

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 16-001

CUONG HO  
January 13, 2016

WHEREAS, Cuong Ho (“Ho”), requested a hearing to contest the proposed disciplinary action initiated against him on April 2, 2015, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-15-017; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Ho’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 Ho a revocation of his occupational license in the above-referenced case in the matter of DC-15-017; 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: Cuong Ho )  
 )  
 ) Case No. 15-017  
License Number: 162199 )

**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 May 12, 2015, making a request for a hearing by Cuong Ho (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated April 2, 2015. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on October 8, 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 September 12, 2014, Petitioner was employed by Harrah’s North Kansas City, LLC ("Company") as an Executive Casino Host aboard the *Harrah’s North Kansas City* ("Casino").
2. On September 15, 2014, Corporal Howard Cowan ("Cpl. Cowan") of the Missouri State Highway Patrol investigated a kiosk malfunction at the *Ameristar Kansas City* ("Ameristar") that allowed patrons to withdraw cash beyond their account limits.
3. On September 15, 2014, Cpl. Cowan was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Cpl. Cowan's investigation and review of surveillance video recordings revealed the following:
  - a) Under normal conditions, Ameristar redemption kiosks allow patrons with My Cash accounts to convert half of their accumulated balance into a cash withdrawal. Such a withdrawal zeroes out the account balance and prevents further transactions until the patron has accumulated a new cash balance.
  - b) Due to a programming error, the My Cash function on the kiosks did not properly deduct patrons’ cash withdrawals from their My Cash accounts, allowing the patrons to withdraw cash in excess of their account balances.

- c) The programming error in the My Cash program was in effect from approximately September 10, 2014 at 1:30 p.m. through September 12, 2014 at 6:30 p.m.
  - d) On September 12, 2014, eighteen separate transactions were initiated on Casino Operations Supervisor Richard Martin's ("Martin") My Cash account at Ameristar kiosks.
  - e) Between 1:32 a.m. and 1:33 a.m., Martin initiated four transactions at one kiosk, withdrawing \$144.00. Martin's account balance at the time should have only allowed him to withdraw \$37.00.
  - f) During Martin's initial transactions, Martin showed Licensee how to operate the kiosk.
  - g) Between 2:20 a.m. and 3:12 a.m., Licensee initiated seven separate kiosk transactions and withdrew \$256.00 from Martin's My Cash account, in excess of the account balance, without Martin being present.
  - h) Licensee admitted to using Martin's Player's Card to withdraw money from Martin's My Cash account, and that he was aware that the transactions did not properly debit Martin's account.
  - i) Licensee's fraudulent transactions contributed to a cash loss to Ameristar of \$256.00.
5. At hearing, Petitioner admitted that he fraudulently withdrew the cash and testified that he regretted his actions. He further testified that he was impaired due to alcohol ingestion when he committed the fraudulent withdrawals.
6. Petitioner's actions in fraudulently withdrawing cash from Ameristar's My Cash program and failing to promptly report the same to the Commission 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), the Commission's Minimum Internal Control Standards ("MICS") Chapter D, § 4.01, and the Company's Internal Control Standards ("ICS") Chapter D § 4.01.

## **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. 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. Section 570.030 of the Revised Statutes of Missouri prohibits the theft or stealing of property or services less than \$500 in value and Section 570.130 of the Revised Statutes of Missouri prohibits the fraudulent use of a debit or credit device.
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**

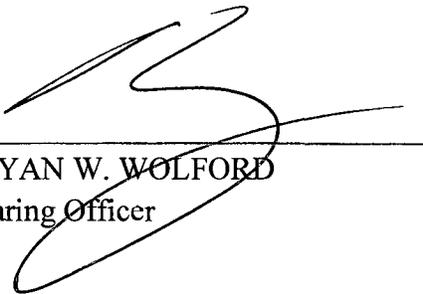
The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner knew that a computer glitch allowed Martin to withdraw more than the \$37.00 balance from his My Cash rewards account. Martin had showed Petitioner how to use Martin's card at the Rewards kiosk to fraudulently withdraw money. Petitioner did use Martin's card and fraudulently obtained \$256.00 in casino assets. Petitioner's and Martin's actions were violations of Missouri criminal law, and Petitioner did not report the violations to Commission agents as required by Missouri gaming regulations. Petitioner's failure to report the kiosk error and the fraudulent withdrawals lead to an additional loss of casino assets and damaged the casino's reputation.

Petitioner's actions in fraudulently withdrawing cash from Ameristar's My Cash program and failing to promptly report the same to the Commission 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 April 2, 2015 to impose a **Revocation of Petitioner's Occupational Gaming License** is affirmed as a proper and appropriate discipline.

DATED: November 25, 2015

  
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BRYAN W. WOLFORD  
Hearing Officer