MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 13-098

DZUNG DO
September 30, 2013

WHEREAS, Dzung Do ("Do"), requested a hearing to contest the proposed disciplinary action initiated against him on April 16, 2013, 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 Do'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-13-290; 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: Dzung Huu Do	)	
	)	
	)	Case No. 13-290
Applicant.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission") upon receipt of a letter dated April 19, 2013 making a request for a hearing by Dzung Huu Do (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Disposition of Occupational Gaming License Application dated April 16, 2013. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on August 27, 2013. Petitioner and the Commission's attorney, Mr. Christopher Hinckley, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On March 5, 2013, Petitioner made an application with the Commission in order to obtain a Level II Occupational License for employment in the gaming industry.

2. Petitioner previously was the holder of a Level II Occupational License issued by the Commission, but had sought employment with Hollywood Casino St. Louis, necessitating a re-application.

3. In response to Petitioner's application, the Commission conducted an investigation in order to determine Petitioner's suitability for employment in the gaming industry.

4. The application for a Level II Occupational License contained the following question numbered 14(a): "Have you ever been arrested, detained, charged, indicted, convicted, pleaded guilty or nolo contendere (no contest), or forfeited bail concerning any crime or offense, in any federal, state, or local jurisdiction, including any findings or pleas in a suspended imposition of sentence? If yes, complete the following chart." The chart asked for details.

5. Petitioner did not provide any answer on the chart in question 14(a).

6. The question 14(a) at the end of the chart asks for applicant's signature on a line following the statement "I have nothing else to declare on this question." Petitioner's signature appeared on this line in response to this statement.

7. The application for a Level II Occupational License contained the following question numbered 14(b): "Have you ever been arrested or given a ticket for driving while intoxicated or under the influence of alcohol or drugs, driving while license under suspension, or revocation, leaving scene of an accident? If yes, complete the following chart." The chart asked for details.

8. Petitioner did not provide any answer on the chart in question 14(b).

9. The question 14(b) at the end of the chart asks for applicant's signature on a line following the statement "I have nothing else to declare on this question." Petitioner's signature appeared on this line in response to this statement.

10. The Commission's investigation revealed that Petitioner failed to disclose in his application that he had been arrested on October 19, 2006 for Driving While Intoxicated in St. Charles, Missouri, and convicted for that same charge on July 12, 2007.

11. Petitioner testified at the hearing on August 27, 2013 that he failed to disclose the Driving While Intoxicated arrest and conviction during his re-application. Petitioner testified that he did not believe he had to disclose the Driving While Intoxicated arrest and conviction because he had disclosed the incident when he initially applied for a license in 2006.

CONCLUSIONS OF LAW

1. "The Commission shall have full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805 MO. REV. STAT. 2010.

2. "A holder of any license shall be subject to the 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 of the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts 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. 2010.

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 the 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).

6. "The commission may refuse an occupational license to any person ... who fails to disclose or states falsely information called for in the application process." Regulation 11 CSR 45-4.260(4)(D).

DISCUSSION

The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. Petitioner had the burden to show by clear and convincing evidence that the Commission should grant him a license. Petitioner admitted that he had failed to disclose a prior arrest and conviction for Driving While Intoxicated. Such lack of disclosure does not show by clear and convincing evidence that Petitioner has proven his suitability to be licensed.

The application process by written documents and by a personal interview provided clear instruction of the duty to disclose and to correctly state information called for in the application process. Petitioner's testimony did not overcome the legal authority that rests with the Commission to deny Petitioner his license based upon his failure to disclose and to correctly state information needed for the application process. The law grants discretion to the Commission to deny a license for such failures. Petitioner did not meet his burden of proof by clear and convincing evidence that would necessitate a reversal of the Commission's decision to find Petitioner unsuitable for licensure.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner did not meet his burden of proof to show that he is suitable for a Level II Occupational license in that Petitioner failed to provide the information needed on his application for a Level II Occupational License.

The decision of the Commission dated April 16, 2013 is affirmed as a proper denial of a license for Petitioner.

DATED: September 11, 2013

BRYAN W. WOLFORD
Hearing Officer