MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 14-051

JEREMY HOWLAND
August 27, 2014

WHEREAS, Jeremy Howland ("Howland"), requested a hearing to contest the proposed disciplinary action initiated against him on September 20, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-360; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Howland'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 Howland a one calendar day suspension of his occupational license in the above-referenced case in the matter of DC-13-360; 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: Jeremy Howland	)	
	)	
	)	Case No. 13-360
License Number: 307580	)	

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 October 15, 2013 making a request for a hearing by Jeremy Howland (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated September 20, 2013. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on May 29, 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 December 21, 2012, Petitioner was employed by The Missouri Gaming Company, ("Company") as a Financial Controller aboard the *Argosy Riverside Casino* ("Casino").

2. On December 21, 2012, Ms. Kelly Florea, an Electronic Gaming Device ("EGD") Coordinator with the Missouri Gaming Commission, began an investigation into Personal Banking Transaction ("PBT") variances for the gaming days of December 20 and 21, 2012.

3. On December 21, 2012, Ms. Kelly Florea was acting as an agent of the Commission in her capacity as an employee of the Commission.

4. Ms. Florea's investigation and review of surveillance video recordings revealed the following:

    a) On December 21 and 22, 2012, in two separate emails, Revenue Lead Audit Marilyn Lair notified Ms. Florea of PBT variances for the gaming days of December 20 and 21, 2012. Several EGDs experienced Non-Cashable electronic Promotion In ("NCEP In") variances of which the cause was unknown The notes for the EGD's in the email stated "Under Investigation."

    b) On December 28, 2012, Ms. Florea emailed Petitioner asking for an update on the variance investigations from December 20, 2012. Petitioner replied, "We

investigated as much as we could on our end and didn't see anything that we have experienced before. I actually opened a case with ATI this morning (attached). I also submitted to them reports and information that I had ran during my investigation." Petitioner had opened a case with Aristocrat, the system manufacturer, at 9:22 a.m. on December 28, 2012. The details of the case read, "On gaming date 12/20/2012 we experienced (16) machine variances for PBT that we haven't seen before. The Meter CUR (current / period) incremented but the System CUR (current / period) didn't. We see the records on the transactions tab in Diagnostic Monitor, but they didn't hit the patrons account in SuperPlaymate. In Diagnostic Monitor, under Report, Personal Banker Transaction, the records don't appear on the report either."

c) On January 7, 2013 at 9:34 a.m., Florea emailed both Petitioner and Aristocrat compliance manager Jacquie Hunter asking for an update on the case. Hunter's response at 2:40 p.m. stated, "Lisa Munoz has been working the case. From her: 'The variances are because the meter incremented and the system transaction did not post to the EFT table. However, the download did actually occur, absolving the variance. OASIS just wrote it to rt_badtx for some reason.'" Petitioner's response at 6:13 p.m. was as follows, "Aside from machine #61410 (this variance offset the next day), we have determined that the variances on both the 20th and 29th are of the same issue. ATI nor local resources have identified the cause, but the Personal Banker Transactions went to the RT_BADTX table. In this case the System CUR (current / period) was incorrect and the meter was correct. We should have added the transaction to the system rather than adjusting the meter. I believe this will result in adjustment to the amount of gaming tax that was remitted." On January 8, 2013 Lair submitted a corrected Betters file for gaming dates December 20 and 21, 2012 to account for the NCEP In transactions. The correction resulted in a difference of $250 in AGR and $52.50 in gaming tax.

d) On January 10, 2013 Florea initiated an investigation into the PBT variance investigation process and subsequent adjustments made for the NCEP In variances identified on the gaming days of December 20 and 21, 2012..

e) After reviewing the documentation, it appears the 'Transactions' tab within Diagnostic Monitor was part of the PBT variance investigation for the gaming days of December 21 and 29, 2012. During the PBT variance investigation done for the gaming day December 20, 2012 it appears Diagnostic Monitor was used but only the 'PersonalBanker' tab and not the 'Transactions' tab. Florea sent a request to the Casino's IT department for the complete transaction listing from Diagnostic Monitor for the December 20, 2012 gaming day.

f) After further review, it appears all PBT INCEP In transactions were present within the transaction listing. By adding those transactions together the total matched the Meter CUR (current / period) and not the System CUR (current / period) seen on the PBT variance report.

5. Petitioner testified that he did not have training on checking the EGDs themselves when investigating variances. He further testified that the weekend and Christmas holiday delayed her investigation.

6. Petitioner's actions or inactions in failing to adequately address and investigate the cause of several PBT variances 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 45-5.190(2)(A); 11 CSR 45-10.030(4); the Commission's Minimum Internal Control Standards ("MICS") Chapter U, § 2.18; and the Company's Internal Control Standards ("ICS") Chapter U, § 2.18.

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. 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 Minimum Internal control Standards ("MICS") Chapter U, § 2.18 states, "The Class B Licensee shall, on each gaming day, in an MGC approved format, prepare a meter comparison report for all EGDs with Cashless, Promotional, or Bonusing options enabled. The reports will compare the Cashless (i.e., WAT In, WAT Out, CEP In, CEP Out, NCEP In, and NCEP Out) and Bonusing (i.e., machine paid external bonus payout and attendant paid external bonus payout) deltas of the EGD internal soft meters with the meter deltas of the respective system. The EGD soft meter deltas may be obtained by manually recording the values at the EGD, or by polling the EGD using the respective system. Any meter variance between the deltas of the EGD and the respective system shall be reconciled prior to filing the daily tax transmittal with the MGC. Transaction detail reports or other tools shall be used to investigate the cause of the variance. If it is determined that an adjustment must be made to ensure the AGR calculations are correct, an appropriate adjustment shall be made by an Accounting employee to correct the system reports. The adjustment must be documented and maintained. The documentation shall indicate who made the adjustment and the amount of the adjustment. The original daily electronic drop reports listing any variances, the transaction detail reports used to investigate the variances, and any corresponding adjustments to correct the variances shall all be maintained as source documentation to

support the daily tax remittal. The MGC EGD department shall be notified of any variance and the results of the investigation by the end of the next gaming day."

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 was responsible for working with the Casino, suppliers, and test laboratories to ensure compliance with commission rules and regulations with regard to EGDs. Petitioner investigated the variances for gaming days December 20 and 21, 2012, and concluded that an adjustment should be made to the game meter rather than the system meter. Had Petitioner looked at the Diagnostic Monitor report more closely, he would have found that the game meter was correct. Adjusting the game meter was not the correct remedial action because the cashless transactions had, in fact, occurred on the machine. Because the incorrect adjustments were made, the Casino's Betters file had to be corrected. Petitioner's investigation of the variances was not sufficient to determine the appropriate adjustment to be made.

Petitioner's actions or inactions in failing to adequately address and investigate the cause of several PBT variances discredits the Missouri gaming industry and the State of Missouri. Petitioner did not meet her 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 September 20, 2013 to impose a **one (1) calendar day suspension** against Petitioner is affirmed as a proper and appropriate discipline.

DATED: June 16, 2014

BRYAN W. WOLFORD
Hearing Officer