

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 14-058

MICHAEL MAYHEW
August 27, 2014

WHEREAS, Michael S. Mayhew ("Mayhew"), requested a hearing to contest the proposed disciplinary action initiated against him on November 6, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-390; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Mayhew'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 Mayhew a four calendar days suspension of his occupational license in the above-referenced case in the matter of DC-13-390; 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: Michael S. Mayhew

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Case No. 13-390

License Number: 146085

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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 an undated letter received December 11, 2013 making a request for a hearing by Michael S. Mayhew (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated November 6, 2013. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on June 17, 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 April 27, 2013, Petitioner was employed by Ameristar Casino St. Charles, INC ("Company") as a Security Shift Manager aboard the *Ameristar Casino St. Charles* ("Casino").
2. On April 27, 2013, Sergeant Michael Wyss ("Sgt. Wyss") of the Missouri State Highway Patrol began an investigation after learning that patrons attempted to steal items from Bugatti's Restaurant.
3. On April 27, 2013, Sgt. Wyss was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Sgt. Wyss's investigation revealed the following:
 - a) On April 27, 2013 at approximately 1843 hours, Petitioner approached a male and female who were attempting to steal from Bugatti's Restaurant on the Streetscape of the Casino.
 - b) Petitioner confronted a male and a female who were intoxicated and the female had a bottle of Tabasco sauce, a steak knife, a fork, and salt and pepper shakers in her purse.

- c) Petitioner allowed the individuals to leave the restaurant and escorted the couple into a cab in the Porta Cochere, without notifying the Commission's on-duty gaming agent of the incident.
5. Petitioner testified that he did fail to promptly notify the MGC gaming agent on duty, but that he was trying to handle the situation in a manner that did not create a disturbance and to ensure that intoxicated patrons made it home safely.
6. Petitioner's actions or inactions in allowing individuals who were attempting to steal from the Casino to leave the Casino property and not notify the on-duty MGC gaming agent 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), 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. 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..."
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

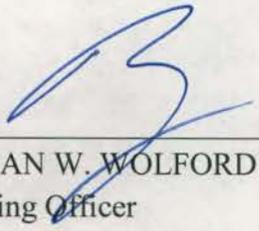
The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner, had the responsibility as a manager to ensure that he and his subordinates followed all gaming laws, regulations, and internal control standards. Petitioner admitted to failing to notify the on-duty MGC gaming agent about the intoxicated patrons' attempted theft of items from Bugatti's Restaurant. Petitioner has a prior suspension for failing to notify the Commission of a violation.

Petitioner's actions or inactions in allowing individuals who were attempting to steal from the Casino to leave the Casino property and not notify the on-duty MGC gaming agent 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 November 6, 2013 to impose a **Four (4) calendar day suspension** against the Petitioner is affirmed as a proper and appropriate discipline.

DATED: July 22, 2014



BRYAN W. WOLFORD
Hearing Officer