MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 14-035

CYNTHIA D. STORZ
June 25, 2014

WHEREAS, Cynthia D. Storz ("Storz"), requested a hearing to contest the proposed disciplinary action initiated against her on September 11, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-341; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Storz'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 rejects the Final Order and does not impose any discipline on the licensee; 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:	)	
	)	
CYNTHIA D. STORZ	)	Case No. DC 13-341
	)	
	)	

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 a request for hearing dated September 27, 2013, submitted by Ms. Cynthia d. Storz (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated September 6, 2013. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a hearing on April 9, 2014, where the Commission's attorney, Ms. Carolyn H. Kerr, appeared to present evidence and arguments of law. However, though properly notified of the Hearing date and time, Petitioner appeared not.

FINDINGS OF FACT

1. Petitioner holds a Level II Occupational License granted by the Commission for employment on an excursion gambling boat licensed by the Commission.

2. On March 16, 2013, Petitioner was employed as an Assistant Cage Supervisor at The River City Casino.

3. On March 16, 2013, at 18:45 hours, Petitioner learned of a violation involving an unsecured bank transfer – a money cart was taken from the main to the cage without being locked.

4. Upon learning of the violation, Petitioner filed to notify the Missouri Gaming Commission of said violation.

5. At the Hearing of April 9, 2014, sworn testimony was received from both Trooper Rhonda Shanika, Gaming Agent, and Petitioner.

6. At the Hearing of April 9, 2014, Missouri Gaming Commission Exhibit 1, a September 5, 2013, cover letter and Preliminary Order For Disciplinary Action; Exhibit 2, Petitioner's September 20, 2013, correspondence requesting a Hearing; and Exhibit 3, Commission Gaming Incident/Investigation Report Details Report entered March 17, 2013, were all admitted into the Record without Objection.

CONCLUSIONS OF LAW

1. "The Commission shall have the full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805, MO. REV. STAT. 2000.

2. "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.

3. "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).

4. 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).

5. "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).

6. 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.

7. 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).

8. Petitioner is subject to disciplines 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).

9. "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.

DISCUSSION

In sworn testimony, Petitioner stated that she believed the incident herein had already been reported to the Commission, however, Petitioner's belief, however earnest, does not relieve Petitioner of the responsibility of notifying the Commission of such an incident. All licensees have a responsibility to notify the Gaming Agent when the licensee learns of a regulatory violation.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner did not meet her burden of proof to show clearly and convincingly that she should not be subject to discipline for not reporting a violation involving a bank transfer. The decision of the Commission dated September 5, 2013, is affirmed as a proper form of discipline to impose upon Petitioner, being a one (1) day suspension of her Level II Occupational License.

Dated: May 28, 2014

Chas. H. Steib, Hearing Officer