

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 14-088

LEIF C. NELSON
December 3, 2014

WHEREAS, Leif C. Nelson ("Nelson"), requested a hearing to contest the proposed disciplinary action initiated against him on August 7, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-276; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Nelson'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 Nelson a one calendar day suspension of his occupational license in the above-referenced case in the matter of DC-13-276; 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: Leif C. Nelson

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Case No. 13-276

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License Number: 302897

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 an undated letter received September 6, 2013 making a request for a hearing by Leif C. Nelson (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated August 7, 2013. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on September 25, 2014 where the Petitioner and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On March 9, 2013, Petitioner was employed by IOC - Cape Girardeau, LLC ("Company") as a Floor Supervisor aboard the *Isle Casino, Cape Girardeau* ("Casino").
2. On March 9, 2013, Trooper Michael Lomedico ("Tpr. Lomedico") of the Missouri State Highway Patrol was contacted by Pit Manager Larry Taylor regarding a variance at the Table Inventory Slip ("TIS") associated with Three Card Poker Table TCP 1.
3. On March 9, 2013, Tpr. Lomedico was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Tpr. Lomedico's investigation and review of surveillance video recordings revealed the following:
 - a) On March 9, 2013 Dealer Mendy Sheffield and the Petitioner inventoried the cheques at TCP 1 and recorded their count on the table's TIS. The Petitioner and Sheffield verified and signed the TIS showing the table inventory as \$24,802 with \$4,600 worth of \$25 cheques.
 - b) Later that same day Dealer Michael Snider and Supervisor Steven Gentili opened TCP 1 and inventoried the table. Snider and Gentili discovered that the TIS was incorrect in that there was \$4,100 worth of \$25 cheques, a \$500 discrepancy with the amount recorded on the TIS by Petitioner and Sheffield.

5. Petitioner testified that he admitted to making a mistake in mis-counting the cheques.
6. Petitioner's actions in failing to accurately count and verify the table inventory slip discredits the Missouri gaming industry and the State of Missouri, and violates Section 313.812.14 RSMo. (2012), Section 313.812.14(1), (2), & (9), RSMo. (2012), the Commission's Minimum Internal Control Standards ("MICS") Chapter D, § 4.01, and the Company's Internal Control Standards ("ICS") Chapter D § 4.01.

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. 2012.
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. Under 11 CSR 45-9.060(3), violations of the Commission's Minimum Internal Control Standards ("MICS") by a Class A licensee or an agent or employee of the Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
7. Under 11 CSR 45-9.060(4), violations of the Class A licensee's internal control system ("ICS") by a Class A licensee or an agent or employee of the Class A licensee shall be prima facie evidence of unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to discipline pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
8. The Commission's MICS, Chapter D, § 4.01 state that "[e]ither two Table Games Supervisors or a Table Games Supervisor and a Dealer or box person shall independently count and verify the gaming chips remaining at the gaming tables, and shall prepare a Table Inventory Slip."
9. The Company's ICS, Chapter D, §, 4.01 state that "When a gaming table is closed, chips remaining at the table shall be independently counted and verified by either two Table Games Supervisors or a Table Games Supervisor and a dealer/boxperson, who shall prepare a Table Inventory Slip."
10. "The commission may . . . revoke or suspend an occupational license of any person . . . who has failed to comply with or make provision for complying with Chapter 313, RSMo, the rules of this commission, or any federal, state, or local law or regulation." Regulation 11 CSR 45-4.260(4)(E).

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. In this case, Petitioner, had the responsibility as a Table Games Supervisor to ensure that he and his subordinates followed all gaming laws, regulations, and internal control standards, including performing accurate count of chips at the gaming tables and recording the accurate amount on the Table Inventory Slips. Petitioner admitted to mis-counting the chips and to verifying the wrong figure as accurate.

Petitioner's actions in failing to accurately count and verify the table inventory slip discredits the Missouri gaming industry. Petitioner did not meet his high burden of proof of clear and convincing evidence in showing that no violation occurred.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner is found to have violated Missouri law and is subject to discipline at the discretion of the Commission. The decision of the Commission dated August 7, 2013 to impose a **One (1) calendar day suspension** against the Petitioner is affirmed as a proper and appropriate discipline.

DATED:

October 24, 2014


BRYAN W. WOLFORD
Hearing Officer