

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 14-047

JOSEPH D. BRANCHIK
August 27, 2014

WHEREAS, Joseph D. Branchik ("Branchik"), requested a hearing to contest the proposed disciplinary action initiated against him on May 31, 2012, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-12-193; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Branchik'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 issues to Branchik no suspension of his occupational license in the above-referenced case in the matter of DC-12-193; 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: Joseph D. Branchik

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Case No. 12-193

License Number: 309547

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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 June 19, 2012 making a request for a hearing by Joseph Branchik (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated May 31, 2012. The designated Hearing Officer, Stephen J. Stark, conducted a hearing on May 1, 2013 where the Petitioner, his attorney Joseph P. Bednar, Jr., and the Commission's attorney, Mr. Christopher Hinckley, appeared to present evidence and arguments of law. By agreement of the parties, the hearing was continued after arguments and evidence were presented. On April 11, 2014, the Petitioner, the Commission's attorney, Ms. Carolyn Kerr, and the designated Hearing Officer, Bryan Wolford, agreed to conclude the hearing and the parties filed arguments and briefs with the Hearing Officer.

FINDINGS OF FACT

1. On December 17, 2011, Petitioner was employed by Casino One Corporation ("Company") as the Vice President of Marketing aboard the *Lumiere Place Casino* ("Casino").
2. On December 17, 2011 Trooper Barbara Collins ("Tpr. Collins") of the Missouri State Highway Patrol initiated an investigation after an underage patron was allowed to enter an event designated for guests "21 years of age or older."
3. On December 17, 2011, Tpr. Collins was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Tpr. Collins's investigation and review of surveillance video recordings revealed the following:
 - a) On December 17, 2011, the Casino held an event for guests "21 years of age or older" where alcoholic beverages were served.
 - b) At approximately 6:52 p.m., an underage female patron (19 years of age) approached the VIP Sales Host Lynn Connors in the theatre lobby in order to get

a ticket and armband for the event. Connors did not ask to see the underage patron's identification and issued her an armband for the event. Shortly thereafter, the underage patron entered the event.

- c) During the event, Security Officer Edward Spearman observed the underage patron at the event holding two alcoholic drinks and, after determining that she was underage, escorted her from the event.
 - d) The Licensee was in charge of the event and instructed only the employees of the marketing department to check the identification of the guests to ensure they were over 21 before issuing the armbands for attendance.
5. Prior to the event, the Petitioner held a meeting with the security personnel and other casino staff working the event. Petitioner assigned the duty of verifying the patrons' identifications to the casino staff, and assigned security the duty of patrolling the theatre. Connors, who was part of the event staff, arrived late and Petitioner did not follow up with her after the meeting to ensure that she had all of the information and instructions for the event.
6. Petitioner's actions and inactions in failing to adequately staff an event for persons "21 years or older" 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), & (Q), and 11 CSR 45-12-090(3).

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. 11 CSR 45-12-090(3) states that "[a]n excursion liquor licensee shall not, through actions of his/her own or of an employee vend, give away its or otherwise supply any intoxicating liquor in any quantity whatsoever to any person under the age of twenty-one (21) years. . ."
7. "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

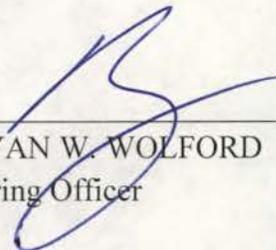
The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner failed to make sure that the event was sufficiently staffed and that his entire team, including Connors, knew what was expected of them, specifically, that the event was strictly for patrons 21 years of age or older, and that they verified everyone's age before issuing armbands. The Petitioner failed to comply with or make provisions so that his staff complied with the liquor laws and regulations forbidding minors from entering the event and receiving intoxicating beverages. As Vice President of Marketing for the Casino, and the organizer of the event, Petitioner had the ultimate responsibility to ensure that all staff, including Connors, knew exactly what their duties and responsibilities were, and that sufficient security staff was present at the event to prevent persons under 21 from attending.

Petitioner's actions and inactions in failing to adequately staff an event for persons "21 years or older" 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 May 31, 2012 to impose a **Two (2) calendar day suspension** against Petitioner is affirmed as a proper and appropriate discipline.

DATED: June 2, 2014



BRYAN W. WOLFORD
Hearing Officer