

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 14-028

DAVID MERRITT
June 25, 2014

WHEREAS, David Merritt ("Merritt"), requested a hearing to contest the proposed disciplinary action initiated against him on April 3, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-008; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Merritt'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 modifies the Hearing Officer's proposed Order and assesses a 30 day suspension of Merritt's license in the above-referenced case in the matter of DC-13-008; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.

Licensee to the exit. Before exiting, the Licensee told Sagez, "Go fuck yourself." At 11:31 p.m. the Licensee exited through West Boarding.

- d) The Licensee's ex-wife, Heather M., was a Dealer employed by Ameristar Kansas City, but was not on duty during the evening of September 15, 2012.
 - e) Shortly after exiting *Ameristar Casino Kansas City*, the Licensee, in an intoxicated condition, called Heather M. and accused her of playing a role in getting him kicked out of *Ameristar Casino Kansas City*.
 - f) After accusing his ex-wife over the phone, the Licensee then sent her several profanity-filled text messages again accusing her of playing a role in getting him kicked out of the casino.
 - g) Petitioner failed to self-report his conduct to the Commission.
5. Security Supervisor Nicholas Sagez testified that the Petitioner was visibly intoxicated in the craps pit, and Sagez noticed the Petitioner leaning severely on the table, mishandling his chips, slurring his speech, and that there was a strong odor of alcohol coming from Petitioner. Petitioner was belligerent when approached by Sagez and did not at first agree to leave the gaming floor when asked to do so by Sagez.
6. Petitioner testified that he was familiar with regulations and knew that intoxicated patrons cannot gamble. Petitioner admitted to calling and texting Heather M. after he left the casino. Petitioner did not admit to being intoxicated, but testified that he was deemed to be intoxicated by *Ameristar Casino Kansas City* staff.
7. Petitioner's actions in being intoxicated on the gaming floor of *Ameristar Casino Kansas City*, being uncooperative with staff, and shortly after, making harassing communications to his ex-wife, as well as his failure to report his violation of gaming regulations to the Commission, 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), 11 CSR 45-4.260(4)(E), (F), (M) & (Q), and 11 CSR 45-10.030(1).

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. The Commission's Minimum Internal Control Standards, Chapter N, § 4.02 states, "Persons who are visibly intoxicated shall not be permitted access to or allowed to remain on the casino floor."
8. 11 CSR 45-10.030(1) states "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 of rule committed by licensees, their employees or others..."

9. "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

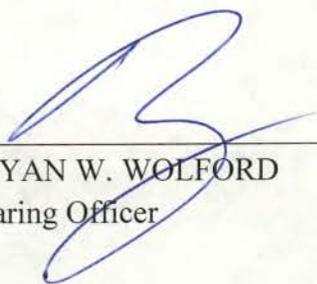
The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner has worked in the gaming industry for fifteen years, and on the night of the incident, the Petitioner was a Table Games Supervisor. As a Level II licensee and supervisor, the Petitioner had the responsibility to watch for visibly intoxicated patrons, and knew or should have known that intoxicated patrons are prohibited by regulation from making wagers. Petitioner was also aware of the duty to immediately report violations of gaming laws or regulations to the Commission.

Petitioner's actions in being intoxicated on the gaming floor of *Ameristar Casino Kansas City*, being uncooperative with staff, and shortly after, making harassing communications to his ex-wife, as well as his failure to report his violation of gaming regulations to the Commission, 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 April 3, 2013 to impose a Revocation against Petitioner is affirmed as a proper and appropriate discipline.

DATED: April 30, 2014


BRYAN W. WOLFORD
Hearing Officer