MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 15-043

SARA UHES
June 24, 2015

WHEREAS, Sara Uhes ("Uhes"), requested a hearing to contest the proposed disciplinary action initiated against her on December 18, 2014, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-14-420; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Uhes' 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 Uhes a one calendar day suspension of her occupational license in the above-referenced case in the matter of DC-14-420; 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: Sara Uhes	)	
	)	
	)	Case No. 14-420
License Number: 315821	)	

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 within the proper time frame making a request for a hearing by Sara Uhes (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated December 18, 2014. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on April 23, 2015 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 23, 2014, Petitioner was employed by St. Louis Gaming Ventures, LLC ("Company") as Director of Casino Marketing aboard the *Hollywood Casino St. Louis* ("Casino").

2. On April 23, 2014, Cynthia Fleener ("Ms. Fleener") of the Missouri Gaming Commission Received a report that the Casino had a slot tournament scheduled for the four Wednesdays in April, 2014 and began a regulatory investigation.

3. On April 23, 2014, Ms. Fleener was employed as an Auditor I with the Commission.

4. Ms. Fleener's investigation revealed the following:

    a) Tournament rules for the slot tournament were not submitted to the Commission at least ten days prior to the start of the tournament.

    b) Casino Director of Regulatory Compliance Jeffrey Hendricks stated that the tournament rules come from the Casino's Marketing Department, and that Petitioner was responsible for sending them.

    c) It was Petitioner's responsibility to submit all tournament rules to the Casino's Compliance Department for review and submission to the MGC prior to the beginning of the tournament.

d) Petitioner failed to submit and/or assure that the promotion's rules were submitted to the Casino's Compliance Department so that they could be submitted to the MGC.

5. Petitioner testified that a subordinate, Jordan Barton, was required to submit the rules and that Petitioner had signed off on the tournament rules ten days prior to the tournament start date. Petitioner testified that she was not Barton's supervisor, and that Barton admitted to making the mistake and was disciplined by the Casino. Petitioner further testified that the Casino's Marketing Department was in a transitional state at the time of the violation, and that several positions were unfilled. Petitioner testified that it was not her duty to submit the rules, and that she was assisting other departments as needed by the Casino due to the lack of personnel.

6. Petitioner's actions in failing to submit and/or assuring that the slot tournament rules were timely submitted to the MGC is injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and discredits the Missouri gaming industry and the State of Missouri, and violates Section 313.812.14 RSMo. (2012), 11 CSR 45-5.180(3)(A), and 11 CSR 45-10.030(1), (2), and (7).

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 45-5.180(3)(A) states, "The licensee shall notify the gaming agent in charge at that property and the commission tax section of the planned tournament at least ten (10) calendar days before the first date of the event."

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, as the Director of Casino Marketing, was responsible for ensuring that the Casino and its employees complied with the gaming laws and regulations of the State of Missouri. During the time of the incident, the Casino's Marketing Department was in transition, and several supervisory positions were vacant. Petitioner was delegated the duty to ensure that the slot tournament rules were submitted to the Commission. Petitioner assigned the duty to Mr. Barton, but did not follow up with Mr. Barton to ensure that the rules were properly and timely submitted. Despite the upheaval in the organizational structure of Petitioner's department at the time of incident, Petitioner was still ultimately responsible to ensure that the task of submitting the rules was performed.

Petitioner's actions in failing to submit and/or assuring that the slot tournament rules were timely submitted to the MGC is injurious to the public health, safety, morals, good order, and general welfare of the people of the State of Missouri and discredits the Missouri gaming industry. 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 December 18, 2014 to impose a one (1) calendar day suspension against Petitioner is affirmed as a proper and appropriate discipline.

DATED: May 22, 2015

BRYAN W. WOLFORD
Hearing Officer