

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 16-006

RICHARD E. MARTIN  
February 24, 2016

WHEREAS, Richard E. Martin ("Martin"), requested a hearing to contest the proposed disciplinary action initiated against him on April 17, 2015, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-15-016; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Martin'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 Martin a revocation of his occupational license in the above-referenced case in the matter of DC-15-016; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.



- d) Cpl. Cowan's investigation revealed that in total, transactions by several patrons, including Licensee, resulted in excessive My Cash kiosk payouts of \$5,337.00.
  - e) On September 12, 2014, eighteen separate transactions were initiated on Licensee's My Cash account at Ameristar kiosks.
  - f) Between 1:32 a.m. and 1:33 a.m. on September 12, 2014, Licensee initiated four transactions at one kiosk, withdrawing \$144.00. Licensee's account balance at the time account balance at the time should have only allowed him to withdraw \$37.00.
  - g) Licensee proceeded to gamble between 2:26 a.m. and 5:55 a.m. on September 12, 2014. During that time period, Licensee had \$3,435.00 in play, which resulted in an increase of his My Cash account balance to \$58.00.
  - h) Between 5:55 a.m. and 6:07 a.m. on September 12, 2014, Licensee initiated seven more kiosk transactions, withdrawing an additional \$400.00 from his My Cash account.
  - i) During Licensee's initial transactions on September 12, 2014, Licensee showed Executive Casino Host Cuong Ho ("Ho") how to operate the kiosk.
  - j) Between 2:20 a.m. and 3:12 a.m. on September 12, 2014, Ho initiated seven separate kiosk transactions and withdrew \$256.00 from Licensee's My Cash account, in excess of the \$37.00 or \$58.00 account balances, without Licensee being present.
  - k) A total of \$800.00 was withdrawn from Licensee's account, in excess of his account balances on September 12, 2014.
  - l) Licensee admitted taking advantage of the fact that the My Cash kiosk was malfunctioning to withdraw more money from his account than he actually had on September 12, 2014.
  - m) Licensee allowed Ho to use his Player's Card to withdraw cash from Licensee's account at the My Cash kiosks on September 12, 2014.
5. At hearing, Petitioner stipulated to each of the facts set forth in the sub-paragraphs to Paragraph 4 above. Petitioner acknowledged that the kiosk did overpay him multiple times, but that he did not manipulate the machine in any way. Petitioner testified that his actions did not meet the elements of the crime alleged in that there was no fraud on his part and that he did not manipulate the machine in any way. Therefore, according to Petitioner, he did not have to report his actions to the Commission. Petitioner also stated

that he did not tell anyone at Ameristar that their My Cash kiosks were malfunctioning, and acknowledged that it was not the right thing to do.

6. Cpl. Cowan testified that Licensee violated Missouri law by Fraudulently Using a Credit or Debit Device and by Stealing Less than \$500.00. Cpl. Cowan acknowledged that the victim, Ameristar, did not want to pursue charges.
7. Petitioner's actions in making fraudulent withdrawals from Ameristar's My Cash program with the intent to deprive Ameristar of cash discredits the Missouri gaming industry and the State of Missouri, and violates Section 313.812.14 RSMo. (2014), Section 570.030 RSMo. (2014), Section 570.130 RSMo. (2014), and 11 CSR 45-10.030(1), (3), and (4).

### 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. 2014.
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. 2014.
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 45-10.030(3) states "In the event that a licensee or employees of the licensee knows or should have known that an illegal or violent act has been committed on or about the licensed premises, they shall immediately report the occurrence to law enforcement authorities and shall cooperate with law enforcement authorities and agents of the commission during the course of any investigation into an occurrence."
8. 11 CSR 45-10.030(4) states "Licensees shall take reasonable actions to safeguard from loss all tokens, tickets, chips, checks, funds, and other gaming assets."
9. Section 570.030 states: "A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion."
10. Section 570.130 states: "A person commits the crime of fraudulent use of a credit device or debit device if the person uses a credit device or debit device for the purpose of obtaining services or property, knowing that: (1) The device is stolen, fictitious or forged; or (2) The device has been revoked or cancelled; or (3) For any other reason his use of the device is unauthorized."
11. "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 Casino Operations Supervisor to ensure the integrity of electronic gaming devices and compliance with the laws and

regulations of the State of Missouri, and to prevent and detect cheating at all gaming facilities. Though Petitioner was a patron at Ameristar on September 12, 2014, and not an employee of that facility, he still had the obligation as a Level II licensee to follow Missouri gaming laws and regulations.

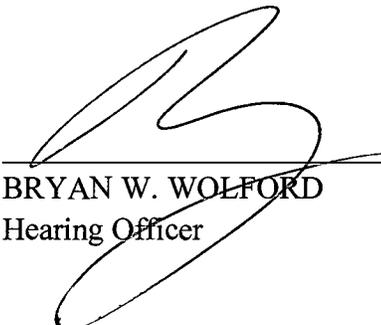
As a Level II licensee, Petitioner knows the Missouri gaming laws and regulations, including the requirement that he safeguard casino assets and that he report violations of law or regulation to the Commission. Petitioner realized that the My Cash rewards kiosks were not debiting his account balance after each withdrawal. He knew that the My Cash program should have zeroed his balance after his withdrawal, yet he continued to use his rewards card to debit cash from the kiosks. Petitioner even testified that he knew that taking money from the kiosks in excess of his balance was not the right thing to do. Petitioner did not notify the Commission or the casino personnel about the malfunctioning kiosks and as a result, the casino lost \$800.00 in assets as a direct result of Petitioner's conduct.

Petitioner's actions in making fraudulent withdrawals from Ameristar's My Cash program with the intent to deprive Ameristar of cash 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 17, 2015 to impose a **Revocation** against the Petitioner is affirmed as a proper and appropriate discipline.

DATED: January 6, 2016

  
BRYAN W. WOLFORD  
Hearing Officer