the qualifying player that receives the blackjack will be paid immediately following the applicable payout order. Once the Blackjack hand is paid, the cards are picked up and put into the discard pile, the Dealer then continues to the next hand. *When the game is over, each player's hand is evaluated separately with all losing bets and each winning hand being paid accordingly starting on the Dealer's right and moving counter-clockwise.* At the conclusion of a round of play, all cards on the

layout shall be picked up by the Dealer and placed in the discard rack, in order and in such a way that they can be easily arranged in case of questions or dispute.

(Emphasis added)

26. Both the MICS and the Casino's ICS, Chapter D, § 2.01, state as follows:

Chips shall only be added to or removed from the table inventory:

- (A) in exchange for cash presented by a patron ...;
- (B) for payment of winning wagers;
- (C) collection of losing wagers made at the table;
- (D) through approved internal controls governing table fill and credit procedures;
- (E) in exchange with a patron for gaming chips of equal value;
- (F) in exchange for a verified automated tip receipt from a MGC approved automated table game controller;
- (G) at the roulette table in exchange with a patron for non-value chips from that roulette table; or
- (H) in exchange for a patron-signed counter check.

27. Both the MICS and the Casino's ICS, Chapter I, § 1.04, require the Casino to "immediately notify MGC when there are reasonable grounds to believe a violation of the rules or regulations has occurred that jeopardizes the protection of assets or the integrity of gaming."

28. Both the MICS and the Casino's ICS, Chapter I, § 5.01 require admission and gaming taxes to "be deposited daily into established accounts via an Electronic Funds Transfer (EFT) system employing an Automated Clearinghouse Debit (ACH-Debit) or wire transfer method and paid each banking day via an Electronic Funds Transfer (EFT) system employing a wire transfer method."

29. Both the MICS and the Casino's ICS, Chapter I, § 5.02 require "adjustments to AGR resulting in additional tax [to] be made when found, reported to MGC, and included in the next weekly tax payment wired to the Missouri Department of Revenue (DOR)."

VIOLATIONS

30. The actions or omissions of employees or agents of the Company, as described above, constitute a failure by the Casino to ensure that the table games offered to its patrons followed the rules of the game, that losing wagers were properly collected, and that the Casino paid the correct amount of taxes based on its adjusted gross receipts, thereby violating

11 CSR 45-5.050, 11 CSR 45-10.030, 11 CSR 45-11.020, 11 CSR 45-11.030, 11 CSR 45-11.040, the Commission's MICS, Chapter C, § 1.01, Chapter D, § 2.01 and Chapter I, §§ 1.04, 5.01, 5.02, and 5.05, and the Company's ICS, Chapter C, Rules of the Game, Appendix 1, Chapter D, § 2.01, and Chapter I, §§ 1.04, 5.01, and 5.02.

31. Tropicana St. Louis, LLC, is therefore subject to discipline for such violations pursuant to §§ 313.805(6) and 314.812.14 (1) and (2), RSMo, and 11 CSR 45-9.060(3) and (4).

PENALTY PROPOSED

32. Under § 313.805(6), RSMo, and 11 CSR 45-11.120(1), the Commission has the power to assess any appropriate administrative penalty against Tropicana St. Louis, LLC, as the holder of a Class B license.
33. Under 11 CSR 45-11.130(2) and 11 CSR 45-11.140(1) the MGC has the authority to make an additional assessment of taxes based on the facts learned during its investigation.
34. THEREFORE, it is proposed that the Commission assess the following penalties against Tropicana St. Louis, LLC:
- a. A fine in the amount of \$10,000 for the violations set forth herein; and
 - b. A gaming tax assessment equal to 21% of the uncollected wagers (\$2,025.00), for the amount of \$425.25.

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 April, 2018, to:

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

Herbert M. Kohn
Chairman
Missouri Gaming Commission