

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 14-048

KEE HUNG
August 27, 2014

WHEREAS, Kee Hung ("Hung"), requested a hearing to contest the proposed disciplinary action initiated against him on March 28, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-12-446; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Hung'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 Hung a seven calendar days suspension of his occupational license in the above-referenced case in the matter of DC-12-446; 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: Kee L. Hung

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Case No. 12-446

License Number: 107700

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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 April 2, 2013 making a request for a hearing by Kee Hung (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated March 28, 2013. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on May 29, 2014. Although duly notified of the time and place for the hearing, Petitioner did not appear and no one on his behalf appeared. The Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On April 25, 2014, the Commission sent a letter to Petitioner by certified mail, return receipt requested, to his address at 674 NW Valleybrook Road, Blue Springs, Missouri 64014. The United States Post Office confirmed its date of delivery to the Petitioner as May 9, 2014, when the Petitioner signed the receipt. The letter notified the Petitioner that his hearing before the Commission's hearing officer was scheduled for Thursday, May 29, 2014 at 9:00 a.m. at the Commission's office located at 1321 Burlington Street, suite 100, Kansas City, Missouri 64116. The Letter also provided the Commission's telephone number at its principal office at (573) 526-4080 and the Commission's telephone number at its Kansas City office at (816) 482-5700.
2. Hearing Officer Wolford waited until 09:53 a.m. on Thursday, May 29, 2014 to start the hearing after first calling the halls of the Commission's Kansas City office and central office to determine if Petitioner was present or had telephoned.
3. On July 4, 2012, Petitioner was employed by IOC-Kansas City, Inc. ("Company") as a Casino Operations Manager aboard the *Isle of Capri Casino, Kansas City* ("Casino").
4. On July 4, 2012, Trooper Mindy Lambeth ("Tpr. Lambeth") of the Missouri State Highway Patrol began an investigation in response to a report that several Casino Pit Managers were not spending 90% of their shifts within the pit.

5. On July 4, 2012, Tpr. Lambeth was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
6. Tpr. Lambeth's investigation and review of surveillance video recordings revealed the following:
 - a) Upon hearing information indicating that Isle of Capri Pit Managers were not spending 90% of their shifts within the Pit, Tpr. Lambeth asked for surveillance coverage of the pit from 8:00 a.m. on July 3, 2012 to 8:00 a.m. on July 4, 2012 to determine the amount of time that Pit Managers Mike Harrington, Toby Ditterline, and Charles Gaillard were spending in the pit during their respective shifts. On July 11, 2012, Tpr. Lambeth received a surveillance report of the above time period and discovered the following:
 - i. Mike Harrington was assigned to the July 3rd day shift from 8:00 a.m. to 4:00 p.m., with the pit being closed from 8:00 a.m. to 10:00 a.m. The review showed that during Harrington's entire shift he was physically present within the pit for ninety (90) minutes, approximately nineteen percent (19%) of his shift. During the time in which the pit was open, from 10:00 a.m. to 4:00 p.m., Harrington was physically present within the pit for eighty-three (83) minutes, approximately twenty-three percent (23%) of his shift.
 - ii. Toby Ditterline was assigned to the swing shift, from 4:00 p.m. on July 3rd to Midnight. The pit was open for Ditterline's entire shift. The review showed that during Ditterline's shift he was physically present within the pit for one hundred thirty-three (133) minutes, approximately twenty-eight percent (28%) of his shift.
 - iii. Charles Gaillard was assigned to the grave shift from Midnight until 8:00 a.m. on July 4th, with the pit being closed from 5:00 a.m. to 8:00 a.m. on July 4th. The review of Gaillard's shift revealed he was physically present within the pit for eighty-five (85) minutes, approximately eighteen percent (18%) of his shift. During the time in which the pit was open, from Midnight to 5:00 a.m., Gaillard was physically present within the pit for fifty-two (52) minutes, approximately seventeen percent (17%) of his shift.

- b) When confronted with the findings regarding their presence on the gaming floor during their July 3 and July 4 shifts, Harrington, Ditterline, and Gaillard each admitted that it was likely that they were not present in the pit for 90% of the time.
 - c) In explaining their absences from the pit, each manager stated that they were absent from the pit during their respective shifts because they were busy completing administrative tasks off of the gaming floor. They added that they were assigned the administrative tasks at an earlier meeting by Director of Casino Operations Chris Stevenson and the Licensee. The Pit Managers added, they were told that their extra work assignments were necessary in order to make up for the absence of an administrative assistant that had recently left her job and that they were not told as to when, during their shifts, they were supposed to complete the extra administrative duties.
 - d) When confronted with the Pit Managers' statements, Stevenson confirmed that the Pit Managers had taken on a variety of administrative duties that are required to be completed on a daily, weekly, and monthly basis. Stevenson went on to say, "It was intended for them, as salaried employees, to work on the administrative duties before or after their shift and not take away from their duties in the pit." When asked if the Pit Managers were advised of when they should be completing the administrative duties, Stevenson indicated the Pit Managers were not directly told when they were to complete the administrative duties.
 - e) When confronted with the Pit Managers' statements, the Licensee said they discussed the duties at the Pit Managers' meeting on June 20, 2012. When asked as to when the Pit Managers were expected to complete the administrative duties, the Licensee stated, "It should not be a problem for Harrington or Gaillard because they have time at the beginning and ending of their shifts to do other tasks when the pit is closed." He added, "They all know they are not to do any administrative paperwork on the weekends." The Licensee was asked if the Pit Managers were told to come in early or stay late to get the assigned duties completed; in response he stated, "It was not mentioned that they needed to come in early or stay late to complete the duties."
7. Petitioner's actions or inactions in failing to adequately staff the gaming floor's pit 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), 11 CSR 45-4.260(4)(E), (F), & (Q), the Commission's Minimum Internal Control Standards

("MICS") Chapter D, § 13.01, the Company's Internal Control Standards ("ICS") Chapter D, §13.01.

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. 2010.
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. Under 11 CSR 45-9.060(3), violations of the Commission's Minimum Internal Control Standards ("MICS") by a Class A licensee or an agent or employee of the Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.

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. The Commission's MICS, Chapter D, § 13.01 states, "Other than a Casino Shift Manager acting as a Table Games Manager, Table Games Managers shall be physically present in the pit for at least ninety percent (90%) of their shift and be solely dedicated to supervising activities at open table games and activities within the pit(s). Absences of a longer duration will require a replacement Table Games Manager to be on duty in the pit."
9. The Company's ICS, Chapter D, § 13.01 states, "Other than a Casino Shift Manager acting as a Table Games Manager, Table Games Managers shall be physically present in the pit for at least ninety percent (90%) of their shift and be solely dedicated to supervising activities at open table games and activities within the pit(s). Absences of a longer duration will require a replacement Table Games Manager to be on duty in the pit."
10. "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).
11. "Failure of the petitioner to appear at the hearing shall constitute an admission of all matters and facts alleged by the commission in its notice of commission action and a waiver of the petitioner's rights to a hearing . . ." Regulation 11 CSR 45-13.060.

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 Casino Operations Manager, had the responsibility to ensure that the gaming floor pit was adequately staffed and that the Pit Managers were physically present in the pit for at least 90% of their shifts. Petitioner assigned additional administrative duties to the Pit Managers, and failed to instruct them that the duties cannot be performed during their shift in the pit. As a result, the Pit Managers spent more time away from the pit during their July 3rd and July 4th shifts than actually in the pit.

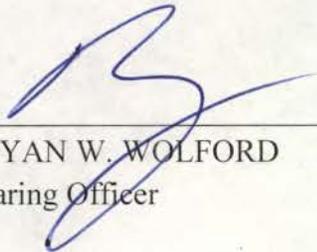
Petitioner's actions or inactions in failing to monitor the gaming floor on August 26, 2012 discredits the Missouri gaming industry. Petitioner did not meet his high burden of proof of clear and convincing evidence in showing that no violation occurred.

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 March 28, 2013 to impose a **seven (7) calendar day suspension** against Petitioner is affirmed as a proper and appropriate discipline.

DATED: _____

June 3, 2014



BRYAN W. WOLFORD
Hearing Officer