

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 15-002

BRIAN T. MEEHAN
January 28, 2015

WHEREAS, Brian T. Meehan (“Meehan”), 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 Meehan’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 Meehan a four calendar day 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: Brian T. Meehan

)
)
)
)

Case No. 13-390

License Number: 146085

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 Brian T. Meehan (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 October 21, 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 February 6, 2013, Petitioner was employed by St. Louis Gaming Ventures, LLC ("Company") as a Table Games Supervisor aboard the *Hollywood Casino St. Louis* ("Casino").
2. On February 6, 2013, Trooper Vernon Whitlock ("Tpr. Whitlock") of the Missouri State Highway Patrol was contacted by the Casino's surveillance department regarding two patrons engaging in lewd and inappropriate behavior.
3. On February 6, 2013, Tpr. Whitlock was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Tpr. Whitlock's investigation and review of surveillance records revealed the following:
 - a) On February 6, 2013 at approximately 21:15 hours, patrons Tracy Luttrell and John Eilermann were gambling in the Rodeo High Limit Room. During the next eighty-six minutes, the two engage in lewd and inappropriate behavior including kissing, fondling each other, and simulating sexual acts in the presence of another patron and Casino employees.
 - b) At approximately 21:50 hours, Petitioner enters the Rodeo High Limit room to relieve Pit Supervisor Scott Rivera.

- c) At 21:52 hours, Eilermann places his left hand under the table upon Luttrell's leg and groin area. This action occurred directly in front of Petitioner.
 - d) At 21:55 hours, Eilermann places his right hand on Luttrell's right breast and partially slides it under her blouse. Eilermann then aggressively and repeatedly squeezed Luttrell's right breast four times. This action occurred directly in front of Petitioner.
 - e) At 22:02 hours, Eilermann places his right hand on Luttrell's left breast and partially slides it under her blouse. Luttrell grabs Eilermann's hand as he squeezes her left breast. This action occurred directly in front of Petitioner.
 - f) At 22:04 hours, Eilermann grabs both of Luttrell's feet causing her to fall on her back into her chair. Eilermann then pulls her legs over his shoulders and begins to thrust his pelvis into her, simulating a sexual act, for approximately five seconds. This action occurred directly in front of Petitioner.
 - g) At 22:16 hours, Eilermann grabs Luttrell's left breast with his right hand. This action occurred directly in front of Petitioner.
 - h) At 22:19 hours, Eilermann lifts the back of Luttrell's blouse and reaches down the back of her pants. This action occurred directly in front of Petitioner.
 - i) At 22:23 hours, Luttrell sits on Eilermann's lap and Eilermann thrusts his pelvis up against her, simulating a sexual act. This action occurred directly in front of Petitioner.
 - j) At no time did Petitioner address Eilermann and Luttrell about their inappropriate behavior. At no time while Petitioner was in the Rodeo High Limit Room did he promptly report to his supervisor or the Commission about the ongoing inappropriate behavior.
5. Petitioner testified that he was present when the lewd and inappropriate behavior occurred, and that he saw the behavior. Petitioner further testified that he should have intervened, but did not for fear of losing his job. Petitioner testified that he did report the incident to his supervisor after he left the Rodeo High Limit Room at 22:42 hours, but also admitted that he could have called someone sooner during a card cut. Petitioner stated that there was no phone nor radio in the pit at the Rodeo High Limit room, but there was one located in the pit stand behind Eilermann. Petitioner testified that he did

not feel comfortable leaving the pit to go to the pit stand because Eilermann was so close and there was \$1 million in Casino assets on the table.

6. Petitioner's actions or inactions in allowing individuals to engage in lewd and inappropriate behavior and failing to stop or promptly report such lewd and inappropriate behavior 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), and 11 CSR 45-5.053(3) (A) & (J).

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. 11 CSR 45-5.053(3) (A) & (J) prohibits a licensee from "(A) Failing to exercise discretion and good judgment to prevent incidents which might reflect on the repute of the State of Missouri and act as a detriment to the development of the industry, including allowing lewd entertainment in a boat . . . and (J) Failing to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; or to permit any type of conduct on the riverboat which reflects negatively on the repute of the state of Missouri or acts as a detriment to the gaming industry."
8. "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 did not confront the patrons about their lewd and inappropriate behavior, nor did he try to stop the behavior. While Petitioner did notify his supervisor about the behavior once he left the Rodeo High Limit Room, Petitioner had the opportunity to report the behavior during the fifty minutes that he was in the pit. Petitioner made the conscious choice to ignore his duty as a licensee because of his fear of being terminated by his employer for upsetting Eilermann, a high-roller patron.

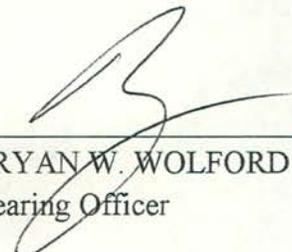
Petitioner did present evidence that the Casino afforded preferential treatment to Eilermann. In fact, the Casino had the Rodeo High Limit Room built for Eilermann. While the room was used almost exclusively by Eilermann, it was not a private room in that other high-limit gamblers could play in the room. Petitioner did present evidence that the Casino had warned employees against upsetting Eilermann. The Commission did not rebut Petitioner's evidence. Despite this evidence, Petitioner has an absolute duty to obey the gaming laws and regulations of the State of Missouri.

Petitioner's actions or inactions in allowing individuals to engage in lewd and inappropriate behavior and failing to stop or promptly report such lewd and inappropriate behavior 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: November 26, 2014



BRYAN W. WOLFORD
Hearing Officer