

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 14-056

RICHARD REECE
August 27, 2014

WHEREAS, Richard Reece ("Reece"), requested a hearing to contest the proposed disciplinary action initiated against him on March 28, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-152; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Reece'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 Reece a five calendar days suspension of his occupational license in the above-referenced case in the matter of DC-13-152; 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: Richard M. Reece

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Case No. 13-152

License Number: 151659

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 April 20, 2013 making a request for a hearing by Richard M. Reece (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated March 28, 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 November 29, 2012, Petitioner was employed by IOC-Cape Girardeau, LLC ("Company") as the Chief of Security aboard the *Isle Casino Cape Girardeau* ("Casino").
2. On November 29, 2012 Trooper Matthew Lomedico ("Tpr. Lomedico") of the Missouri State Highway Patrol began an investigation after discovering that members of the security department were improperly issuing visitor passes to employees who forgot their employee access badges.
3. On November 29, 2012, Tpr. Lomedico was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Tpr. Lomedico's investigation revealed the following:
 - a) On Thursday November 29, 2012 at 12:30 p.m. Cage Cashier Miranda Lenand responded to the Commission office. Lenand reported that she had lost her employee access badge ("access badge") and requested a new one. Lenand was informed of the appropriate procedure to follow for lost access badges and then escorted to the Casino's Security Department to help in securing a temporary employee access badges ("temporary badge").
 - b) Upon responding to the security office, Tpr. Lomedico contacted Security Supervisor Alan Schoen and Security Officer Shirleen Sexton and requested a temporary badge for Lenand. In response, Schoen stated, "*We don't have any.*"

Only HR have [sic] them. We have been handing out visitor badges to employees who forgot them." Sexton added that she knew of two incidents where the employees forgot their access badges and were given visitor badges.

- c) Tpr. Lomedico next responded to the Security Dispatch Office and was unable to locate any temporary badges and could not find the Temporary Badge Issue Log Book.
 - d) When confronted with the investigatory findings and apparent oversights within the security department, the Petitioner provided the Commission with a written statement, which in part states, *"The pre-opening timeline included the printing of Visitor/Vendor badges while Temporary badges were mistakenly omitted from that timeline. . . The Temporary Badge Issue Log was created and on file for use; however, the log was not printed and did not serve as a reminder of the need."*
5. Petitioner admitted that the Security Department had been issuing Vendor/Visitor badges instead of temporary badges to employees.
 6. Petitioner's actions or inactions in failing to ensure that the security department possessed and properly issued temporary access badges along with a log book recording their issuance and return 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); the Commission's Minimum Internal Control Standards ("MICS") Chapter N § 4.05; and the Company's Internal Control Standards ("ICS") Chapter N § 4.05.

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 N, § 4.05 C through D states that "(a)ny employee who has lost their employee access or gaming license badge will obtain a temporary employee access badge from Security Dispatch... A Temporary Badge Issue Log (N2) . . . will be completed and submitted."
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, as Chief of Security, was responsible for ensuring that the Security Department personnel followed all rules, regulations, and internal control standards. Petitioner was aware that the Security Department did not have temporary access badges and did not have a Temporary Badge Issue Log Book as required by the internal controls. Petitioner testified that his staff issued Vendor/Visitor badges to employees rather than temporary access badges as required by the internal controls.

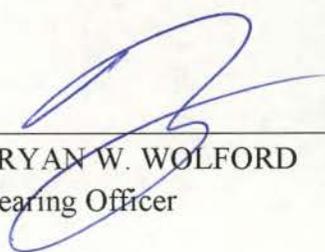
Petitioner's actions or inactions in failing to ensure that the security department possessed and properly issued temporary access badges along with a log book recording their issuance and return discredits the Missouri gaming industry. Petitioner did not meet his high burden of proof of clear and convincing 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 March 28, 2013 to impose a **Five (5) calendar day suspension** against Petitioner is affirmed as a proper and appropriate discipline.

DATED: _____

July 17, 2014



BRYAN W. WOLFORD
Hearing Officer