MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 15-017

JAMES DOWNES
March 25, 2015

WHEREAS, James Downes ("Downes"), requested a hearing to contest the proposed disciplinary action initiated against him on January 22, 2014, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-681; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Downes' 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 Downes a three hundred sixty-five (365) calendar day suspension of his occupational license in the above-referenced case in the matter of DC-13-681; 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:	)	
	)	
JAMES E. DOWNES	)	Case No. DC-13-861
	)	
	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "MGC") upon a request for hearing submitted by James E. Downes (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the MGC's Preliminary Order for Disciplinary Action dated January 22, 2014. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a hearing on December 11, 2014, where the Petitioner and the MGC's attorney, Mrs. Carolyn H. Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. Petitioner holds a Level II Occupational Gaming License granted by the MGC on August 9, 2012, for employment on an excursion gambling boat licensed by the MGC.

2. On March 29, 2013, the Maryland Lottery and Gaming Control Agency ("MLGCA") informed Petitioner via written correspondence that his application to become a gaming employee license would be denied for his failure to provide the MLGCA with certain documents concerning debts of Petitioner.

3. The aforesaid correspondence to Petitioner advised Petitioner of his right to request a reconsideration meeting within fifteen (15) days of March 29, 2013.

4. Petitioner did not request a reconsideration meeting within fifteen (15) days of March 29, 2013.

5. On August 22, 2013, the MLGCA denied Petitioner's Application to become a gaming employee in Maryland.

6. On August 22, 2013, Petitioner was advised of said Denial and advised of his right to file a petition for judicial review of the MLGCA decision within thirty (30) days of August 22, 2013.

7. Petitioner failed to file a petition for judicial review of the MLGCA decision within thirty (30) days of August 22, 2013.

8. At the Missouri Gaming Commission (MGC) Hearing conducted December 11, 2014, MGC Exhibit 1 (Cover Letter dated January 22, 2014, and Preliminary Order for Disciplinary Action); MGC Exhibit 2 (Correspondence of Petitioner dated February 4, 2014, requesting a Hearing); and MGC Exhibit 3 (Gaming Incident Report No. 20130929003) were all admitted into evidence without objection.

9. At the Hearing of December 11, 2014, when asked by MGC Counsel:

> Q: And you didn't - - and their (MLGCA) (sic) statement that you did not get this information to them as requested, that's accurate?
>
> (Tr.p.21 l.2)

Petitioner responded:

> A: That is accurate, yes.
>
> (Tr.p.22 l.5)

CONCLUSIONS OF LAW

1. "The MGC shall have the full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805, MO. REV. STAT. 2000.

2. The denial of Licensee's application for a gaming employee license by the MLGCA provides grounds to discipline Licensee's occupational license pursuant to §§ 313.805(6) and 313.812.14(4), RSMo, and CSR 45-4.260(4)(G).

3. "A holder of any license shall be the subject to 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 or the State of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts or omissions 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 MGC or any federal, state or local law regulation; . . . "Section 313.812.14, MO. REV. STAT. 2000.

4. "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 MGC's power to regulate riverboat gaming operations in this 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).

5. 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).

6. "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).

7. "The MGC shall have the following powers . . . to access any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, and penalties of an amount as determined by the MGC . . ." Section 313.805(6), MO. REV. STAT. 2000.

DISCUSSION

Upon the evidence adduced, Petitioner failed to supply the Maryland Lottery and Gaming Control Agency with requested information resulting in a denial of a license in Maryland. Further, when advised of his right to both administrative and judicial review of said Denial, Petitioner failed to exercise said right.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner did not meet his burden of proof to show clearly and convincingly that he should not be subject to discipline in that his application for a gaming employee license was denied by the Maryland Lottery and Gaming Control Agency. The decision of the MGC dated January 22, 2014, is affirmed as a proper form of discipline to be imposed upon Petitioner, being a three hundred sixty-five (365) calendar day suspension.

Dated: January 26, 2015

Chas. H. Steib, Hearing Officer