

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 16-016

KENNETH B. TWILLA
April 27, 2016

WHEREAS, Kenneth B. Twilla ("Twilla"), requested a hearing to contest the proposed disciplinary action initiated against him on September 1, 2015, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-15-274; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Twilla'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 Twilla a three (3) day suspension of his occupational license in the above-referenced case in the matter of DC-15-274; 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:

KENNETH B. TWILLA

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Case No. DC 15-274

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission" "MGC") upon an undated request for hearing submitted by Kenneth B. Twilla (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated September 1, 2015. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a hearing on January 21, 2016, where the Commission's attorney, Ms. Carolyn H. Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. Petitioner holds a Level II Occupational License granted by the Commission for employment at a casino licensed by the Commission.
2. Petitioner was employed as a Pit Manager at The Lady Luck Casino, Caruthersville, Missouri.
3. On January 11, 2015, Petitioner observed Dealer Karla Benitez expose a card to a patron enabling the patron to cheat at Benitez's table (MGC Exhibit 1, p.000049).
4. On or about January 12, 2015, Licensee Roy Leasure told Petitioner that he suspected Benitez of exposing cards to patrons (MGC Exhibit 1, p.2).
5. Several weeks prior to January 17, 2015, Petitioner observed Karla Benitez (a licensed Dealer) expose a card to a patron thereby enabling the patron to cheat at Benitez's table (MGC Exhibit 1, p.000049).
6. On January 16, 2015, Petitioner, at a regularly-scheduled Pit Manager Meeting, advised Lead Pit Manager Paul Bourman that "... game dealers (including Benitez) were exposing cards to patrons" (MGC Exhibit 1, p.000022) and that "this is something we need to take a look at" (Twilla Transcript p.40, l.19-21).
7. On January 16, 2015, at the above Pit Manager's Meeting, Petitioner stated "... we need(ed) to take a closer look at Karla Benitez, that I had seen things go on that didn't sit right with me: (Twilla Transcript p.39, l.20-23).
8. On January 17, 2015, Petitioner provided a written statement to Trooper D.W. McCormick, assigned to the Gaming Division, regarding Benitez exposing cards to patrons (MGC Exhibit 1, p.000022).

9. Petitioner admitted under oath that he had suspicions regarding activity at Benitez's table (Twilla Transcript p.31, l. 10-19).

10. Petitioner admitted under oath:

. . . I 'm not denying – hey, I could have come forward a week sooner . . . (Twilla Transcript p.41, l.10-11)

11. Petitioner admitted under oath that between January 12, 2015, and January 16, 2015, he didn't say anything to anyone (re: Benitez exposing cards) (Twilla Transcript p.40, l.21-23).

12. Between January 12, 2015, and January 16, 2015, Petitioner failed to “immediately notify MGC agent” of suspicion of “cheating, irregularities or other suspicious activity” at a table game, as required by Casino's ICS, Chapter C04 – Mississippi Stud, §1.01(H).

13. Petitioner stated for the record:

But my main concern with – my only concern with the findings of the Commission was on line six, section six (re MGC Preliminary Order For Disciplinary Action) which stated I admitted to seeing Karla Benitez expose cards. That never happened. And this is a – (Twilla Transcript p.27, l.15-18)

14. On January 17, 2015, contra to the statement above (No.13) Petitioner stated:

This past Sunday 1-11-15 on 2133 I watched Karla get a hit signal from a player when she pulled the card where it could be seen the player waived it off and Karla stopped . . . (MGC Exhibit 1, p.000049)

15. “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 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 or regulation; . . . “Section 313.812.14, MO. REV. STAT. 2000.

16. “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).

17. 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).

18. “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).

19. Under 11 CSR 45-10.030(1) “Petitioner shall promptly report to the Commission any facts which the Petitioner 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 Petitioner, their employees or others, including, without limitation, the performance of licensed activities different from those permitted under their license.

20. The actions or omissions of Petitioner as described in paragraph 4 above violate the following statutes, rules, MICS, or ICS: Section 313.812.14, RSMO, Section 313.812.14(1), (2), and (9), and CSR 45-10.030(1).

21. Petitioner is subject to discipline for such violations pursuant to 11 CSR 45-9.060(3) and (4), Section 313.805(6), RSMO (2000), and Section 313.812.14, RSMO (2000).

22. “The Commission shall have the following powers . . . to access any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, and penalties of an amount as determined by the commission . . .” Section 313.805(6), MO. REV. STAT. 2000.

23. At the Hearing of January 21, 2106, Missouri Gaming Commission Exhibit 1, (September 1, 2015, cover letter and Preliminary Order For Disciplinary Action); Exhibit 2, (Petitioner’s correspondence requesting a Hearing to challenge Line 6, Section D, Subsection VI of the Preliminary Order for Disciplinary Action); and Exhibit 3, (Commission Gaming Incident/Investigation Report Details Report entered February 1, 2015), were all admitted into the Record without Objection.

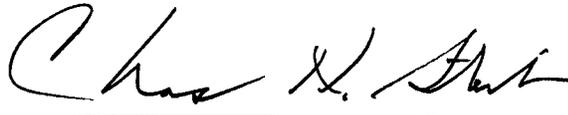
DISCUSSION

Although Petitioner did on January 16, 2015, inform other supervisors of his suspicions regarding Benitez’s actions which occurred as early as a week before January 17, 2015, he failed to immediately notify a MGC agent until January 17, 2015, in violation of the Casino’s ICS.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner did not meet his burden of proof to show clearly and convincingly that he should not be subject to discipline for not immediately reporting an irregularity and suspicion of cheating to a MGC agent. The decision of the Commission dated September 1, 2015, being a three (3) calendar day suspension of his Level II Occupational License, is affirmed as a proper form of discipline to impose upon Petitioner.

Dated: February 16, 2016


Chas. H. Steib, Hearing Officer